

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2665 of 1997

New Delhi, this the 3rd day of April, 1998

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

Dr. I. Sahai son of late Shri Bhagwan Sahai, Ex-Senior Radio Therapist and Head of the Department of Radiotherapy (Retired) Safdarjung Hospital, Ministry of Health & Family Welfare, New Delhi and residing at 302, Ambika Vihar, New Delhi -110087

-APPLICANT

(By Advocate Shri B. Krishan)

Versus

1. Union of India through the Director of Estates, Directorate of Estates, 4th Floor, "C" Wing, Nirman Bhavan, New Delhi.
2. The Medical Superintendent, Safdarjung Hospital, Ministry of Health & Family Welfare, Aurobindo Marg, New Delhi.
3. The Estate Officer, Safdarjung Hospital, Ministry of Health & Family Welfare, Aurobindo Marg, New Delhi.

-RESPONDENTS

(By Advocate Shri Harbir Singh proxy counsel of Mrs. P.K.Gupta)

O R D E R

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

In this Original Application the applicant prays this Court to quash the impugned order Annexure-A-1 directing him to pay an amount of Rs.20,641/- for the alleged unauthorised occupation from 1.5.1991 to 9.9.1991 at the rate of Rs.4455/- per month.

2. The brief facts are that the applicant retired from Safdarjung Hospital on 30.6.1990. He has been occupying D-II 149, Kidwai Nagar West which is a flat of the Safdarjung Hospital pool

accommodation. By a letter dated 7.10.1991 the Directorate of Estates stated that this quarter was decided to be taken to the general pool with effect from 10.9.1991 and in lieu thereof a general pool flat is being placed at the disposal of the Safdarjung Hospital pool. With effect from 10.9.1991 this quarter was allotted to Dr. (Mrs) L. Sahi, Deputy Health Officer, M.C.D. There was a reference to the proposal of the Additional Commissioner Rent and Estate of M.C.D. dated 31.10.1990. This flat was placed at the disposal of the M.C.D. with effect from 1.5.1991 but due to some administrative delay it could not be given effect from that date. The applicant pleaded that there was no delay on his part because he submitted all the documents required for the purpose in time. What ever rental dues exist, they are to be accounted to M.C.D. as the flat remained in the continued possession of the applicant without any break. The applicant also pointed out that the continued occupation of the flat was according to an agreement in principle by the Directorate of Estates and this was proved by the fact that the same flat was allotted to his wife. The levy of damage rent was stated to be unjust and arbitrary.

Answer
3. The learned counsel for the applicant also stated that the impugned order is not in accordance with law. Under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 if the Estate Officer is of opinion that any person is in unauthorised occupation of any public premises

and that he should be evicted he should issue a notice in the prescribed form. The notice shall specify the grounds on which the order of eviction is proposed to be made. Failure to give this opportunity for showing cause is not only contrary to law but also contrary to principles of natural justice. Wire Netting Stores Vs. DDA, 1969(3) SCC 415. It is after the issue of this notice, the Estate Officer should record his satisfaction that the public premises are in unauthorised occupation. Then and then only he may make an order of eviction. The records before me clearly reveal that there was a proposal to surrender the quarter in the occupation of the applicant to the general pool so that the Directorate of Estates can allot this quarter to his wife. Both have been staying in this accommodation since ages. On the basis of the provision that there could be a transfer of the accommodation to the spouse of a retiring employee provided certain conditions are fulfilled, this quarter was transferred to the applicant's wife. All the conditions have been fulfilled.

4.. The impugned order of the Estate Officer Annexure-A-1 dated 13.10.1997 is quashed for the reason that it had not taken into account relevant material on record. When at the time of passing the order there was a proposal to surrender this accommodation to the general pool and in lieu thereof the Directorate of Estates have agreed to offer another accommodation to the Safdarjung Hospital and has subsequently this interchange has

been accepted and the orders passed, there can be no question of any unauthorised occupation; on the contrary the continued accommodation for a period of 4 months after retirement was with the knowledge and implied consent of the Directorate of Estates. The Estate Officer has not taken these valid reasons into consideration. Secondly, the impugned order suffers from the defect that the statutory notice under Section 4(1) has not been given and that no eviction proceedings were ever initiated by respondent no.2 under the provisions of Section 9 of the P.P. Act at the time when the matter was pending consideration for regularisation of allotment. Respondent no.3 ought to have issued the statutory form and given an appropriate opportunity under the provisions of the PP Act, 1971. The form is not a mere formality. This is form 'A' under section 4(1) and clause (b)(ii) of sub-section 2 of Section 4. Thereafter comes Form 'B' under Section 5(1). Neither of these two forms was issued. What was issued was Form F under Section 7(3). The Estate Officer has jumped two steps ahead and decided the case.

5. For the above reasons I hold that the impugned order dated 13.10.1997 levying Rs.20,641/- is bad in law and unsustainable on facts. It is accordingly quashed. The O.A. is allowed. No costs.

N. Sahu
(N. Sahu) 3.4.98
Member (Admnv)