

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

18

O.A./T.A. No 1541/1997

Decided on: 18.8.98

Shri Mehar Singh....Applicant(s)

(By Shri S.C. Jain Advocate)

Versus

Lt. Governor & Ors.....Respondent(s)

(By Shri None Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal? *no*

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1541 of 1997

New Delhi this the 18th day of August, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Mehar Singh
R/o Flat No.643, Gulabi Bagh,
Delhi.

....Applicant

By Advocate Shri S.C. Jain

Versus

1. Lt. Governor of Delhi through
Chief Secretary, 5, Sham Nath Marg,
New Delhi.
2. Secretary,
Land and Building,
Delhi Govt.,
Vikas Bhawan,
I.P. Estate,
New Delhi.
3. Under Secretary (Allotment),
L&B,
Delhi Government,
Vikas Bhawan,
I.P. Estate,
New Delhi.
4. Director of Employment,
2, Battery Lane,
Rajpur Road,
New Delhi.

...Respondents

None for the respondents.

ORDER

Applicant is aggrieved that the respondents have cancelled the accommodation allotted to him without any show cause notice and the impugned order of the respondents is also illegal and without jurisdiction and has been issued by an authority not competent under the rules.

2. Facts briefly stated are that the applicant an Upper Division Clerk under the Directorate of Employment in Delhi Administration was allotted a flat

under the control of Directorate of Allotment, Government of NCT Delhi. On the ground that the said accommodation was completely sub-let, the respondents issued the impugned order cancelling the allotment and he was asked to hand over the vacant possession, failing which eviction proceedings would be initiated. By an interim order dated 7.2.1997, the respondents were directed to maintain status quo of the applicant in regard to the accommodation. After exchange of pleadings, the matter was heard finally.

3. Applicant contends that even in proceedings as in this case, he is entitled to a notice and he relies on the judgment of the Apex Court in **Maneka Gandhi Vs. Union of India**, AIR 1978 SC 593 and contends that he has not been given any personal hearing in the matter. The applicant also contends that the impugned order purports to be in exercise of power under SR 317B which is also totally illegal as this pertained to allotment of Government residences (General Pool in Delhi) under the relevant rules of 1963, which regulate allotment of residences under Administrative Control of the Directorate of Estates, New Delhi under Government of India whereas the applicant has been allotted a flat by the respondents, i.e., the Government of NCT and is governed under the Delhi Administration Government Residence (General Pool) Rules, 1977 which are separate and distinct. He further contends that as per these rules, the Directorate of allotment means Secretary of Public Works Department of Administration whereas the impugned order has been issued by the Under Secretary (Allotment) in the Land and Building Department who is not the competent authority.

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He is also aggrieved that he has been declared as ineligible for allotment under General Pool Accommodation for a period of 5 years, which according to him is totally illegal and wrong. He has also agitated against the proposal to initiate departmental proceedings against him and has, therefore, prayed that the impugned order should be quashed.

4. Respondents in their reply have stated that on the basis of the local inspection and on the statement of one Shri Kamal Singh and Raj Pal Singh which are annexed as Annexure R-2, a show cause notice dated 19.2.1997 was issued to the applicant by Registered Post, Annexure R-3. The respondents contend that the Delhi Administration Government Residence (General Pool) Rules, 1977 were framed in the year 1977 and were also implemented by the Government of NCT in the Department of Land and Building. The respondents further contend that para 2(e) of the Delhi Administration Allotment of Government Residences (General Pool) Rules, 1977 clearly specifies the definition of the Director of Allotment. It is further contended that the impugned order has been passed by the Secretary, Land and Building (PWD) and conveyed by the Under Secretary (Allotment). They have stated that in accordance with the provisions of FR 45-A, the applicant has been charged standard licence fee under FR 45-A, i.e., from the date of vacation if the intervening period falls within the grace period of 60

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days. The proposal to initiate departmental proceedings cannot be considered illegal as this is covered fully by Rule 17 and 18 of the Delhi Administration Allotment of Government Residence (General Pool) Rules, 1977.

5. The learned counsel for the applicant submitted that as per the Ministry of Works, Housing and Supply Notification dated 28.1.1959 published in the Gazette ordinary dated 7.2.59, Gazetted officers mentioned in table 1 of Col.1 para (b) of Government to be Estate Officers for the purpose of the said Act who shall exercise the powers conferred and perform the duties imposed by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1953, according to which, Additional District Magistrate was the designated officer in respect of premises under the administrative control of the Delhi Administration. The learned counsel argued that even assuming that the earlier notifications have been superseded by the Delhi Administration, Land and Building order dated 31.8.1992 on the basis of which powers of Estate Officer have been delegated by the Central Government under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to Assistant Housing Commissioner (Loans), Delhi Administration delegated powers to the Assistant Housing Commissioner (Loans). He, therefore, argued that the impugned order issued by the Land and Building department has been issued by an incompetent authority.

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6. The learned counsel also relies on some judgments in P.P.A. No. 30/93 - Pukhraj Singh Vs. Delhi Administration and Others decided by Additional District Judge, Delhi on March 18, 1993, P.P.A. No. 52 of 1993 - Vikram Mehto Vs. Secretary (PWD) and Another decided by Additional District Judge, Delhi on May 6, 1993, PPA No. 544 of 1991 - Nehru Lal Vs. Lt. Governor of Delhi and Another decided by the Additional District Judge, Delhi on 16.7.1992 and judgment of the Tribunal in O.A. No. 2142/1991 - Mujahid Ul Islam Farooqui Vs. Delhi Administration & Others decided on 24.01.1992.

7. I have heard the learned counsel for the parties and have carefully perused the record.

8. Regarding the competency of the authority who has ordered the cancellation of the allotment, it is necessary to refer to the Delhi Administration Government Residence (General Pool Accommodation) Rules, 1977. The applicant also relies on these rules. Under these rules in the definition clause under Rule 2(e), Director of Allotment is defined as Secretary of Public Works Department of the Administration which included Under Secretary under him. The impugned order of cancellation of allotment is issued by the Under Secretary (Allotment) in the Land and Building Department, Estate Branch. In this order it is stated that the Secretary (L&B)/PWD has ordered the cancellation of allotment and this was communicated by the Under Secretary (Allotment). The applicant contends that Under Secretary (Allotment) has no legal jurisdiction to sign and issue this order. I am

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unable to appreciate this contention. As stated above, the order specifically states that the cancellation has been done by the Secretary, (L&B)/PWD and this was communicated by the Under Secretary (Allotment). The rules provide that for any infringement of the rules of allotment, the Director of Allotment has the power to cancel the allotment and as per the definition 'Director of Allotment' means the Secretary in PWD and includes Under Secretary under him also. In view of this, the contention raised by the applicant regarding the competency of the authority who has issued this impugned order is rejected. The applicant has also raised a contention that the impugned order has been issued without giving the applicant any hearing. In the counter-reply filed by the respondents, there is a specific averment to the effect that notice was issued by Registered Post (Annexure R-III) to the applicant before the cancellation of the allotment. The applicant was asked to give reply to the notice on 28.1.1997. In the rejoinder to para 4.3, the applicant has not specifically denied the receipt of the Registered Notice. There is just a bland denial of entire averments in para 4.3 of the reply. In the circumstances, it cannot be said that the respondents had issued the impugned order without giving a show cause notice to the applicant. In the cases relied upon by the applicant, it was noticed that no opportunity was given to the petitioners in those cases. These cases are distinguishable and do not apply to the facts and circumstances of the present case. In the case of Pukhraj (Supra), it was held that the

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competent authority did not show any application of mind. On the other hand, in the present case, the impugned order is a fairly detailed order and there is application of mind on all relevant matters.

9. In view of the above, I am of the considered view that there is no ground to interfere with the impugned order. The application has no merit and is rejected. The interim order stands vacated. No costs.


(K. MUTHUKUMAR)
MEMBER (A)

Rakesh