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

Date of Decision : 24.09.92

OA 1372/90

H.C. GUPTA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI D.P. AVINASHI.

For the Respondents

... SHRI P.P. KHURANA.

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

JUDGEMENT (ORAL)

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

The applicant was working as Senior Supdt. Stores, Air HQ, R.K. Puram, New Delhi and was allotted a quarter No.B 624, Sarojini Nagar, New Delhi. The applicant is aggrieved by the order dated 20.11.89 by which the applicant has been served with a notice of recovery of certain amount which has been calculated against him at the rate of prescribed in the extant rules for unauthorised retention or occupation of the allotted quarters. The applicant has claimed the relief that the said impugned notice dated 20.11.89 be quashed and that no excess amount be deducted from him as he has vacated the said quarter after the marriage of his daughter on 11.2.88.

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The case of the applicant is that he has been allotted, during the course of his employment, (since retired on 31.7.90) quarter No.B 624, Sarojini Nagar, New Delhi. The applicant has to perform the marriage of his daughter and the respondents had allotted him temporarily quarter No.B 616 from 5.2.88 to 11.2.88 and the applicant after the marriage of the daughter vacated the same and handed-over the possession to Junior Engineer Shri O.P. Choudhary, who was posted in the CPWD Enquiry Office (B Block), Sarojini Nagar. Thus, according to the applicant he is not entitled to pay damages at the rate of Rs.980/- p.m., as calculated by the respondents. It is also stated that the applicant has received no notice of any proceeding of eviction. It is also stated that the applicant has vacated the quarter No.B 616 after the marriage of the daughter.

The respondents in their reply denied the contention of the applicant and stated that the applicant continued in possession of the temporarily allotted quarter No. B-616, Sarojini Nagar, New Delhi and did not vacate the same so the proceedings have to be taken for eviction after cancelling the allotment. He was evicted from the said premises on 6.7.89 as such he is liable to pay market rate of rent/damages for retention of the said quarter beyond the period of authorisation i.e. 11.2.88

till 6.7.89. The respondents have also enclosed with the counter a calculation chart prepared by the Assistant Director of Estates, showing that the amount of quarter No.B 616 frp. 12.2.88 to 6.7.89 comes to Rs.16,478/- and for quarter No.B 624, Sarojini Nagar, the applicant did not vacate even after his retirement and he vacated the same on 1.8.91, so for this quarter B 624, the applicant has also to pay the sum of Rs.7,903/- . In addition alongwith the aforesaid amount, for the quarter No.B 616. However, the quarter No.B 624 is not in picture nor that is an issue in the present case.

I have heard the learned counsel for the parties at length. The main issue in this case is whether the applicant has overstayed beyond the period for which he was temporarily allowed quarter No.B 616 for the purpose of marriage of his daughter ? In this connection, the averment of the learned counsel for the applicant is that when he received the notice on 28.3.89 wherein he was asked that he has not vacated the quarter B-616, he immediately replied in April, 1989 that the possession of B-616 has been handed over to CPWD Inquiry Office (B Block), Sarojini Nagar, New Delhi on 11.2.88 and Shri O.P. Choudhary, Junior Engineer, has actually took the possession and locked the said quarter as an agent of the respondents. On the other hand, it is contended by the learned counsel for the respondents that had the applicant handed over the possession to the Junior

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Engineer he would have obtained a valid receipt, provided under rules for handing over the possession of the said quarter alongwith its fittings to the said Junior Engineer. The learned counsel for the applicant has also filed certain annexures to the application which appears to have been submitted by the persons residing in the locality i.e. Sarojini Nagar that the said premises were not in possession of the applicant. The applicant has also filed an affidavit that he has handed over the possession to the said Junior Engineer on 11.2.88. The General Secretary, ABC Avenue Welfare Association has also testified the fact that the applicant has been residing only in quarter No.B-624, Sarojini Nagar. The ACSO for Chief of the Air Staff, Air HQ, has also recommended to the Additional Director of Estates, Nirman Bhawan, that the applicant's case be considered sympathetically and also forwarded certain documents for the consideration at the level of the respondents.

Though the applicant has committed a lapse either by inadvertence or by ignorance by not obtaining a receipt of delivery of possession to the said Junior Engineer Shri O.P. Chaudhary but the department is also at fault in not pursuing the matter in the right perspective by enquiring from Shri Choudhary, Junior Engineer, regarding the truth of the whole affairs. The various documents which have also submitted to the

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department in the form of affidavit and certificates of the residence of the locality have not at all been perused by the authorities before coming to the decision that only the applicant is at fault. If the Junior Engineer Shri Chaudhary would have been questioned and in case he would have given negative reply to the alleged handing over possession by the applicant to him then the matter could have been considered to have been dealt with fairly by the respondents. In such a situation, where a penal order to be passed the benefit of any fault committed by the respondents has to be given to the applicant.

In view of the above facts and circumstances, the respondents are not justified in coming to a conclusion abruptly that the applicant has overstayed in the said quarter B-616 beyond the period of allotment i.e. after 11.2.88.

From another aspect also it was a temporary allotment from 5.2.88 to 11.2.88 and the CPWD Inquiry Office (B Block), Sarojini Nagar had made an entry in the register to that fact. It was the duty of the persons incharge of that inquiry to verify this fact when the rent of that period was also deposited in advance. Even if this has been over looked by virtue of rush of work, if at all it was there, the respondents should have raised the issue soon thereafter rather than waiting till March, 89

asking the applicant as to why he has not vacated the temporarily allotted quarter B-616. Even if this delay has occurred not because of administrative lapse then the reply given by the applicant should have been rightly perused and comment thereon should have been called from the concerned person there after taking a decision that the applicant did not vacate the quarter No.B-616.

This is not the case of the respondents that the applicant has shifted from quarter B-624 to B-616. Taking into account the normal course of human events of day to day life, it is not accepted that a person will occupy both the houses together. It is not the case of the respondents also that one of them was sublet. It is also not the case that some other person was found in occupation in either of the houses. This gives an inference that the quarter B-616 remained vacant after vacation by the applicant.

Taking into account all these facts and circumstances, the present application is partly allowed and disposed of with the direction that the impugned notice dated 20.2.89 is quashed and that the applicant is not liable to pay for any damages whatsoever for the said premises B-616, Sarojini Nagar, New Delhi. However, this will not preclude a right to the respondents to claim for quarter No.B-624, which is not an issue in this case. Costs to be borne by the parties.

24.09.92

MEMBER (J)

(J.P. SHARMA) 24.9.92

Sharma