

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1991/94

Hon'ble Shri P.T.Thiruvengadam, Member(A)

New Delhi, this 24th day of March, 1995

Shri Bhagwat Dass
S-1/625, R.K.Puram
New Delhi.

.... Applicant

(By Shri George Paracken, Advocate)

Versus

Union of India, through

The Director
Directorate of Estate
Nirman Bhawan
New Delhi - 110 011.

... Respondent

(By Shri B.Lall, Advocate)

O R D E R (Oral)

The applicant has been in possession of Qr. No.S-1/625, R.K.Puram, New Delhi allotted by the Directorate of Estates. He had made a small temporary wooden construction behind his house for keeping his shoes and house hold belongings. This came to the notice of the estate authorities and it is alleged that the accommodation was cancelled with effect from 16.7.1992 without giving an opportunity to the applicant to explain his case and for demolishing the structure. After cancellation, the proceedings under the order of Estate Officer took place, and by an order dated 16.9.1994, the applicant was directed to vacate the premisses, since he was deemed to be an unauthorised occupant beyond 16.2.1993. This OA has been filed with a prayer that the cancellation beyond 16.2.1993 and the subsequent eviction order dated 16.9.1994 be quashed.

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(2)

2. Learned counsel for the applicant mainly relies on the relevant Office Memorandum (Annexure-B) which reads as under:

"As per instruction contained in SR-317-B-21, if an officer to whom a residence has been allotted erects an unauthorised structure in any part of the residence, the Director of Estate may without prejudice to any other disciplinary action that may be taken against him, cancel the allotment of the residence. To allow an opportunity to the allottee to remove the unauthorised structure, the notice of one month is given. It has been observed that different Allotment Sections are using different proforma for writing to the allottees to remove unauthorised construction carried out in their quarter. Some Sections are even referring to communication received from the CPWD. The CPWD have objected to this practice and desired that the name of the informer should not be disclosed to the allottee. Therefore, a revised standard proforma to be used in such cases has been devised. A copy of the proforma is enclosed herewith. In future, communication may be sent to the allottee in this format only."

4. To the proforma attached to the above OM, the following provisions are incorporated:

"It has been reported that Sh/Smt./Km. _____ has made the following unauthorised construction in Qr. No.

2. Sh/Smt./Km. _____ is therefore directed to remove this unauthorised structure within a period of one month from the date of issue of this letter. The fact of removal of the unauthorised structure should be intimated to this Directorate and the CPWD Enquiry Office concerned failing which the allotment is liable to be cancelled under the provisions of SR-317-B-21. Damage rate of licence fee shall be charged after cancellation till vacaton of the house, for which eviction proceedings shall be introduced under the provision of the P.P.Act 1971."

5. It is stated that the applicant was not given any opportunity or show-cause notice and the cancellation of accommodation has taken place unilaterally. Accordingly, it is claimed that the further eviction procedure is illegal.

.....3/-

(3)

6. Learned counsel for the respondents referred to various paragraphs in the reply, wherein, it has been pointed out that show-cause notices were issued to the applicant on 6.4.1992 and 30.4.1992. It is argued that the applicant cannot take a stand that he was not given any opportunity before cancellation. This argument was rebutted by the learned counsel for the applicant who stated that the applicant had not received any show-cause notice.

7. After hearing both the sides I find that but for the averments in the reply no documentary evidence has been brought out to establish that the notices had been served on the applicant. Hence, the cancellation dated 16.2.1993 cannot be sustained.

8. At this stage, learned counsel for the respondents argued that in addition to the show-cause notices dated 6.2.1992 and 30.3.1992, the applicant had been given further opportunity before the Estate Officer at the time of hearing for eviction. This argument was rebutted by the learned counsel for the applicant who submitted that the appearance before the Estate Officer arises as a part of eviction proceedings which are initiated after cancellation. Hence, the primary lacuna in not giving the show-cause notice by the respondents still remains. I find force in this submission. In the circumstances, cancellation order dated 16.2.1993 is liable to be quashed.

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(4)

9. I note that the respondents have now decided to regularise the quarter subject to payment of the licence fee and damage rent from the date of cancellation of allotment dated 16.2.1994 to 5.10.1994. Having held that the cancellation was not in order in view of the prescribed procedure not having been followed, the question of charging licence fee and damage rent should not arise.

10. The OA is therefore, allowed and the cancellation order dated 16.2.1993 and eviction order dated 16.9.1994 are quashed. No costs.

P. J. 26

(P.T. THIRUVENGADAM)
MEMBER(A)

/RAO/