

Central Administrative Tribunal, Principal Bench

O.A. No. 2683 of 1997

New Delhi this the ^{26th} day of August, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Shri Kuldip Singh, Member (J)

Shri Raj Kamal
39-D Rouse Avenue, New Delhi-2.

...Applicant

By Advocate Shri O.P. Khokha

Versus

1. Union of India
through its Secretary,
Ministry of Urban Affairs,
Nirman Bhavan,
New Delhi.

2. Directorate of Estate,
through its Director,
Nirman Bhavan,
New Delhi.

...Respondents

By Advocate Shri K.K. Patel.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

Shri Raj Kamal has filed this Original Application challenging the order dated 7.11.1997 passed by the Assistant Director of Estates (Annexure A-1) calling upon the applicant to vacate the Government accommodation allotted to him, namely, 39-D Rouse Avenue, New Delhi. According to the annexure A-1 this action of eviction was taken in accordance with the Supreme Court Judgment dated 23.12.1996 as contained in CWP No.585/94 - Shiv Sagar Tiwari Vs. U.O.I. As the applicant was also an allottee who was allotted accommodation on out-of-turn basis, he was called upon to vacate the house.

2. The applicant has challenged the notice Annexure A-1 on the ground that this is arbitrary and he will be thrown on the road side without providing an alternative accommodation.

3. Respondents in their reply have stated that the applicant was working as Assistant Director General of Foreign Trade and had joined Central Government services on 22.8.90. First he got an ~~out-of-turn~~^{out-of-turn} allotment at 608 Minto Road Hostel on out-of-turn basis. Thereafter, he got Type-D accommodation, i.e. the accommodation in question again on out-of-turn basis and one type higher than his eligibility. The Hon'ble Supreme Court in case titled as Shiv Sagar Tiwari (Supra) has decided that all out-of-turn allottees who got allotments between 1991-95 may be got evicted. As such, the impugned notice has been served in pursuance of the orders of the Hon'ble Supreme Court. It is also pleaded that the Government of India had also issued an Ordinance known as "Out-of-Turn Allotment of Government Residences (Validation) Ordinance, 1997" on 21.6.1997 validating all allotments except those mentioned in clause 3(5) of the Ordinance. Clause 3(5)(C) provides that the protection from eviction will not be available to those out-of-turn allottees when allotment is of a higher type than the entitlement of allottee. Since the applicant was holding the accommodation which was above his entitlement and even prior to occupying this accommodation, earlier accommodation which was allotted to him was also allotted on out-of-turn basis, hence, no protection was available to him either from the judgment of the Supreme Court or from the Ordinance passed to validate the out-of-turn allotment. As such applicant has no right to challenge the eviction order mentioned in Annexure A-1.

4. We have heard the learned counsel for the parties and have perused the records.

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5. The learned counsel for the applicant has relied upon para 40 of the AIR 1997 SC 2725 that is again judgment of Shiv Sagar Tiwari (Supra) on the basis of which this Anneuxre A-1 has been issued and submitted that in accordance with paragraph 40 of the judgment, the applicant is protected and he cannot be evicted. However, we have carefully gone through para 40 of the judgment which is reproduced below:-

40. It is required to be stated as to how eviction should take place. The need for expressing views on this aspect has arisen because in the first report of Gupta Committee some observations have been made in this regard in paras 6.1 to 6.3. In the written submission filed by Shri G. Ramaswamy it has been prayed on behalf of the aforesaid Association that, recommendation in paras 6.2 and 6.3 may be directed to be complied with. We have considered this, and the recommendation made in para 6.1 reading as below:

6.1 Allottees in Categories IV, IX and XI may be ordered to be evicted subject to the condition that if they are entitled to any lower type of accommodation on in-turn basis of if they were previously occupying any lower type of accommodation, the eviction will not take place for four weeks from the date on which the entitled in-turn accommodation or the lower type which was previously occupied is offered to the allottees entitled to an alternate accommodation will be offered the same, until the arrears on the basis of enhanced licence fee recommended herein are deposited within two months, the Director should take action for eviction against such persons and for the period beyond two months, the allottee should be liable to pay at the "damages rate".

has our approval. This would apply to those others also who have become liable for eviction by the force of this judgment. We state the same regarding the following recommendation in para 6.3.

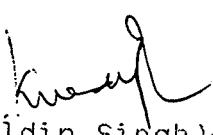
6.3. The Committee recommends that in case any allottee in Categories IV, IX and XI is due for retirement in the next one year from 27.9.1996, he may be exempted from eviction in view of the exceptional hardship that is likely to be faced by him and his family".

(emphasis added)


6. A - careful perusal of para 40 would show that the applicant was entitled to an alternative accommodation of Type III only, in case, he was entitled to Type III accommodation and was earlier in occupation of the same on "in turn basis".

7. Since the applicant has nowhere in his application has averred that he was holding Type III accommodation on "in turn basis" or that he was allotted accommodation on "in turn basis". Even, in the rejoinder to the counter-affidavit filed by the department, the applicant, has nowhere alleged that he was allotted the earlier accommodation on in turn basis when there was specific allegation against him that earlier accommodation allotted to him was on out-of-turn basis. Now the applicant cannot say that he should have been offered a lower category of accommodation previously occupied by him and only thereafter, eviction notice should have been ^{passed} ~~passed~~ against him.

8. From whatever angle we may examine the case of the applicant, we are of the considered opinion that, the applicant has no cause and the order issued by the respondents as per Annexure A-1 is well in conformity with the judgment of the Hon'ble Supreme Court in Shiv Sagar Tiwari's case. In view of this, application fails and is dismissed. No costs.


(Kuldeep Singh)
Member (J)

Rakesh


(S.R. Adige)
Vice Chairman(A)