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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2339 of 2000

New Delhi, this the 7th day of June, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri R.D.Mishra
S/o Shri G.P.Mishra
R/o 3-LF, Todar Mal Square
New Delhi-1

-APPLICANT

(By Advocate: Shri Jitender Pal Singh)

Versus

1. Union of India
through its Secretary,
Ministry of Urban Development
Nirman Bhawan, New Delhi
2. Director of Estates-II
Government of India
Nirman Bhawan
New Delhi
3. Assistant Director of Estate
Government of India
Nirman Bhawan
New Delhi
4. The Estate Officer
Directorate of Estates(Litigation)
Nirman Bhawan,
New Delhi

-RESPONDENTS

(By Advocate: Shri J.B.Mudgil)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

Applicant in this case has assailed order dated 24.9.99 passed by respondent no.3 cancelling the allotment of quarter no.3-LF, Todar Mal Square, New Delhi. He has also assailed order dated 28.7.2000 passed by respondent no.2 rejecting the appeal filed by applicant against the cancellation of allotment.

2. Applicant submits that he is working as a Senior Accounts Officer (in short "SAO") in the office of Chief Controller of Accounts and was allotted a type

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III quarter in the year 1987. In the year 1998, he was allotted a type - IV quarter at Todar Mal Square, Bengali Market, New Delhi as he had become entitled for the same. The applicant further submits that since he himself and his wife are very fond of their youngest daughter Shushma, therefore, she alongwith her family very often visit and stay with them. Since the applicant and his wife are living alone in the said quarter and there is nobody else living with them, they often call over their daughter with her family to spend weekends with them or look after the house in their absence. It is stated that the impugned order has been passed on the basis of the allegation that applicant has sublet the quarter to his daughter and son-in-law Shri Shukla. The said allegation is stated to be totally false as by no stretch of imagination and particularly in the Hindu culture, it could ever be thought that a person could let out his quarter to his son-in-law. It is alleged that though various inspections had been carried out but either they were in the absence of the applicant when he was away on official tour or when his wife had gone to visit her son at Hardoi. During the absence of applicant and his wife, their daughter had been staying in the accommodation and during inspections when the inspecting team found that neither applicant nor his wife were there in the premises, therefore, they concluded as if the house had been sublet by the applicant to his daughter. Applicant has pleaded that respondents have wrongly concluded that he and his wife do not reside in the accommodation allotted to him and there is complete control of the daughter of the applicant.

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3. In the grounds to challenge the impugned orders, the applicant has submitted that definition of subletting in the relevant rules shows that "Sub-letting" includes sharing of accommodation by an allottee with another person with or without payment of rent by such other person and in explanation to the term "sub-letting", it has been specifically mentioned that any sharing of accommodation by an allottee with close relations shall not be deemed to be sub-letting. It is submitted that respondents have failed to appreciate that daughter and son-in-law are close relations and the premises cannot be said to have been sub-let in terms of the definition appearing in the rules. Thus there is no basis for the respondents to conclude that the applicant was staying with his daughter and son-in-law. The applicant also pleads that he has got a CGHS card which was prepared much before the visit of the inspector and the same has not been believed when there was no occasion for the applicant to even have any doubt that respondents were contemplating to take any action against him. On one such occasion of the inspection, the applicant had submitted all the documentary proofs and the inspector was satisfied that the applicant had been residing in the premises but this fact had been deliberately suppressed to maintain the impugned order against the applicant. So it is prayed that the impugned order for cancellation of the quarter be quashed.

4. Respondents are contesting the OA. They have alleged that applicant has not approached the court with clean hands and has suppressed the material facts and tried to mislead the court. It is stated that on a

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complaint, the inspecting officers of the respondents' department visited the premises on 14.5.99. At that time, neither the applicant nor his family members were there and instead, one Mr. Shukla along with his wife Smt. Sushma and son Kirtikar were found residing in the quarter unauthorisedly. Therefore, the inspecting team reported full sub-letting. Thereafter, a show cause notice was issued to the applicant. The applicant appeared before the Deputy Director, who ordered for re-inspection of the quarter. The quarter was again inspected on 22.7.99 and the inspecting team again reported full sub-letting as neither the applicant nor any member of his family was found present in the quarter. Again a show cause notice was issued to the applicant to appear before the Deputy Director. The Deputy Director heard the applicant on 2.9.99 and after going through the inspection reports and submissions of the applicant, concluded that the quarter was sub-let to private persons. It is submitted by the respondents that order of cancellation of the quarter in the name of applicant has been passed after affording full opportunities to the applicant and, therefore, it should not be quashed.

5. I have heard learned counsel for the parties and gone through the records.

6. Learned counsel for the applicant submitted that the applicant is working in the Ministry of Health which is housed in the same building where there exists the office of respondents and since the quarter is situated at a very prime location, therefore, many

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interested persons have an eye over it. The department had carried out inspections on four occasions when they knew fully well that applicant was on tour and on one occasion, he was in his office. Out of four inspections carried out, on one occasion the applicant did meet the inspecting team at the premises in question. Learned counsel submitted that on two occasions when the applicant was on tour, the documents were furnished to the inspecting officers but still they drew the inference that applicant was not residing in the premises. Even on the occasion when the applicant was in his office and he could not have been found in the premises in question, on that occasion also the inference was drawn that he was not occupying the quarter.

7. Learned counsel for the applicant further submitted that documentary evidence like CGHS card etc. had also not been believed by the respondents and unnecessarily it had been imported that the CGHS card had been manipulated after the applicant had come to know about the intending visit of the inspecting team. On one such visit, applicant and his wife had gone to the dentist and from that also, an inference was drawn that applicant was not living in the quarter. It is stated that the conclusion arrived at by the inspecting team of Directorate of Estate with regard to sub-letting is altogether malafide since the respondents are interested in allotting the quarter in question to somebody else after cancelling the same in the name of the applicant.

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8. In reply to this, learned counsel for the respondents submitted that various surprise inspections were carried out and only on one occasion, the applicant had met the inspecting team which could not satisfy the department that it was the applicant who was residing in the premises. Besides that, the telephone number which was installed in the quarter was also in the name of son-in-law of the applicant and that itself shows that the applicant had completely sub-let the premises to his daughter and son-in-law and was not himself residing there.

9. It appears that one inspection was carried out on 14.5.99 when neither the applicant nor his wife were available. Thereafter notices were issued to the applicant and a hearing had taken place whereafter the Deputy Director passed an order dated 8.6.99 holding that the educational certificate and old CGHS card prove that Smt. Sushma is the daughter of allottee. The other documents proved that the said Smt. Sushma is also living in the quarter as the same are showing the residential address of the allottee as 3 Todarmal Square. The Deputy Director however noted that "since the allottee and his wife were not present at the time of inspection, there was still a doubt whether they were living in the premises. Therefore, he directed that the quarter could be re-inspected preferably in the evening." The next inspection was carried out on 22.7.99. This time again, neither the applicant nor any member of his family was available in the premises in question. Therefore the Assistant Director who had gone for inspection, concluded that since the ration card of the allottee was not

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produced and as there was no physical evidence of the allottee and his family members in the quarter in question, the accommodation was completely sub-let. So again a notice was issued to the applicant. The Deputy Director after hearing the applicant, passed an order dated 2.9.99, again holding that the allottee was guilty of sub-letting the quarter to private persons and debarred the applicant for further allotment for remaining period of his service. The applicant preferred an appeal to the appellate authority i.e. Director of Estate and in an inspection on 22.4.2000, though the applicant had met the inspecting team in the premises but the inspecting officers had drawn the conclusion that though it was a surprise check but still there was possibility that the applicant might have got advance information about the visit. The inspecting officer also observed in its report that though the applicant had produced ration card and CGHS card but they were probably made only after a sub-letting case had been registered against him. Thus it appears that inspections after inspections had been carried out to ascertain whether the applicant was residing in the quarter or not. The competent authority vide order dated 28.7.2000 observed as under:

"(a) That Shri K.K.Shukla, the allottee of the quarter No.3, Todar Mal Square before allotment to Shri R.D.Mishra still continues to be a occupant through his son Shri K.Shukla who also happens to be son in law of Shri R.D. Mishra. There is still a telephone No.3321367 in the name of Shri K.K.Shukla who is running one Bhagirath Sewa Sanstha from the quarter as its Director.

(b) That Shri has obtained a new Ration Card only after the proceedings for subletting were started.

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- (c) That there is evidence of his regular stay in Yamuna Vihar in the form of Ration Card and the circumstances that his wife was not there in the allotted quarter at the time of inspection and also the telephone number which appears even in the directory.

From the above, I firmly conclude that the quarter is not being used by Shri R.D. Mishra for staying and there being no bonafide use the quarter is allowed to be misused/sublet for whatever consideration and in these circumstances I find no reason to interfere with the orders of the Deciding Authority and I, hereby, confirm the same."

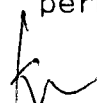
10. I have given my thoughtful consideration to the matter involved and evidence on record. The plea of the applicant that the inspections have been carried out with malafide intentions having an eye over a quarter which is located at a prime location, does not appear to be sound because the applicant himself admits that except CGHS card which bears his address, he had nothing to show that he had ever been residing in the accommodation. The department had concluded that there was evidence of applicant's regular stay in his own house at Yamuna vihar and the wife of the applicant had never met the inspecting team on any occasion. The inspecting team also came to the conclusion that one Shri K.K. Shukla who was also an allottee of the premises in question before it was allotted to the applicant, still continued to be in occupation of the said quarter through his son Shri K.Shukla happens to be the son-in-law of the applicant. There was still a telephone number 3321367 in the name of Shri K.K.Shukla who has been running one Bhagirath Sewa Sanstha from the quarter as its Director. So on that basis, the department had concluded that the applicant was not residing in the quarter.

[Handwritten signature]

11. To allege malafide that somebody had an eye over the quarter in question, I find that this is not the only one quarter but there are several other quarters on various prime locations, so merely for this quarter alone, nobody would like to pursue the matter so vigorously with the department and the department would also not pursue the matter so vigorously just to see that the applicant is ousted from the quarter in question. As regards carrying out inspections when the applicant was out of Station on official tour, I may observe that the inspection had been carried out not only once but on many occasions and on the facts which were found available on the spot during the inspections, the impugned order cannot be challenged and the applicant has been unable to challenge the same. It also appears that except the CGHS card, the applicant could not produce any other document to support his occupation on the premises.

12. This court while exercising the power of judicial review, is not supposed to re-appreciate the evidence collected by the inspecting team. The only challenge to this could be on the plea of malafide which has been argued by the applicant's counsel but it is not substantiated by any document on record nor the applicant has named any person who is allegedly acting against him with malafide motive to see to it that allotment of the quarter is cancelled in the applicant's name.

13. As far the plea of applicant that sharing of accommodation with close relations does not amount to sub-letting, I may mention that it is only sharing of accommodation with close relations which is permissible



under the rules but in case the allottee of the quarter is not occupying the accommodation at all and it is being occupied by someone else who may happen to be the daughter of the allottee, under those circumstances it cannot be said that daughter is sharing accommodation with the allottee. The allottee in the present case has been found to be not occupying the premises at all and it is only the daughter and applicant's son-in-law who have been found to be occupying the quarter completely. Thus it is not a case of sharing of accommodation which is protected under the definition of sub-letting but it is completely parting away the quarter in question.


14. In view of the above discussion, I find that the plea of malafide intention raised during the course of arguments, is not substantiated at all and the applicant does not get protection even under the definition of sub-letting. The authorities on the basis of various inspections had come to the conclusion that allottee had completely parted away the possession of the quarter in question to some private persons for some wrongful gains. I am also of the opinion that principles of natural justice have been properly observed and after each inspection, notice had been issued to the applicant and he had been given full opportunity to explain his conduct. However, since the competent authority was not satisfied with the explanation given by the applicant, the impugned order of cancellation of the quarter had been passed.

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15. " Under these circumstances, I am of the opinion that the OA does not call for any interference and deserves to be dismissed. It is, therefore, dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

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