

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1082/91

DATE OF DECISION : 07.08.1992

Shri Rajeev Sharma

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri B. Krishan

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 Reporter or not? *yes*

JUDGEMENT

The applicant is the son of late Shri Suresh Sharma, who died in harness and was allotted quarter No.3/371, R.K. Puram, New Delhi. The applicant has been directed to vacate the quarter by the order dt. 12.6.1991 and there is another demand notice for realisation of damages Rs.1340 p.m. vide letter dt. 20.6.1990 and another letter to the same effect dt. 16.4.1991. The applicant also assailed the non allotment of an alternative accommodation to the applicant.

2. The applicant in this application has claimed the relief that an alternative accommodation, Type-II may be directed to be allotted to the applicant in the vicinity of R.K.Puram and the applicant may not be liable to pay any sort of damages in respect of the present premises in his occupation and the recovery through coercive process from the salary of the

applicant may be stopped.

3. The facts ^{as stated by the applicant} of the case are that the father of the applicant, Shri Suresh Sharma died in harness on 12.7.1987 while working in the office of the LAG. The applicant was given a compassionate appointment w.e.f. 30.11.1987 and since then he is continuing in that employment. The applicant applied for allotment of an alternative accommodation of eligible type, i.e., Type-II in lieu of the one of the family of the deceased vide application dt. 11.12.1987. The application has not yet been disposed of. Instead the applicant has been issued a show cause notice dt. 7.11.1990 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. That show cause notice is based on the cancellation of the allotment dt. 29.1.1988. In terms of the said cancellation, the applicant was further entitled to retain the said premises on payment of concessional licence fee for a period of six months. The final eviction order has been passed against the applicant in February, 1991 that the applicant has been pressed for payment of damages @ Rs.1340 p.m. in terms of respondents Memo dt. 27.8.1987. The respondents are under an obligation to allot an alternative accommodation in terms of the letter dt. 13.7.1981 (Annexure A1). It is further stated that the respondents are under obligation to

charge only the normal/standard licence fee of the present accommodation in occupation of the family of the deceased. The respondents are not discharging that obligation and hence the present application for the reliefs stated above.

4. The respondents contested the application and stated that the deceased Suresh Sharma was allotted Type-B quarter No.371/S-II R.K. Puram, New Delhi in April, 1982. He expired on 12.7.1987. Consequently, the allotment was cancelled w.e.f. 13.1.1988. His son who has been employed as a Clerk in the Directorate of Audit applied for ad hoc allotment on the ground of the death of his father. His request was examined and rejected because he owned a house in father's name. Eviction proceedings were initiated against him. His request was again considered, but was rejected because he owned a house in his father's name. Since the applicant is in unauthorised occupation of the said premises, he is liable to pay the damages from the date of cancellation under SH 317-B-22. Thus the applicant is not entitled to any relief.

5. I have heard the learned counsel for both the parties at length. The applicant has claimed allotment of eligible type of accommodation on the basis of the OM dt. 13.7.1991.

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Under clause 3(d), the concession of ad hoc allotment is not allowed in cases where the deceased officer or his/her dependents in whose case ad hoc allotment of Government residence is proposed to be made, owns house or plot at the place of posting. The respondents in the reply have stated that the alternative accommodation cannot be allotted to the applicant because there is a house in the name of the deceased officer. No rejoinder has been filed. The applicant has been given a number of opportunities to file the rejoinder particularly to meet the contention of the respondents that there is a house existing in the name of the father of the applicant. The learned counsel for the applicant has relied on the decision of Chander Shekhar Arora and Ors. vs. Union of India. In this case, the relief granted by the Tribunal in OA 874/88 decided on

30.10.1989 is as follows :-

- (i) The applicants are jointly and severally liable to pay the market rent in respect of the premises of Qr.No.26, Probyn Road, Delhi till the date of commencement of the amendment to the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 providing for payment of damages instead of market rent. For the period after the commencement of the amendment to the said Rules and till applicant No.1 is regularised in the said quarter or he is given alternative accommodation, they are liable to pay damages instead of market rent at the rates prescribed.

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- (2) The respondents shall take a decision on the question of regularisation and allotment of the aforesaid accommodation in the name of applicant No.1 or allotment of an alternative accommodation to him of his entitled type in any locality expeditiously, but in no event later than 31st December, 1989. Applicant No.1 shall be allotted the accommodation accordingly but subject to his clearance of the dues mentioned in (1) above.

The applicant has also relied upon the decision of Shaji Zaman vs. Union of India (OA 345/90) decided on 1.2.1991.

In that case, the question whether the applicant is liable to pay the licence fee or damages in the event of ad hoc allotment of Government accommodation to him is left

to be decided by the respondents. The learned counsel

also placed reliance on the decision of Smt. Narain Devi and

Another vs. Director General of Works (OA 2218/90) decided on

11.10.1991. In this case, a direction was issued to the

respondents ^{not} to dispossess the applicant and he shall be

charged only the licence fee from the date of the death

of the Government servant. I have considered the ratio

of the judgement and find that in the present case the

quarter could not be regularised in the name of the applicant

as there is already a house in the name of the father of

the applicant. Regarding the charging of the damage rent,

the learned counsel has referred to the circular of 27.8.1987

issued by the Directorate of Estates (Annexure A1). In

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para 2(vi) of the said circular, it is stated as follows :-

"The rate of damages as above would be the rate to be charged from the unauthorised occupant and if he/she is not agreeable to pay it, the damages to be recovered from him/her will have to be pleaded before the Estate Officer in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971. (Extract enclosed)."

The Directorate of Estates have issued various OM from time to time for assessment of the damages for unauthorised occupation. In the present case, the damages have been fixed at the monthly rate of Rs.1340 w.e.f. 13.1.1988. The damages have been assessed at Rs.830 upto 12.1.1988. The allotment in the name of late Shri Suresh Sharma was cancelled w.e.f. 13.1.1988. Thus the respondents as per the Extant Rules can recover the damages. The relief claimed by the applicant, therefore, that he is not liable to pay the damages in respect of the present premises cannot be allowed. Similarly, the applicant cannot be allowed the relief of allotment of an alternative accommodation.

6. The application is, therefore, devoid of merit and is dismissed with the direction to the respondents to recover the damages as per the Extant Rules which were in force from time to time from 13.1.1988 till the date the possession is obtained from the applicant. Costs easy.

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(J.P. SHARMA) 7.8.92
MEMBER (J)