

**Central Administrative Tribunal
Principal Bench**



OA No.1298/2000

New Delhi, this the 13th day of May, 2009

Hon'ble Dr. Ramesh Chandra Panda, Member (A)

Shri V. K. Sharma
S/o Shri R. N. Sharma
Working as Compositor,
Govt. of India Press
Minto Road,
New Delhi.

.... Applicant.

(By Advocate : Shri S. C. Luthra)

V e r s u s

1. Union of India
through its Secretary
Ministry of Urban Affairs &
Employment (Directorate of Printing)
New Delhi.
2. Estate Officer-cum-Manager
Govt. of India Press
Minto Road,
New Delhi.

... Respondents.

(By Advocate : Ms. Lata Gangwani for Shri H. K. Gangwani)

: O R D E R :

Shri V. K. Sharma, working as Compositor in the Government of India Press, Minto Road, the Applicant herein, has been aggrieved by the order dated 8.6.2000 (**Annexure-A1**) to pay Rs.78213 as damages for subletting the accommodation allotted to him at Qtr. No.E-20, Press Place, New Delhi, for the period 6.3.1998 to April 2000. He has prayed for the following reliefs :-

- "8.1 To hold and declare that Annexure A1 has been passed by an incompetent authority and further in passing the order, the provision of Section 7 of P.P. Act have not followed and also quash Annexure-I as being not tenable in the eyes of law.
- 8.2 To hold and declare that an allotted accommodation cannot be cancelled retrospectively and quash Annexure A2 as having been passed in violation of the procedure laid down in P.P. Act.



8.3 To grant any other relief or reliefs which this Hon'ble Tribunal may deem fit under the circumstances."

2. The facts of the case, as submitted by the Applicant in this OA are as follows:

He was allotted accommodation of the Qtr. No.E-20, Press Place, New Delhi. He was living when his wife expired and he invited his sister to live with him to look after his 2 young daughters since he used to attend night duties in the Press. On 14.1.1998, in his absence, an enquiry of the said quarter was conducted when the subletting of the said quarter to unauthorized person was alleged to have been detected. He received a show cause notice dated 9.2.1998 (**Annexure-A3**) issued by the Estate Officer asking the Applicant to give his reply before 24.3.1998 on 3 points : (i) Why the allotment of quarter should not be cancelled, (ii) why he should not be debarred for allotment of Govt. accommodation for a period of 3 years: and (iii) why he should not be charged the enhanced Licence Fee under FR 45 A with effect from 14.1.1998 till the date of removal of unauthorized persons from the quarter, and to appear before him with evidence on 25.2.1998. He met the Estate Officer on 25.2.1998 and informed him that the quarter was occupied by him, his children and his sister Smt. Subhadra. He also reported that his sister was invited to stay with his 2 young daughters and thus, the quarter was not sublet. Hence, no permission was required to be taken. During the enquiry, the Assistant Manager (Administration) Shri A. L. Parashar forced him to sign pre-typed paper. The Applicant alleges in the OA that the Estate Officer and gang of Persons used to extract commission by subletting the quarter and since he did not accept their offer, he was subjected to the false accusation of quarter subletting. Subsequently, the allotment of the said quarter was cancelled vide Memo dated 6.3.1998 (**Annexure A-4**), against which he represented on 27.3.1998 (**Annexure A-5**). He was served with an order dated 21.5.1998 (**Annexure A-6**) issued under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act (in short PP Act), directing him to vacate the quarter. Being

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aggrieved by the said order, he approached the Learned District Judge of Delhi Under Section 9 of the said Act, and appeal was decided vide order dated 16.10.1998 (**Annexure A-7**) by quashing Estate Officer's order dated 21.5.1998 and remitting back "to Estate Officer for fresh adjudication as per law after giving an opportunity of hearing to both the parties" and also directed that the "EO should also send a show cause notice under Section 4(1) of the P.P. Act to the alleged Sublette." The Estate Officer issued a fresh show cause notice on 13.5.1999 (**Annexure A-8**) and he avers that no notice was issued to the alleged Sublette. The Applicant submitted his reply on 17.5.1999 (**Annexure A-9**). He appeared before the Estate Officer on 26.5.1999 and the Estate Officer in his order dated 28.5.1999 cancelled the said quarter allotted to the Applicant with effect from 5.5.1998 (**Annexure A-2**). The Applicant again approached the Learned District Judge under PP Act which was decided on 9.2.1999 in **PP Act Appeal No. 8 of 1997 (Annexure R-XI)** allowing the Applicant to vacate the said quarter on or before 31.3.2000. This order was on the basis of the undertaking given by the Applicant that "I do not contest the appeal on merits. I undertake to vacate the premise in dispute on or before 31.3.2000." Consequently, the Applicant vacated the quarter on 29.4.2000 and the Assistant Manager (Admn.) issued the Office Memo dated 8.6.2000 (**Annexure A-1**) informing him that he was liable to pay Rs.78213/- as damages for unauthorized occupation of the said quarter which was to be recovered from his salary in easy instalments. Being aggrieved by this OM, the Applicant has approached this Tribunal in this OA.

3. Shri S. C. Luthra, the Learned Counsel for the Applicant very comprehensively narrated the background of the case and submitted the following contentions in support of the Applicant's prayer. (i) The Estate Officer did not issue notice to the alleged sublettee though directed by the District Judge. (ii) The recovery order on the damage rent was issued by an incompetent authority viz. Assistant Manager (Admn.). (iii) The Applicant was not given any notice under Section 7 of the PP Act while the damage rent order was passed. (iv). The order on damage rent does not specify the rate and other details and as

such the case is malice in law and malice in fact. (v) The order as damage rent was passed on 28.5.1999 but was illegally given retrospective effect from 5.5.1998. Thus, Shri Luthra argued that the OA should be allowed.

4. On contra, Ms. Lata Gangwani opposed the contentions adduced by Shri Luthra. She handed over a copy of the Ministry of Urban Development Notification SO 1949 dated 7.7.1987 and submitted that Manager, Government of India Press is designated as Estate Officer for the purposes of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. She drew my attention to the Notice dated 9.2.1998, OM dated 8.3.1998, Memorandum dated 6.4.1998, and the final order dated 28.5.1999 to state that all these had been issued by the Estate Officer/Manager who was competent authority. She contended that the OM dated 8.6.2000 intimating the Applicant about the quantum of damage rent recoverable from him was an administrative communication for which the provisions of the PP Act could not be invoked. Her contentions were that (i) the alleged occupants were not the Applicant's family member and he was not staying in the said quarter as revealed in both inspections, (ii) though the final order was passed on 28.5.1999 due to litigations taken up by the Applicant, the effective date was from 5.5.1998 as per the extant Rules; (iii) the damage rent has been fixed as per the Table given in the Para 5 of the additional affidavit filed by the Respondents, (iv) since the Applicant has vacated the quarter as per the order of the Learned District Judge, there was no need to issue further notices to the Applicant and the alleged sublettee.

5. Having heard the rival parties and perused the pleadings, the issues come up for my determination are (i) Whether Section 7 notice under PP Act was to be issued for ordering recovery of damage rent? (ii) When the quarter cancellation order was issued on 28.5.1999, would the cancellation and damage rent come into force retrospectively with effect from 5.5.1998? (iii) Does the non issue of notice to the Sublette vitiate the administrative process? (iv) What period the



damage rent is to be charged? (v) Was the damage rent fixed as per extant rules? How much the damage rent is payable by the Applicant?

6. Coming to the controversies whether the non issue of notice to the Sublette vitiated the administrative process in charging damage rent to the Applicant, These issues have been raised by the Applicant when the case was considered and decision taken by the Learned District Judge when the case was considered for the second time under the PP Act. Before Learned District Judge the Applicant undertook to vacate the premises on or before 31.3.2000, and as such he foreclosed the relevant issues of illegality, irregularity, and procedural infirmity which might have been caused by the Respondents. Accepting his undertaking the Learned District Judge passed the order allowing the Applicant to vacate and the Applicant on his part also complied with the directions and vacated the quarter on 29.04.2000. Had not there been the Sublette in quarter allotted to the Applicant, he would not have agreed to vacate the quarter. The plea taken by him that after the demise of his wife, to look after his two young daughters he invited his sister and the family to stay with him does not come out with appropriate evidence as argued by the Respondents. There are two ingredients which are important and both the ingredients are positive the unauthorized occupation of the quarter would stand not proved. These 2 ingredients are (1) did the Applicant stay in the quarter allotted to him (2) the persons who were living in the quarter belonged to the Applicant's family. Two inspections conducted by the Respondents clearly reveal that the Applicant was not staying in the quarter. On the other hand, the Inspecting Officer clearly noticed the circumstantial evidence of Sublette. As per FR 45-A, the member of family has been defined in relation to officer means as the wife or husband as the case may be, and dependent child of the official. Even the sister Subhadra and her family were staying for a long term in the said premises, which cannot give him the protection under FR45A. Married sister and her family are not included in the definition of Member of his family. Be that as it may, the Applicant has indirectly admitted that the quarter was sublet which was accepted before the Learned

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District Judge through the undertaking given to vacate the premises. Therefore, I find that there is no dispute of subletting of the premises and as such these issues are not going to be adjudicated by me in this OA.

7. Now the question arises as to what period the damage rent is to be charged and what is the procedure to be adopted for fixing the damage rent and whether the Applicant has been charged the damage rent properly. In this regard, I find that unauthorized occupation was detected by the Respondents through an inspection held on 14-1-1998, and after issue of notice the quarter allotment was cancelled on 6-3-1998. Though the order was quashed, the learned District Judge did not come to the conclusion that the Sublette were not occupying the said quarter. The litigation between the Applicant and the respondents continued and finally the Applicant vacated the quarter on 29-4-2000. After going through the pleadings and hearing the rival parties I come to the considered conclusion that the date for imposing damage rent must commence on 6-3-1998 and end on 29-4-2000.

8.1 Let me take up the legal aspect of the case The Section 7 of the PPAct provides power to impose damage rent and the relevant part of the Section are as follows:

"7. Power to require payment of rent or damages in respect of public Premises.

(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments as may be specified in the order.

(3) No order under sub-section (1) or subsection (2) shall be made against any person until after the issue of a notice in writing to the person calling



upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

8.2. With regard to the issues relating to whether Section 7 notice on the PP Act was to be issued for ordering recovery of damage rent, the principles have been clearly laid down in the cited Rule by the Government and the Estate Officer has to work out the damage rent and recover the same from the Applicant since he is guilty of subletting the quarter allotted to him. This does require further notice under Section 7(3) of the PP Act which states that no order under sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer. The Respondent's counsel argued that damage rent information being administrative one has been correctly issued by Asstt. Manager (Admn.). But the Act position is clear that the notice and the order are to be issued by none other than the Estate Officer/Manager. Therefore, though the eviction order issued by the Estate Officer dated 21.5.1998 was held as valid and sustainable by the Learned District Judge in its order dated 16.10.1998, the further issue of notice to recover the damage rent would be necessarily to be issued by the Estate Officer/Manager but not the Asstt. Manager (Admn.). Thus I come to the conclusion that the damage rent order was passed by the incompetent authority and is liable to be quashed

9.1 I now advert to the issue of the assessment of damages. The Respondents were questioned to provide the rate at which and the period for which the damage rent has been charged. In their written additional affidavit the Respondents provided a Table and the calculation of the total damage rent of Rs.78,213/- fixed for Quarter No.E-20, Press Place, New Delhi. Area of the quarter being 48 square metres, the damage rent has been fixed at the rates indicated in the Table.

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Period	Rate	Amount
06.03.1998 to 05.04.1998 4 times Licence fee @ Rs.122/- p.m	@Rs.122/-p.m.	Rs.488/-
06.04.1998 to 04.05.1998 4 times Licence fee @ Rs.122/- p.m.	@Rs.122/-p.m.	Rs.488/-
05.05.1998 to 31.05.1998	@Rs.3120/-p.m.	Rs.2,717/-
June 1998 to October 1999 (17 Months)	@Rs.3,120/-p.m.	Rs.53,040/-
Nov.1999 to March 2000 (5 Months)	@Rs.3,600/- p.m.	Rs.18,000/-
April 2000 (29 days)	@Rs.3,600/-p.m.	Rs.3,480/-
	Total	Rs.78,213/-

9.2 It is apt for me to go into the Rule position in the controversy. Rule 8 of the Public Premises (Eviction of unauthorised Occupants) Rules, 1971 prescribes the Procedure for the assessment of damages and the FR 45A prescribes the rates at which the damage rent to be fixed. Rule 8 reads as follows:

"8.Assessment of damages. In assessing damages of unauthorised use and occupation of any public premises the estate officer shall take into consideration the following matters, namely :
(a)The purpose and the period for which the public premises were in unauthorised occupation-

(b)The nature, size and standard of the accommodation available in such premises;

(c)The rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;

(d)Any damage done to the premises during the period of unauthorised occupation;

(e)Any other matter relevant for the purpose of assessing the damages."

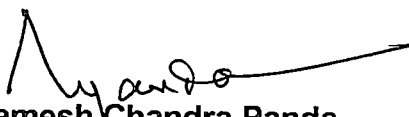
9.3 The Table above indicates that 4 times the license fee (Rs.122/- p.m.) was charged for about 2 months i.e. from 6.3.1998 to 4.5.1998. Subsequently, from 5.5.1998 to 31.5.1998 a rate of Rs.3120 p.m. was charged. Subsequently, from November 1999 Rs.3600 p.m. were charged. The Respondent's counsel could not clarify the working table of the rates and the different period having different

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rates. It is the duty of the Respondents to provide all these details to the Applicant who may accept or raise objection and on receipt of the same the competent authority namely the Estate Officer/Manager will decide the amount of damage rent.

10. In view of the total facts and circumstances of the case, I come to the conclusion that (i) the Respondent - Estate Officer is entitled to impose the damage rent for the period 6.-3-1998 to 29-4-2000;(ii) the Respondent - Estate Officer's action canceling the allotted accommodation retrospectively as per Annexure A2 is valid in law and facts; and (iii) declare the Annexure A1 to have been passed by an incompetent authority and the provision of Section 7 of P.P. Act has not been followed and thus quash and set aside the Annexure-I with the direction to the Respondent Estate Officer to issue notice to the Applicant along with the detailed working sheet on the calculation of damage rent and pass order as per the law (a) to fix the final damage rent and (b) to recover the same from the Applicant's salary in specified monthly installments. The Original Application is allowed in above terms. No costs.


Dr. Ramesh Chandra Panda
Member (A)

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