

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

(7)

OA No. 2679 of 1996 decided on 3rd July, 1997.

Pradeep Kumar & another
(By Advocate : Shri B. Krishan)

Applicants

Vs

Directorate of Estates & another
(By Advocate : Shri K.C.D. Gangwani)

Respondents

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Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? YES/NO

2. Whether to be circulated to other Benches
of the Tribunal? YES/NO

N. Sahu
(N. SAHU)
Member(A)

Central Administrative Tribunal
Principal Bench
New Delhi

OA 2679/96

New Delhi this the 30th day of July 1997.

Hon'ble Mr N. Sahu, Member (A)

1. Mr Pradeep Kumar
Son of Mr Chuhru Ram
working as UDC in the
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi
R/o B-707, Sarojini Nagar
New Delhi.

2. Mr Chuhru Ram
Son of Mr Mangat Ram
R/o B-707 Sarojini Nagar
New Delhi.

...Applicants.

(By advocate: Mr B.Krishan)

Versus

1. Director of Estates
Dte of Estates
4th Floor, C-Wing
Nirman Bhawan
New Delhi.

2. The Estate Officer
Dte. of Estates
4th Floor, B-Wing
Nirman Bhawan
New Delhi.

...Respondents.

(By advocate: Mr K.C.D.Gangwani)

O R D E R

Hon'ble Mr N. Sahu, Member (A)

Applicant No.2, father of applicant No.1 was allotted government residence No.B-707, Sarojini Nagar. He retired from government service on 30.6.95. He was allowed to retain the accommodation for a further period of 4 months after retirement as per rules. By a letter dated 21.8.95, his accommodation was cancelled w.e.f. 1.11.95. Applicant No.1, an UDC in the University Grants Commission was refused regularisation of the allotment in his name on the ground that his father had drawn house building advance and owned a plot of 48 sq. mts. in Block-B, Pocket-6, Sector-5, Rohini, although admittedly the said property was sold on 28.3.95 before his retirement on a power of attorney. Copy of the OM dated 1.5.81 Annexure R-2

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states that concession of an adhoc allotment will not be allowed where the retiring officer or the member of his family owns a house in the place of his posting. The respondents further argue that power of attorney does not transfer title to property and, therefore, applicant No.2 should continue to be treated as an owner. Even after his request for regularisation was turned down, applicant No.2 did not vacate the premises in question; eviction order under P.P. Act 1971 was passed on 16.7.96.

2. In the above background of facts, the following reliefs are claimed:

- (i) That suitable directions may be given to the respondents to allot a type B accommodation from the General Pool in the name of applicant No.1 and the applicants may be directed to be allowed to retain the present quarter No. B-707, Sarojini Nagar on payment of normal licence fee till such time an alternative accommodation is allotted in the name of applicant No.1.
- (ii) The impugned eviction order dated 16.7.96 may be quashed;
- (iii) Such other or further orders as this Tribunal may deem fit and proper may also be passed in favour of the applicants and against the respondents with costs.

3. A direction given for maintaining the status quo as an interim relief continued till date.

4. Mr B. Krishan, learned counsel for the applicants states that fulfilment of eligibility criteria must be considered on the date of retirement. The crucial statement made in the rejoinder was: "Applicant No.2 has never been a house owner at any point of time". No house was constructed although HBA was availed. The Rohini plot was sold on 28.3.95. He intimated this fact to his administrative authority. The next point made by the learned counsel for the applicant is best made by extracting a sentence from the rejoinder itself:

"That in view of Scheme or conversion of lease hold rights into free hold rights and allowing the G.P.A holders to get such properties transferred in their names by paying a conversion charge and additional fee etc. formulated by the DDA & L&DO with the final

approval of the Ministry of Urban Affairs the respondents cannot be allowed to say that the title still vests in the original owner even after executing the irrevocable General Power of Attorney in favour of the purchaser."

5. Besides the above submissions, learned counsel for the applicant pointed out to an instance of regularisation of quarter no. 1745 Laxmibai Nagar on similar facts in the case of Sunil Kumar and also filed a decision of CAT, PB in the case of Dr A. Golmei and another, OA 1249/91. The Tribunal directed regularisation of Park Street residence in the name of Mrs Golmei in favour of her husband. He cited the Apex Court's decision in the case of Vinod Krishna Kaul, C.A. No.10500 of 1995 where it is laid down that amended clause 3 of Government Residence (General Pool) Rules, 1963 cannot apply to a government officer who merely owns a house but does not have its possession or the right to its immediate possession ~~because~~ ^{if} becoming of occupation by another person under a legal right which cannot be overridden. The law does not compel a person to do the impossible. Recovery of damages in such circumstances was held to be unjustified.

6. Learned counsel for the applicant further argued that the impugned eviction order dated 16.7.95 was passed without affording a reasonable opportunity of being heard and cited for this purpose the Apex Court's decision in Minoo Balsaria's case, AIR 1992 (Bom.) P. 375 wherein the proposition laid down was that the Estate Officer must be satisfied that public premises are in unauthorised occupation and that the person in unauthorised occupation should be evicted. The Estate Officer should form his opinion on both counts. According to the counsel, no such opinion has been formed. Another Bombay decision in the case of Philips & Co. 1996 (CLT) 158(DB) was cited to the same effect.

7. Learned counsel for the respondents reiterated the submissions in the counter affidavit.

8. I have heard both the learned counsel. The objection of a plot

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of land with no evidence of a house built thereon which was already sold on the date of retirement cannot be sustained. What is mentioned in the rule is that the father or any family member should not own a house in the place of posting. Applicant No.2 declared that he did not own a house and the plot he owned was sold. A plot cannot be equated to a house, even if the respondents' doubts on the valid transfer of title is assumed to be true. Other conditions, namely non-drawal of HRA, continuous stay having been fulfilled, I agree with the point made by the learned counsel for the applicant that the crucial date for examining the eligibility criteria is the retirement date. Thus the only impediment imagined by the respondents being unfounded, they are directed to make ad-hoc allotment of appropriate type of residential accommodation to applicant No.1 from the General Pool as per rules and his entitlement within four weeks from the date of receipt of a copy of this order. The only other condition to be fulfilled by the applicant is the clearance of all arrear dues which exist as on the date of ^{which is} retirement is the eligibility date for consideration.

9. With regard to the impugned eviction order dated 16.7.96, the records show that there was a notice under Sub Section (1) of Clause (b) of Sub Section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 dated 25.6.96. It made out a case of unauthorised occupation ^{because of} ~~becoming~~ the Dte's cancellation order dated 21.8.95 taking effect from 1.11.95. Even according to the applicant, he appeared on 12.7.96. He only stated that his request for allotment of an alternative accommodation was still pending consideration before respondents No.1 on the date of hearing. After hearing the applicant, the eviction order dated 16.7.96 was passed. On the question of grant of an opportunity of hearing and forming an opinion or satisfaction of unauthorised occupation before issuing a notice, admittedly opportunity of hearing was given and availed of and the satisfaction is clearly

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spelt out in the preamble to the notice at Annexure-7. Any overstay after cancellation of an allotment order is obviously unauthorised unless that cancellation order is stayed or annulled or set at naught.

10. There is no rule which mandates that existing accommodation can be retained even after retirement till alternative ad-hoc accommodation is allotted to the dependent relative. There is no ^{Causal} ~~casual~~ relationship between the two. There is no authority brought to my notice either in law or under executive instructions that the allotted residence can be continued to be retained simply on the ground that no alternative accommodation is allotted. Allotment of a house is a facility extended to a government servant for enabling him to discharge his official duties more efficiently. It is a perquisite directly related to the office he holds. This facility is provided only in the public interest. The moment the government servant retires from public service, the very raison d'etre of holding onto such accommodation disappears. There is no vested right in a government accommodation. Such accommodation is public property and its use can only be justified on the ground of public interest. Having once retired from service, no such public interest is subserved. I, therefore, do not see any infirmity either in Annexure A-7 or Annexure A-1, the impugned order of eviction. Annexure A-1, therefore, does not call for any judicial intervention.

11. In view of the above discussion, the prayer for a direction to respondents to allow the applicant to retain quarter No.B-707, Sarojini Nagar, New Delhi on payment of normal licence fee till such time an alternative accommodation is allotted in the name of applicant No.1 cannot be granted. If such a prayer is granted, it will amount to laying down a new rule. This court is powerless to do so. That apart, the OM dated 1.5.81 which is cited by both sides clearly states that the government servant will be required to pay licence fee at market

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rate for the period of unauthorised occupation of the government accommodation. Any such direction will be contrary to the existing rules because applicant no.1 may not be entitled to the accommodation allotted to his retiring father. Thus it is not possible to grant this prayer of the applicant. Licence fee or arrears of licence fee will be collected by the respondents in accordance with the rules. A direct authority in support of this view is to be found in Apex order in Amitabh Kumar and another Vs. Director of Estates and another, (1997)3 SCC 88.

12. In the result, application is disposed of as above. Needless to state, the interim order directing status quo on 10.1.97 and continued thereafter is hereby vacated. In the circumstances of the case, no costs.

Narasimha Sahu
3/7/97
(N. Sahu)
Member (A)