

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 63 of 1997 decided on 30th June, 1997. 9

Shri Ved PrakashApplicant
(By Advocate : Shri George Paracken)

Vs

Director, Directorate of Estates & Ors.Respondents
(By Advocate : Shri R.P. Agarwal)

CORUM

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

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO

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

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.63 of 1997

New Delhi, this the 30th day of June, 1997. (10)

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

Shri Ved Prakash
S/o Daya Ram
R/o 332, Sector -2,
R.K. Puram
New Delhi - 110 022

...Applicant

(By Advocate : Shri George Paracken)

Versus

1. Director
Directorate of Estates,
Nirman Bhawan,
New Delhi

2. The Estate Officer,
Directorate of Estates,
Nirman Bhawan,
New Delhi

...Respondents

(By Advocate : Shri R.P. Agarwal)

JUDGEMENT

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

The applicant, allottee of a quarter on compassionate grounds, is aggrieved by an order dated 26.03.1996 cancelling the allotment of Quarter No.332, Sector-2, R.K. Puram, New Delhi for allegedly subletting the said accommodation and also the eviction order dated 18.12.1996 passed by the Estate Officer directing the applicant to vacate the quarter.

2. Respondent No.1 stated that on an inspection in December, 1995 the applicant was not found in his allotted house and one Mrs. Sudha was found in the premises. The applicant was alleged to have sublet the same to an unauthorised person contravening SR 317-B-20 of the Allotment of Government Residences

(General Pool in Delhi) Rules, 1963. In a hearing before the respondents, the applicant had produced the following evidence to show that he was genuinely residing in the allotted premises:

- (a) Ration Card No.059482 with FIR No.7/91 dated 04.01.1995 for the loss of the earlier ration card.
- (b) C.G.H.S. Card No.163391
- (c) Voters Identity Card No.DL/02/010/180498.
- (d) Copy of the inland letter received by post dated 22.02.1995.
- (e) Copy of wedding invitation card received on 01.11.1995.
- (f) Receipts from Raj Electronics, R.K. Puram dated 01.11.1994.
- (g) Receipts from Pushpa Finance Co. dated 10.11.1993 and 01.01.1994.

The above evidence did not convince the respondents and the impugned order was passed.

3. The applicant was a bachelor and living alone in the quarter. He lost his father and mother. He needed some assistance particularly because, as claimed, he suffered from mental disorder and was on medical leave from 12.03.1995 to 13.03.1996. During this period one Mrs. Sudha frequently visited his house and she was present when the inspecting team arrived. Mrs. Sudha was stated to be his cousin sister. On the date of inspection, he stated he was on a visit to a hospital for medicines. The eviction order was issued in the name of "family of Ved Prakash" and not in the applicant's name; which according to the applicant, indicated carelessness on

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the part of the respondents. The applicant's ground is that the mere presence of Mrs. Sudha should not have led to the conclusion that she was sharing the accommodation of the applicant. This alleged subletting had not been proved by any document or witnesses. The enquiry conducted by the respondents is one sided and onus of proving bonafide stay was improperly cast on the applicant.

4. In the counter it is stated that subletting was suspected as the allottee and his family members were not available. About the presence of Mrs. Sudha, it is stated "the applicant could not produce any documentary evidence to show that Mrs. Sudha was his sister". Her name was not included in the Ration Card nor on the CGHS card.

5. I have carefully considered the submissions. SR 317-B-20, ibid states "No officer shall share the residence allotted to him". This prohibition extends to out houses, garages etc., and if any sharing is done, full particulars should be conveyed to the Director of the Estate. Clause(2) of SR-317-B20 ibid says "No officer shall sublet the whole of his residence". However, an officer proceeding on leave may accommodate another eligible officer to share Government accommodation as a care taker. Sub-letting is defined to include sharing of accommodation by an allottee with another person with or without payment of licence fees by such other persons. It is made clear by an Explanation that any sharing of accommodation by an allottee with close relations

(3)

shall not be deemed to be subletting. Close relations are defined to include father, mother, brothers, sisters, grandfather and grandmother, grandsons and grand-daughters. They shall also include Uncles, aunts, first cousins, nephews, nieces etc.

6. According to the applicant's counsel the impugned order did not establish either sharing or subletting. In the first place the evidence, 8 items listed in para 2 above, are adequate to establish the bonafide stay of the applicant in the allotted quarter. His temporary absence during the inspection does not convey or conclude any adverse inference. In the case of Bhupender Singh Vs. Union of India & others, 1993 (23) ATC 113 it has been held that evidence must be adequate to draw a conclusion of subletting though this evidence need not be conclusive and only on probabilities conclusion can be drawn. The Tribunal stated that the allottee must be proved to be residing at a place other than the accommodation allotted to him. Secondly, the statements of neighbouring allottees was considered relevant. It was held that one time casual enquiry cannot render other pieces of evidence irrelevant. I respectfully agree with the above guidelines. The charge of sharing cannot be sustained on the mere finding of a person in the premises on one casual visit. Sharing is a continuous process. The continued enjoyment of the facility of the house must be proved over a period of time in order to establish sharing. If the inspection team finds a visitor that does not indicate sharing. There should be evidence of repeated

(X)

observations over a period of a week or two, overt or covert and a continuous stay of persons other than those belonging to the permitted category must be proved. If this is not done, then there should be some independent evidence of a witness who should corroborate that some person, other than a permitted relations, continuously stays in the allotted residence. Sharing cannot be equated to a mere presence of a person. There should be proof of utilising for the benefit of the alleged sharer of the facilities of the house as though he or she were the owner. How frequently the presence was found in the premises? Whether he or she was seen by the neighbourhoods as residing at that place and if so whether any enquiry was made from the neighbourhood? Basic to the concept of sharing is continuous stay and not a fortuitous presence of a person on a single inspection. Mrs. Sudha could have been examined as to whether she belonged to the family of Bhagwan Singh son of late K.S. Bisht, who filed an affidavit that his wife used to visit the applicant at least once in a week to cook food for him, was true or not. Mrs. Sudha and Bhagwan Singh have three children and he averred that his wife never stayed with the applicant but only assisted him in the house. Much is made of the fact that Mrs. Sudha's name was not mentioned either in the ration card or in the CGHS card. This enquiry is totally irrelevant. There is no need to find out whether a visitors' name is included either in the ration card or in the CGHS card. That apart, a

[Signature]

(B)

cousin sister which is stated to be what Mrs Sudha is, is within the permitted category of persons entitled to stay.

7. I am satisfied that the evidence produced by the applicant listed in para 2 above is proof of his bonafide stay in the allotted quarter. The onus of proving "sharing" or sub-letting is entirely on the respondents. There is no evidence that the accommodation was "shared" by Mrs. Sudha; there is certainly no evidence of subletting. The respondents have only on a vague suspicion cancelled the accommodation of the applicant. For such matters they should at least take care to gather (a) continuous stay to be established by repeated inspections or surveillance; (b) evidence of neighbours; (c) evidence of sharer himself; and (d) movements of the alleged sharer diarised over a period, may be, even for a week. The evidence must satisfy any rational mind that the stranger's presence is not fortuitous or a courtesy visit. Evidence must show to a reasonable person that there is sharing i.e. common use of all the facilities of the house for the benefits of a third person who is not in the permitted category over a period of time.

8. The Original Application is allowed. The Order No. DE/7/106/RKP/E/96 dated 26.03.1996 cancelling the allotment and the order dated 18.12.1996 directing eviction, are quashed. Status-quo granted on

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(b)

10.01.1997 and continued thereafter has become academic and obviously lapses with the passing of this order. The parties shall bear their own costs.

Narasimha
(N. SAHU)
Member(A) 30/6/97