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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1098/ 1989.

DATE OF DECISION November 9, 1989.

Shri M. L. Bargotra \_\_\_\_\_ Applicant (s)

Shri Sant Lal \_\_\_\_\_ Advocate for the Applicant (s)

Union of India & Others \_\_\_\_\_ Respondent (s)

Shri P. P. Khurana \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. C. Jain, Member (A).

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

JUDGEMENT

The applicant who retired on 31.12.86 on attaining the age of superannuation from the post of Assistant Postmaster General, Delhi Circle, has, in this application under Section 19 of the Administrative Tribunals Act, 1985, prayed for setting aside the four orders in Annexures A-1 to A-4 of the application; the refund of the amount paid in excess; and for awarding the cost of this application. Orders sought to be quashed are (1) letter dated 5.10.88, by which the Estate Officer intimated to the applicant that an amount of Rs.12136.40 was due from him which should be deposited and particulars of deposit intimated (Annexure A-1); (2) notice under sub-section (3) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, dated 2.11.88, by which the applicant was asked to show cause why an order requiring him to pay the amount of Rs.12136.40 towards arrears of rent together with simple interest should not be made (Annexure A-2 to the application); (3) letter dated

*(leaving)*

18.11.1988 by which particulars of amount due were again furnished by the Estate Officer and the applicant was requested to deposit the amount less deposit, already made if any, besides electric / water charges (Annexure A-3); and the Estate Officer's letter dated 9.12.88 by which reply to his application dated 2.12.88 was communicated to him.

2. The admitted facts are that the applicant retired on 31.12.86 and vacated the premises P&T Qr. No. UD-1, Dev Nagar Karol Bagh, New Delhi allotted to him during service, on 29.2.1988. He was entitled to keep the accommodation on payment of normal licence fee upto 30.4.87. He was allowed to retain it for a further period of four months i.e., from 1.5.87 to 31.8.87 on payment of double the standard licence fee. He was further allowed to retain the accommodation for another three months, i.e., from 1.9.87 to 30.11.87 as a very special case on the condition that "The rent as admissible will be recovered from the Retiree in advance" (Annexure A-9 to the application). He continued to occupy the premises upto 29.2.88. There is no dispute about the payment of licence fee for the period 1.1.87 to 31.8.87. However, for the period 1.9.87 to 29.2.88, there is a dispute between the parties.

3. I have carefully gone through the pleadings of the case and have also heard their learned counsel.

4. The occupation of the premises by the applicant during the period 1.9.87 to 30.11.87 was on the basis of the permission given to him subject to payment of rent as admissible. This period cannot, therefore, be considered as a period of unauthorised occupation. Section 2 (g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter to be referred as the Act) defines "unauthorised occupation" as occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to

*(Signature)*

occupy the premises has expired or has been determined for any reason whatsoever. It is clear that the occupation of the premises during this period of three months cannot be deemed as unauthorised. Section 2(f) of the Act defines the "rent" as the consideration payable periodically for the authorised occupation of the premises and also includes any charge for electricity, water or any other services, and any tax payable in respect of the premises as defined therein. Thus, the rent for this period of three months has to be the consideration payable under the relevant FRs/ SRs. Though the word 'damages' has not been defined in Section 2 of the Act, yet a perusal of sub-sections(1) and (2) of Section 7 of the Act makes it clear that the term 'Rent' is different from the term 'Damages'. I am, therefore, of the view that for the period 1.9.87 to 30.11.87, the applicant cannot be held liable to pay damages, but he will have to pay the rent as per the provisions of relevant FRs/ SRs. No evidence has been adduced by either party on the point of exact liability for this period and, as such, the exact amount payable by the applicant will have to be determined by the Estate Officer.

5. For the period 1.12.87 to 29.2.88, the applicant had no authority to continue to occupy the premises and, as such, he is to be treated as an unauthorised occupant of the premises during this period. The plea of the applicant that for the period he occupied the premises under the orders of the Court passed on 29.1.88 in OA 175/88 he will be deemed to be in authorised occupation, is not, in my view legally tenable. A copy of the interim order filed by the applicant as Annexure A-10 to the application, shows that vide order dated 29.1.88, a Dasti notice was directed to be issued to the respondents on admission and interim relief returnable on 9.2.1988 and in the meantime status-quo was to continue and the applicant was not/dispossessed from the premises.

the quarter of which he was in occupation. What happened on 9.2.88 has not been disclosed in the pleadings nor clarified at the bar. Moreover, the interim order pertained to dispossession and nothing was stated in regard to the payment liability. Further, it would not be equitable to allow undue benefit to the applicant as the interim relief sought for and granted was at his request and shall be deemed to be at the risk of the applicant. He cannot, in all fairness, be allowed to take the position that he was not to be dispossessed from the premises and at the same time he would not make payment which may otherwise be found due from him. Thus, the entire period of three months will have to be considered as a period of unauthorised occupation for purposes of determining the payment liability.

6. Sub-section (2) of Section 7 of the Act prescribes for assessment of damages by the estate officer for the period of unauthorised occupation of any public premises. Thus, damages are payable for this period.

7. The rates of damages were last prescribed in the Government of India, Ministry of Urban Development (Directorate of Estates) Office Memorandum dated 27th August, 1987. These orders are effective from 1.9.1987 i.e., unauthorised occupation commencing from 1st September, 1987. These orders were meant for general pool accommodation in Delhi. These rates were also to be adopted by various other Ministries / Departments in respect of other departmental pools of accommodation in Delhi / other stations. If an unauthorised occupant was not agreeable to pay damages as prescribed, these are to be pleaded before the Estate Officer in terms of Rule 8 of the Act. It has also been stated in these orders that suitable amendments are being carried out in the Allotment of Government Premises (General Pool) in Delhi Rules, 1963 to delete the words 'market licence fee' and to substitute the same by the word 'damages',

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and that similar amendments may be carried out by the Ministries / Departments in their Allotment Rules. It is not clear whether necessary amendments have been carried out in the Allotment Rules applicable to the applicant. The applicant will, therefore, be liable to pay the prescribed market rate of licence fee / recovery of damages for the period upto which the relevant rules were not amended and the damages as per the order dated 27.8.1987 with effect from the date the amendment came into effect.

8. The action taken by the Estate Officer, as disclosed in the pleadings, does not appear to have been in accordance with the provisions of the Act and the rules made thereunder. A notice in Form D was issued under sub-section (3) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for recovery of the total amount claimed to be due from the applicant. The amount claimed included the ~~xxxxxx~~ dues from the period 1.1.1987 till 29.2.88. The notice for the period 1.9.87 to 30.11.87 should have been in Form D, while for the period 1.12.87 to 29.2.88, it should have been in Form F. Similarly, the Estate Officer's letter dated 9.12.88 (Annexure A-4 to the application) and which is purported to be the final order, does not mention any provision of the Act or the rules thereunder under which it is purported to have been issued. The final order, after a show cause notice in Form D for the period of authorised occupation, should have been in Form E and for the period of unauthorised occupation in Form G.

9. The learned counsel for the applicant cited the case of **Shri B.S. MAINEE Vs. UNION OF INDIA & ORS (1989 (1) ATLT (CAT) 746)** in support of his contention that he should be allowed to be in occupation of the premises from 1.12.87 to 29.2.88 on payment of normal licence fee. No such plea has been taken in the O.A. The facts of that case are totally different from the facts of the case before me and the citation is not applicable.

10. Thus, the applicant will be deemed to be in authorised occupation of the premises allotted to him during his service for the period from 1.9.87 to 30.11.87, but he shall be treated as in unauthorised occupation for the period 1.12.87 to 29.2.88. However, in view of the infirmities in the order dated 9.12.88 (Annexure A-4 to the application) as discussed in para 8 above, the same has to be quashed and is accordingly set aside. The Estate Officer shall initiate appropriate action in accordance with the provisions of the Act and the rules thereunder.

11. In view of the above discussion, I direct as below: -

- (1) Respondent No.3 shall assess the rent / market rate of licence fee / penal rent etc. for the period 1.9.87 to 30.11.87 in accordance with the relevant rules, treating this period as a period of authorised occupation.
- (2) Respondent No.3 shall assess the market rent / penal rent / damages etc. for the period 1.12.87 to 29.2.88 in accordance with the provisions and the procedure prescribed in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 read with the relevant FRs/SRs applicable during that period.

12. The application is disposed of on the lines of the directions given above. The parties shall bear their own costs.

(C. 9/21/89)  
(P.C. JAIN)  
MEMBER(A)