

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.380 of 1994

(b)

This 18th day of August, 1994

Hon'ble Mr. A.V. Haridasan, Member (J)

R.K. Airi,
R/o B-16, Vivek Vihar-II,
Delhi.

Applicant

By Advocate: Shri V.K. Rao

VERSUS

Union of India, through:

1. The Director of Estates,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi.
2. The Director (EBA Section)
President's Secretariat,
Rashtrapati Bhavan,
New Delhi.
3. The Executive Engineer,
PWD (I), N.C.T.,
4/20, Asaf Ali Road,
New Delhi.

Respondents

By Advocate: Shri M.M. Sudan

O R D E R (Oral)

(By Hon'ble Mr. A.V. Haridasan, M(J))

This application has been filed under Section 19 of the A.T. Act, 1985 against the impugned orders dated 3.11.1993 and 22.12.1993 passed by the Executive Engineer, Rashtrapati Bhavan, New Delhi. Shorn of the details, the facts in brief of the case can be stated as follows.

2. The applicant, a Divisional Accounts Officer, was posted in President's Estates Division on 6.4.1987. Quarter No. 47, Kalibari Apartment, Uday Marg, New Delhi was allotted for his residence. While working ^{there}, the applicant suffered a heart-attack for which he was hospitalised ~~for~~ ~~about~~ ~~month~~ On 30.6.1992 he was transferred from President Estate and was posted in PWD Division. Finding

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(1)

that the quarter in which he was staying would be more convenient ~~in the matter~~ for his treatment, the applicant approached the authorities for inter-pool exchange of quarter so that he could continue to reside in the same quarter. However, this request of the applicant was not acceded to. The respondent No.2 granted the applicant extension of time to vacate the quarter upto 14.12.1992 and by an order dated 7.12.1992 (annexure R-4) informed him that if he retained the quarter thereafter, he would be liable to pay damages at market rate. The applicant did not vacate the premises and therefore steps for evicting him from the said quarter under PP(Eviction of Unauthorised Occupants) Act, 1971 were initiated. After serving notice under Section 4 of the said Act order of eviction under Section 5 of the said Act was passed. The applicant challenged this order before the Additional District Judge (annexure R-7, PPA No.40/93). The learned Additional District Judge on consideration of the rival contentions in the case, found no infirmity in the order of eviction. Taking an undertaking from the appellant that he would vacate the premises, the learned Addl. District Judge dismissed the appeal as withdrawn and allowed him permission to retain the quarter till 15.4.1993. The applicant did vacate the premises on 15th April 1993. The applicant, however, filed an OA 754/93 praying for the following reliefs:

- (a) quashing the order dated 23.2.93 passed by the respondents, Estate Officer, for vacating the quarter by the applicant;
- (b) directing the respondents to allow inter-pool exchange of quarter in question;
- (c) restraining the respondents from charging damages at market rate and directing them to charge only normal license fee; and

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(d) alternatively he may be allowed suitable accommodation.

This OA was disposed of by the Tribunal by order dated 17.1.1994 dismissing the application as infructuous but giving liberty to the applicant to assail the matter of levying of damages for which cause of action had arisen subsequently. It is thereafter that the applicant has filed this application praying that the impugned orders dated 3.11.93 and 22.12.93 by which he has been directed to pay a sum of Rs.13,545/- as double the license fee^{and} as damage rent plus Rs. 576/- as electricity charges, be quashed and set aside. He has also sought direction to the respondents to allot suitable alternative accommodation as he is entitled to the same.

As far as the second prayer for allotment of suitable accommodation to the applicant is concerned, there is no averment on record that the applicant's request for allotment has not been considered or that any person who has got lower seniority of registration has been allotted government quarter overlooking his claim.

3. Respondents 2 and 3 have filed counter replies. They contend that as the applicant has been in unauthorised occupation of the quarter till 15.4.1993, he is liable to pay the damage rent as directed in the impugned orders. They have further contended that since all the other issues involved in this case have been settled by the decision of the Tribunal in OA No.754/93, the applicant is not entitled to raise the same issues again.

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4. I have heard the arguments of both the parties and have also perused the documents on record. An order under Section 5 of the PPE Act 1971 was passed against the applicant on 23.2.1993. The challenge against this order by the applicant in the PPA No.40/93 was dismissed by the learned Addl. District Judge but while dismissing the appeal the learned Judge observed as follows:

"....Thus, there is no infirmity, irregularity or illegality in the impugned order. However, in the facts and circumstances of this case, I accept the solemn undertaking of the appellant and while dismissing his appeal as withdrawn, I grant him time to retain the premises till 15th April, 1993 with liberty to move the appropriate authority for redressal of his alleged grievances for non-allotment of accommodation by his parent department. On the failure of the appellant to vacate the premises by the evening of 15th April, 1993, subject to any other order passed by any superior court, the Department would be at liberty to evict the appellant and/or any other person who may be found in occupation by use of coercive means."

5. In the light of these observations by the learned Addl. District Judge granting time to the applicant to vacate the premises till 15.4.1994, the question whether the applicant would be liable to pay market rent, has to be considered and decision taken by the competent authority in view of those observations and in accordance with the law. Section 7 of the PP (Eviction of Unauthorised Occupants) Act 1971 lays down certain procedure before requiring a person to pay rent or damages in respect of public premises. Before passing an order under Sub-section 1 of Section 7 of the said Act, a notice has to be issued in writing to the person concerned to show cause within such a period as may be prescribed under rules, why such an order should not be

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made. It is evident from the documents on record and the learned counsel for the respondents in the presence of the official representative stated at bar that no such notice had been issued to the applicant before the order dated 3.11.93 and 22.12.93 for payment of Rs.13,545/- and Rs.576/- were passed. Therefore the impugned orders directing the applicant to pay an amount of Rs.13,545/- ~~xxxxxx~~ are liable to be struck down for that reason alone. The applicant has no grudge against payment for Rs.576/-

6. In the light of what has been stated above, this application is disposed of with the following directions:

(i) If in spite of what has been observed by the learned Addl. District Judge in his order in the PPA 40/93 the respondents consider it necessary and appropriate to recover the damages rent from the applicant for his occupation of quarter till 15.4.1993, they may proceed in accordance with the provisions contained in Rule 7 of PP (Eviction of Unauthorised Occupants) Act, 1971 and a decision should be taken only after getting a reply from the applicant considering his reply in the light of the observations of the learned Addl. District Judge. The aforesaid impugned orders dated 3.11.93 and 22.12.93 for recovery of damage rent ~~xxxi xxxxxxxxx xxxxxxxxx~~, are set aside with the liberty to the respondents as stated above;

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(ii) The respondent No.1 is directed to consider the application of the applicant for allotment of government quarter and allot him the accommodation in his turn in accordance with his seniority;

(iii) A decision in the ~~matter~~ matter of allotment of quarter should be communicated to the applicant within a period of one month from the date of receipt of a ~~crossed~~ fixed copy of this order.

There will be no order as to costs.



(A.V. Haridasan)
Member (J)

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