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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1819 of 1989

January 13

New Delhi, this the 2nd day of December, 1996

Hon'ble Mr N.V.Krishnana, Acting Chairman
Hon'ble Mrs Lakshmi Swaminathan, Member(J)

Shri Goverdhan Lal Son of Shri Bhundu Ram
as UDC in the office of Chief Postmaster
General Delhi Circle New Delhi and r/o
Quarter No.512/VI R.K.Puram, New Delhi.

..... Applicant.

(by Advocate: Shri Sant Lal)

vs.

1. Chief Postmaster General
Delhi Circle, New Delhi-1.
2. The Estate Officer, O/O the CP.M.G.,
Delhi Circle, Mohan Singh Place,
New Delhi. Respondents.

(by Advocate: Mr M.K.Gupta)

ORDER

(delivered by Hon'ble Mrs Lakshmi Swaminathan, Member(J.)

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This application has been filed under
Section 19 of the Administrative Tribunals Act,
1985 impugning the validity of the orders dated
7.2.1989 and 22.8.1989 (Annexures A-1 and A-2),
passed by the Office of the Post Master General,
Delhi Circle and by the Estate Officer. By these
orders, the quarter allotted to the applicant, that is,
Qr.No.512/VI R.K.Puram had been cancelled on the
ground that he has sub let the premises and the
order had been passed to vacate the premises within
15 days of the date of publication of the order, i.e.,
order dated 22.8.1989, failing which the applicant

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was liable to be evicted from the premises under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1979 (hereafter shortly referred to as the 'PP Act').

2. Before dealing with the facts in this case, it would be necessary to refer to certain preliminary questions which were raised in this case. By order of this Tribunal dated 29.11.1989, it was stated that since this is a case under the PP Act, and the Hon'ble Supreme Court has stayed action in such cases till a decision is taken by it in the SLP in the case of Rasila Ram & Others v. Union of India & Others (S.L.P.s 9345 to 9348), the case was adjourned sine-die. Prior to that date by the order dated 12.9.1989, interim direction had been given suspending the impugned order dated 22.8.1989 passed by the Estate Officer. The respondents have filed MA No.850 of 1995 for re-calling the order dated 29.11.1989 and for fixing a date for final hearing in the case to which a reply has also been filed by the applicant.

3. When the MA was taken up, the learned counsel for the applicant stated that he has no objection if the OA is listed for final hearing. S.L.P.Nos 9345 to 9348 in the case of Rasila Ram, referred to in the order dated 29.11.1989 referred to certain

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judgments in OAs 89/88, 166/87, 149/88 and 1802/88.

The present application is, therefore, not one of the cases pending before the Hon'ble Supreme Court.

4. Although the applicant himself had taken the stand in the application that the subject matter of the impugned orders was within the jurisdiction of the Tribunal, in the reply filed by the respondents they had taken the stand that in view of the stay granted by the Hon'ble Supreme Court in the case of Rasila Ram v. Union of India (Supra), this Tribunal had no jurisdiction to deal with the case under the PP Act. However, at the time of hearing, that it is on 12.7.94. Shri M.K. Gupta, learned counsel for the respondents submitted that the matter has been further considered by another Full Bench Judgment in this Tribunal in Ganga Ram & others vs. Union of India and others (1989-1991 Full Bench Judgments, Bahri Bros. Vol. II Page 441). In this case, after considering the order passed by the Hon'ble Supreme Court in S.L.P. against the Full Bench judgment in Rasila Ram's case, the decision in the latter Full Bench held :

* It will thus be seen that it is not a speaking order at all. It does not give any reason nor makes any declaration of law. Consequently it is not a binding order under Article 141 of the Constitution. It will only have an effect in the case of Shri Rasila Ram and three (SLPs (Civil) Nos. 9345 to 9348 of 1989-OA No. 89/88, 1667/87, 1497/88 and 1802/88). Until the decision of the Full Bench is set aside, reversed or modified by the Supreme Court, the Full Bench

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decision of the Tribunal in the case of Rasila Ram (Supra) remains effective."

Shri Gupta, therefore, submits that the Tribunal has jurisdiction to hear this case.

5. In view of the above decision, the interim order that has been passed in the case of Rasila Ram and three others being not a declaration of law under Article 311 of the Constitution is not binding on any case other than those which were the subject matter of the SLPs and the OAs from which they arose. We accordingly proceed to answer the question referred to in the affirmative.

6. The matter was thus finally heard on 12.7.95 and the orders were reserved.

7. Soon thereafter the order of the Hon'ble Supreme Court in Shiv Sagar Tiwari v. Union of India & Others WP(C) No.585/94) was passed on 17.7.1995(an un-certified copy of the order is placed on the file). In this case, the Hon'ble Supreme Court stayed the proceedings in the cases of which un-authorised occupants were continuing in possession of quarters, as a result of the stay granted by various Courts/Tribunals. This ~~case~~^{case} was thereafter ordered to be listed after three months to await any further orders of the Hon'ble Supreme Court. Therefore, the case came up for hearing on 1.12.1995 and 12.12.1995 when both the counsel were heard. Shri M.K.Gupta, learned counsel for the respondents read over the order of Hon'ble Supreme Court dated 17.7.1995 in S.S.Tiwari's case(supra). He clarified at the bar that the applicant in this case is not one

among the 394 persons whose name is in the attached list pending in the Supreme Court who are unauthorisedly occupying Govt.houses in Delhi on which the Supreme Court had directed a show cause notice to be issued. He, therefore, submits that the order dated 17.7.95 of the Supreme Court in S.S.Tiwari's case would not come in the way of final disposal of this case. Besides, the respondents in S.S.Tiwari's case are entirely different, they being the Union of India through Secretary, Ministry of Urban Development, whereas the respondents in this case are the Chief Postmaster General, Delhi Circle, New Delhi and the Estate Officer, office of CPMG, Delhi Circle, New Delhi. As mentioned earlier Shri Sant Lal, learned counsel for the applicant has also no objection in final disposal of this case.

8. We have carefully considered the submissions of both the learned counsel. We are of the view that the directions issued by the Supreme Court staying further proceedings before the Tribunal where 'such cases are pending' refers to the list of 394 persons pending before the Supreme Court. The directions have also been issued to the Housing Ministry to supply a list of all allotments. In the circumstances, we are satisfied that there is no bar in disposing of this application pending before us, as this is not included in the pending list before the Hon'ble Supreme Court.

9. The brief facts of the case are that the applicant, who was working as UDC with the respondents, was allotted P&T quarter No.512/VI,R.K. Puram, New Delhi in September 1985. According to him he was living in this quarter with his family. By the letter dated 6.12.88 (Annexure A-3), the respondents called for an explanation from him alleging that during the physical checking carried out by them on 30.11.88 by the special checking squad of the Department, they had found that the quarter allotted to him had been unauthorisedly sublet. They have, therefore, issued a show cause notice to the applicant as to why the allotment of the quarter should not be cancelled according to the rules. The applicant submitted his explanation to the show cause notice on 16.1.89 (Annexure A-4). In this letter he has submitted that because he was seriously ill for the period from October 1988 to December 1988 he had shifted temporarily to his native village Surehra for treatment. In order to look after the quarter in his absence, he has requested Shri Ajit Kumar who was his near relative to look after the house, who was also residing in the same area. He has also stated that Shri Ajit Kumar was not his tenant in the quarter nor anybody else was living. In the circumstances since he has resumed his duties and was residing in the quarter as usual, the matter be considered sympathetically.

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10. The impugned order dated 7.2.89 cancelling the allotment of the quarter with immediate effect was thereafter passed on the ground that the applicant had sublet the Govt. quarter unauthorisedly. The said memo. also stated that if vacant possession of the quarter was not handed over immediately, action will be taken for recovery of damages. The applicant thereafter, on 21.2.89 requested for supply of the relevant documents in order to enable him to defend his position regarding subletting of the quarter. He had also furnished the details of the document in the letter of 13.3.89 but his request was rejected by the respondents vide order dated 19.4.89 (Annexures 7 and 8).

11. The applicant states that the Estate Officer, thereafter, started eviction proceedings under the provisions of P.P. Act by notice dated 18.5.89. He fixed dates for personal hearing on 30.5.89, 12.6.89 and again on 28.7.89. The applicant appeared before the Estate Officer on the last date i.e. 28.7.89 and explained his position, denying that he had sublet the quarter. He also requested that a fresh enquiry may be held. He submitted the written representation to the Estate Officer on 31.7.89 (Annexure A-9). In this representation he has reiterated the facts regarding his illness and that he had kept the grandson of his 'Mama', namely Shri Ajit Kumar at the quarter for the period of his absence when he was ill.

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12. Shri Sant Lal, learned counsel for the applicant has submitted that no reasonable opportunity has been given to the applicant before the impugned order dated 7.2.89 cancelling the allotment of the quarter had been passed which is against the principles of natural justice. He has submitted that the documents specified by the applicant were also not given to him. He has stated that no reasons had been given in the impugned order of cancellation and the order has been passed without application of mind. He, however, submits that it can be seen from the signatures on the impugned order at Annexures 1 and 2, that the same officer had passed the orders cancelling the allotment and for eviction thereby acting as judge in his own cause. Another ground taken on behalf of the applicant is that the order ¹³of imposing the damages is violative of the provisions of Section 7 of the P.P. Act which only empowered the Estate Officer to pass such order after following the procedure prescribed by law. He has relied on the judgement of the Tribunal in Jagat Singh Vs. UOI and ors. (OA 2388/88 dated 10.5.89) which is placed on record, wherein it has been held that the orders cannot be sustained in law where no enquiry has been held and a reasonable opportunity has not been afforded to the applicant to explain his case. He also relies on Shri A.S. Mann Vs. UOI & Ors. (1995 (1) ATJ 848).

13. The respondents have filed a reply disputing the above averments of the applicant. They have stated that when the checking squad from the office of the CPMG made a surprise check on 30.11.88 at the quarter allotted to the applicant, they found that one Shri Ajit Kumar was residing there with his family. They have produced the statement of Shri Ajit Kumar dated 30.11.88 (Annexure R-3) in which he has stated that he alongwith his wife and two children were staying in the quarter since March, 1987. In the statement he has mentioned that he is nephew of the applicant who is ~~the~~ actually ^{is} allottee of the quarter. He has also stated that the applicant was seldom staying here. The checking party has recorded in their report (Annexure R-2) that Shri Ajit Kumar could not name the village to which the applicant belongs. In this report the checking party have also mentioned that Shri Ajit Kumar confirmed that the ration card of the quarter belongs to him and his family and that there was no ration card in the name of the applicant giving the address of that quarter. They have also stated that the Ration Depot has confirmed that there is no card in the name of the applicant given at the address of Quarter NO.512/VI, R.K. Puram, New Delhi. One of the neighbours has also confirmed that the applicant and his family were not staying in the quarter. Shri Ajit Kumar, however, has stated that he was not paying any rent to the applicant for using the accommodation.

14. On the basis of the enquiry and facts gathered by the checking squad, a notice was issued to the applicant, first on his address at his native place on 5.12.88 and later a show cause notice was issued on 2.1.89 to which the applicant replied on 16.1.89. The respondents state that this representation was duly considered by the competent authority before deciding to cancel the allotment of the quarter on 7.2.89 under the Rules. Since the applicant did not vacate the premises, ^{P2}eviction proceedings were instituted by the Estate Officer against him under section 4(1) of the P.P.Act. The applicant was given a personal hearing by the Estate Officer on 28.7.89 who gave him time to make another representation upto 31.7.89. The competent authority had also considered the representation of the applicant dated 31.7.89 before passing a final notice on 22.8.89. According to the respondents the applicant was not at all residing in the quarter allotted to him which is also evident from the copy of the ration card which he had submitted which is dated 17.1.89 (Annexure R-6).

15. The applicant has stated in his application that the subject matter of the orders is within the jurisdiction of the Tribunal. This was also confirmed by Shri Sant Lal, counsel.

16. Shri M.K. Gupta, learned counsel for the respondents submits that the competent authority had given ample opportunities to the applicant to present his case before passing the impugned orders and, therefore, the rules have been fully complied with as also the principles of natural justice. He has referred to FR SR 317-B(20) which provides that no officer shall share the residence allotted to him except with the prior approval of the Government and no officer can sublet the whole of his residence except as provided in sub paragraph (2). In the statement of Shri Ajit Kumar he has stated that he has been staying in the quarter allotted to the applicant from March 1987. In the representation made by the applicant, he had only explained that Shri Ajit Kumar was staying in the quarter during the period of his illness from October 1988 to December 1988. The ration card produced by the applicant is dated 17.1.89 and therefore does not help him; nor does the CGHS card which was subsequently produced by the applicant in the rejoinder as an after thought. Shri Gupta submits that CGHS card issued to him on 20.9.85 does not by itself prove that he was resident^{ing} in that quarter in the face of the statement given by Shri Ajit Kumar and other neighbours to the effect that the applicant was not staying in the quarter allotted to him. In the circumstances of the case he strongly urged that the cancellation of the

quarter is fully justified and has been done in accordance with law. The eviction notice issued by the Estate Officer on 22.8.89 has also been properly done by the competent authority in accordance with the provisions of P.P. Act. He, therefore, urges that the application may be dismissed and the interim order dated 12.9.89 suspending the order passed by the Estate Officer may be vacated.

17. We have carefully considered the arguments of both the learned counsel, the pleadings and the original records in the file submitted by the learned counsel for the respondents, as directed by us.

18. On the preliminary question of jurisdiction, ^{we} come to the conclusion that ^{we} have for the reasons given above there is no bar in deciding the matter.

19. When the show cause notice was issued to the applicant on 6.12.88 asking for his explanation regarding the subletting of the quarter allotted to him, it is seen that the applicant submitted his representation on 16.1.89. In this letter he had merely referred to his illness and had stated that he has allowed a near relative to stay in the quarter for the period from October 1988 to December 1988.

This, however, is contrary to the statement given by Shri Ajit Kumar who admits that he is staying in the quarter from March 1987. Shri Ajit Kumar has also given a statement to the checking squad that he ^{has} a ration card in his name c/o 512/VI, R.K. Puram, New Delhi and that he has also been staying with his family in that house. The ration card produced by the applicant pertains to a much later date although the applicant has produced a CGHS card issued to him and his family in 1985. Shri Sant Lal had tried to show that in the notice issued to the applicant on 6.12.88 reasonable opportunity had not been given to the applicant as sufficient details of the statements of the neighbours had not been furnished. However, it is pertinent to note that the applicant did not ask for any such detail at that time and has correctly mentioned the name of Shri Ajit Kumar as residing in the quarter because of his illness and being away at his native place. From this it shows that the applicant was well aware that he had kept Shri Ajit Kumar in the quarter allotted to him, which has been done without prior intimation or permission of the competent authority as required under the Rules. A perusal of the statements given by the neighbours also shows that the applicant was not residing in the quarter and that Shri Ajit Kumar and his family were residing in the

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premises in question contrary to the provisions of the Rules.

In the circumstances of the case, the explanation given by the applicant that because of his serious illness from October 1988 to December 1988, he had gone to his native village and asked Shri Ajit Kumar who was his relative to live in the quarter does not explain the contrary statement given by Shri Ajit Kumar that he was actually residing in the quarter from March 1987. In the facts and circumstances of the case, we further find that the applicant has been given more than sufficient opportunities to present his case before the competent authority before ^{the R.} cancellation order was passed. For the reasons given above we find that there was sufficient material on record for the competent authority to come to ^{the} conclusion that the applicant had sublet the quarter based on which the allotment of the quarter was cancelled by order dated 7.2.89. In this view of the matter the judgement of this Tribunal in Jagat Singh Vs. UOI and ors. (supra) relied upon by the applicant will not assist him as the facts are distinguishable.

20. In the cancellation order dated 7.2.89 the respondents had clearly indicated that if he did not vacate the quarter immediately, they will take necessary action for evicting him from the premises under the PP Act, besides a recovery of damages at Rs.22/- per square metre. The applicant has

himself admitted that a number of days had been fixed for personal hearing by the Estate Officer and he was in fact heard on 28.7.89 when he explained his position to the Estate Officer and strongly denied the allegation of subletting, asserting that he was residing in the Govt. accommodation with his family. He also admits that he gave a further written statement to the Estate Officer on 31.7.89 in which he had requested for a fresh enquiry. The Estate Officer has stated that the applicant was duly heard. He was asked to vacate the quarter. Since he had failed to do so, an order for vacation of the quarter within 15 days had been made failing which the applicant was liable to be evicted from the premises. It is thus clear from a perusal of the orders that there has been no violation of the principles of natural justice in this case, as the applicant has been afforded all reasonable opportunity to represent his case against imposition of damages.

21. It is settled law that this Tribunal in exercise of its power of judicial review cannot substitute its own discretion for that of the competent authority or sit as a court of appeal. (see UOI & Ors. Vs. Upendra Singh (1994) 27 ATC 200; UOI Vs. Parmanand AIR 1989 SC 1185).

The object of judicial review is to ensure that the individual receives fair treatment from the competent authority in accordance with the rules and principles of natural justice. In the present case as mentioned above, the applicant has been fully afforded opportunity to explain his case as to how Shri Ajit Kumar was present in the quarter which was allotted to him. As observed earlier, there are number of discrepancies in the statement given by Shri Ajit Kumar to the checking squad and the representations submitted by the applicant. In the facts and circumstances the decision of the competent authority that the applicant has unauthorisedly sublet his quarter on the basis of which he decided to cancel his allotment of quarter is neither arbitrary or perverse which warrants any interference in the matter.

22. In the result there is no merit in this application and it is accordingly dismissed. The interim order dated 22.8.89 is also vacated forthwith. The parties to bear their own costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J) 2/1/96

N.V. Krishnan
(N.V. KRISHNAN)
ACTING CHAIRMAN

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