

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 1065/89

DATE OF DECISION : 27.3.92

SHRI S.P. SARASWAT

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI G.D. BHANDARI

FOR THE RESPONDENTS

...SHRI P.S. MAHENDRU

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant is working as Wireless Maintainer Mechanic Grade-III under Deputy Chief Signal Telecommunication Engineer/TW, DRM's office, New Delhi. The applicant has assailed the letter dt.4.10.1988 by which the respondents are illegally recovering Rs.1100 p.m. w.e.f. 1.8.1988 along with water and conservation charges from the salary of the applicant towards the rent and licence fee for Quarter No.6/12 Sewa Nagar, New Delhi.

2. The applicant has claimed the relief to quash the impugned order dt.4.10.1988 and a further direction that the penal rent recovered from the applicant be ordered to be refunded to him.

3. The applicant is in the Railway service as Wireless Maintainer Mechanic Grade-III since 20.6.1980, i.e., he has been in the Maintenance Branch of the Signal and Telecommunications Department. The applicant has applied for allotment of quarter in 1980, then again in 1983, but he was not allotted any quarter. In 1987, a separate pool for the maintenance staff was created and the discipline, the applicant was holding as Wireless Maintainer Mechanic, has been declared as Essential. Since the creation of a separate pool, the name of the applicant was struck from the maintenance pool and the applicant was asked to register with respondent No.4, DAC, Estate. The applicant got himself registered and was given registration No.12. As the wife of the applicant continued to be ill, so the Chairman of the Allotment Committee of the Maintenance Pool^{* as stated in the application} allowed the applicant to take possession of the Railway Quarter No.6/12, Sewa Nagar, which the applicant occupied on 4.7.1988 and requested the Dy.CSTE/MWM, DRM's office to regularise the quarter in his name. Respondent No.2, the Dy.CSTE/TW, DRM's office also wrote to Respondent No.3, Dy.CSTE/MWM, the Controller of Maintenance Pool of the quarter recommended the case of the applicant that quarter No.6/12 be regularised in the name of the applicant. However, the quarter No.6/12, Sewa Nagar was not regularised in the name of the applicant

even though the case of the applicant was also recommended by the Hon'ble Minister. The Dy.CSTE/TW again wrote to Dy.CSTE/MWM about the regularisation of the quarter in the name of the applicant, but to no effect. Instead of regularising the quarter, the impugned order has been issued whereby from the salary of the applicant, a recovery of Rs.1100 p.m. is being effected and also there is a threat of eviction under Public Premises Act.

4. The respondents contested the application and admitted that the applicant has applied for allotment of the quarter. The quarter, however, is to be allotted to the applicant on his turn in case he is eligible for the same. It is also admitted that the respondents have created a separate pool for the maintenance staff of Micro Wave in Delhi area. The respondents have denied the fact that the Chairman of the Allotment Committee of the Maintenance Pool allowed the applicant to take the possession of the Railway Quarter No.6/12, Sewa Nagar, New Delhi. The applicant, however, occupied the quarter in question without any permission and in an unauthorised manner for which a report was lodged with SHO, Police Station, Sewa Nagar, New Delhi in July, 1988 and a copy of the report is Annexure R1. Since the applicant has trespasssed into the house without any authority, so there was no question

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of regularising the same quarter in his name. A registered letter was also sent to the applicant on 13.7.1988 to vacate the quarter forcibly occupied by him, but to no effect (Annexure R2). Another letter dt. 4.10.1988 was issued to the applicant and since the applicant failed to comply with the same, a notice under Section 7(3) dt. 20.12.1988 as also under Section 4(1)(2) of the Public Premises Act were duly issued to the applicant by the Estate Officer, but the applicant did not submit any reply to the said notice. The Estate Officer passed the judgement on 2.5.1989 (Annexure R7). Thus the realisation of damages as well as of eviction of the quarter against the applicant has been taken as per Public Premises Act, 1971 in accordance with law. The applicant has suppressed these materials ^{facts} from the Tribunal.

5. I have heard the learned counsel for the parties at length and have gone through the record of the case. The relief claimed in the present application is that the impugned order dt. 4.10.1988 be quashed and the penal rent recovered from the applicant be ordered to be refunded. The impugned order dt. 4.10.1988 is on the subject of forcibly occupation of the Railway quarter by the applicant. This was sent by the registered post to the applicant asking

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him to vacate the quarter No.6/12 Sewa Nagar within 10 days from the date of receipt of the notice, otherwise proceedings under the Public Premises Act, 1971 will be started against him. It was also mentioned in the notice that a penal rent of Rs.1100 p.m. w.e.f. 1.8.1988, water charges - Rs.25.50 p.m. and conservation charges - Rs.4 p.m. will also be charged. After the receipt of this notice, the applicant did not vacate the Railway quarter.

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The applicant even running from pillar to post for getting the quarter regularised in his name, but the same has not been done. There is no prayer before the Tribunal that the applicant has been regularised the quarter or that the respondents have withheld the regularisation of the said quarter, which should have been done under the extant rules. On the other hand, the respondents in their counter have specifically stated that the applicant trespassed into the quarter in July, 1988 and in this connection, a report lodged with SHO, Sewa Nagar (Annexure R1) fixes the date of occupation of the quarter by the applicant. The applicant in his application also stated that he was permitted by the Chairman of the Allotment Committee to occupy the said quarter on 4.7.1988. This fact has not been established by the applicant and mere assertions in the application or in the rejoinder without any written proof thereof will not establish the fact. The applicant has filed this application

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on 18.5.1989. The applicant had already been issued a notice even in July, 1988 (Annexure R2 to the counter), but the applicant did not care for the same. The applicant was then issued another notice under PP Act (Annexure R3 and R4 to the counter) on which date of hearing was fixed on 17.1.1989 and when the applicant did not appear on that date and on the subsequent date fixed before the Estate Officer, then the judgement was delivered ex parte in May, 1989.

Though this judgement was delivered in May, 1989, the applicant did not mention this fact at all in this application filed on 18.5.1989 and he has not even assailed the judgement of the Estate Officer and allowed the same to become final against him.

6. In view of the above facts and circumstances, the applicant could not make out any case that the respondents cannot realise the penal rent from him as per extant rules as he entered the premises 6/12 Sewa Nagar without any allotment order.

7. The letter written by the applicant himself on 5.7.1988 to Dy.CSTE/MWM, (Annexure A14 to the application) clearly

shows that the applicant has entered the quarter and then requested that the same be allotted to him. In this letter, the applicant did not mention any fact about the Chairman of the Allotment Committee etc. The applicant has also moved MP 3236/91. In this MP, the applicant has requested the respondents to be restrained from charging the penal rent etc. from the applicant. But this prayer in the MP is the same as was in the Original Application. So it was directed to be heard along with the OA. The learned counsel for the applicant further stated that the normal rent has been deducted from the month of June, 1990 to July, 1991 and then again from August, 1991, the penal rent of Rs.1100 is being deducted. By this the learned counsel for the applicant wants to show that the charging of the normal rent amounts to giving up charging of the penal rent because the applicant was allotted a quarter No.260/1 Shakur Basti, but the vacant possession of that was not delivered to the applicant for no fault of his. This matter has also been seen thoroughly. In fact the applicant was allotted Quarter No.260/1 Shakur Basti on 17.4.1990. On 19.4.1990, the applicant

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had
was informed through a letter that the said quarter is in possession of one Hira Lal, so instead of that quarter, *other*
quarter
No. 6/12 or 10/3 Sewa Nagar be allotted to him. After this, the applicant himself moved an application on 14.6.1990 that deduction of penal rent from the salary may be stopped and on this account, the penal rent was not deducted from the salary of the applicant from June, 1990 to July, 1991. Thus there is no substance in the argument that when the deduction of penal rent was discontinued for a year or so, the deduction cannot be resumed.

8. The basic question remains that the applicant was never allotted premises 6/12 Sewa Nagar and he forcibly occupied the same. The learned counsel for the applicant could not show any law where a person who is not an allottee cannot be made to pay the rent/damages as per extant rules by way of penalty. The extant rules on the other hand, are clear on the point and also lay down the measure of damages to be recovered in the event of unauthorised occupation. Further in this case, there is already an order under Public Premises (Unauthorised Occupants Eviction) Act, 1971 and the Estate Officer after following the procedure laid down under Sections 4 and 7 and giving dates of hearing to the

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applicant, not once but thrice, passed the judgement *ex parte* against the applicant in May, 1989 much before the filing of the present application in the Tribunal and the same order has become final and has not been challenged.

9. In view of the above discussion, I find no merit in the application and the same is dismissed leaving the parties to bear their own costs.

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J. P. Sharma
47, 3/92
(J.P. SHARMA)
MEMBER (J)