

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1963 of 1997

New Delhi, this the 27th day of March, 1998

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

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Smt. Balo Devi, W/O Late Sh.
Rattan Lal Ex-guide R/O WC-7/55,
Prem Nagar Near Lodi Road, New
Delhi.

--APPLICANT.

(By Advocate Sh. V P S Tyagi)

Versus

1. The Union of India, through Secretary, Ministry of Rural and Urban Development, Nirman Bhawan, New Delhi - 110 001.
2. Director of Estates, Govt. of India, Maulana Azad Road, Nirman Bhawan, New Delhi.
3. Assistant Director of Estate (Type-A Section), (Litigation), Nirman Bhawan, New Delhi.

--RESPONDENTS.

(By Advocate -Mrs. Pratima Kr. Gupta)

O R D E R (ORAL)

By Mr. N. Sahu, Member(Admnv) -

The facts, in this case, are very simple. The husband of the applicant late Sh. Rattan Lal worked in the Directorate of Employment. He was allotted quarter No. WC-7/55, Prem Nagar, New Delhi in the year 1983. He died in harness on 2.1.1995. His superannuation in the normal course was due on 31.1.1997. The applicant applied for compassionate appointment and she was granted a compassionate appointment on 28.11.1996 as Chowkidar in the same Department in which her husband worked.

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2. It is also clear from the record that from the date of appointment regular licence fee has been recovered from the applicant. She applied for regularisation of the premises in her own name. As she continued to occupy the accommodation from November 1996, she was awaiting a decision on her application for regularisation. On 17.7.1997 the Directorate of Estate issued a statutory notice under Sub Section (1) and Clause (b) of Sub Section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the P.P. Act"). It is mentioned, in that notice, that the allotment stood cancelled on 1.6.1997. She was asked to explain as to why she should not be declared unauthorised occupant under the Public Premises Act and thereafter the attendant consequences would follow. By a letter dated 31.7.1997 (Annexure A-7), she replied to the show-cause notice proposing cancellation of allotment and eviction.

3. It is necessary to place on record that the allotment was cancelled by an order dated 4.7.1997. Thereafter the impugned order, dated 7.8.1997 (Annexure A-1) was passed directing vacation of the premises failing which there was a threat of eviction. The interim order, in this case, was passed on 26.9.1997 directing maintainence of the status-quo. This interim order continues till today. As things stood ~~by~~ another notice dated 4.9.1997 was issued by the Estate Officer under Sub Section (1) and Clause (b) of Sub Section (2) of Section 4 of the P.P. Act, Annexure A-12. On 22.9.1997, an order was issued computing the damages from July 1992 and levying an aggregate of Rs. 28,987/-.

4. The action of the respondents in issuing Annexures A-12 and A-13, when the proceedings were pending in this Court, is in violation of the Administrative Tribunal Acts, 1995, as the notice of this Court dated 21.8.1997 on admission was served on 29.8.1997 and all further proceedings, in this case, should have abated.

5. After notice, the respondents stated that the Govt. accommodation cannot be regularised in the applicant's name as there is a gap of nearly two years between the date of death of applicant's husband and date of appointment of applicant. The second point made by the respondents ^{Counsel} is that the second set of notices under Section 4 Sub Section (1) and (2), dated 4.9.1997 requiring the applicant to show-cause by 18.9.1997 and thereafter passing another order on 22.9.1997 levying penal rent of Rs. 22,987/- was a ~~mistake~~.

6. It is not possible to give any weight to this argument of the learned counsel for the respondents because the second notice dated 4.9.1997 is also a statutory notice signed by the Estate Officer. The order passed on 22.9.1997 is pursuant to this notice. As there are parallel proceedings, it is not clear which proceedings should be taken cognizance of.

On merits also, the notice dated 22.9.1997, Annexure A-13 levies normal rent from July 1992 to June 1993 to June 1996; it is only from June 1996 to August 1997 that penal rent at Rs. 1,375/- per month was levied

in the place of Rs. 39/- per month levied earlier. The conduct of the respondents shows that they have taken cognizance of the applicant's continuation after the death of her husband Sh. Rattan Lal from 2.1.1995 and it was only in July 1997, they have woken-up and issued the notice. Their conduct also shows that they have treated applicant as a regular tenant and levied regular licence fee. There is no dispute ~~that~~ on the facts; at least till the first notice of cancellation was given on 4.7.1997, for a period of two and half years, the respondents have allowed the applicant's stay by their intention and conduct and legitimized the same by collecting only the normal licence fee of Rs. 39/- per month. Collecting normal licence fee for a period of two years after death of original allottee raises a presumption of implied regularisation and also created a legitimate expectation of such regularisation. It is this background and as two parallel proceedings, equally and validly initiated by issuing statutory notices, one set of proceedings cannot be sustained in law. As the notice dated 7.8.1997 was not intended to be acted upon because of the subsequent notice dated 18.9.1997, I have no other option except to cancel Annexure A-1, dated 7.8.1997. I would, however, direct respondent No. 1, Secretary, Ministry of Rural and Urban Development, Nirman Bhawan to consider the applicant's case in the light of the implied acquiescence of the respondents for continuation of stay for a period of over two years after the death of Sh. Rattan Lal, applicant's late husband and also consider the fact that they have themselves directed levy of normal rent and if it is still felt that

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proceedings under the P.P. Act can be pursued the respondents are at liberty to await the explanation of the applicant on the notice dated 4.9.1997 by affording a fresh opportunity of being heard and decide the case thereafter in accordance with the provisions of law.

6. The OA is disposed of as above. No costs.

transcribed
(N SAHU) 27/3/98
MEMBER (ADMNV)

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