

17

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1093/91

DECIDED ON : October 30, 1992

Shri Lakshman Swarup

... Applicant

Vs.

Union of India & Anr.

... Respondents

CCRAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri B. Krishna, Counsel for Applicant

Shri J. C. Madan, Proxy Counsel for Shri
P. P. Khurana, Counsel for Respondents

J U D G M E N T

The applicant who is employed as Stenographer Grade-II, Defence Science Centre, Research & Development Organisation, Ministry of Defence was allotted quarter No. 100 (MS), Timar Pur, New Delhi. On the grounds of alleged subletting by him of the aforesaid accommodation, the allotment of the same was cancelled by order dated 18.1.1990 w.e.f. 18.3.1990 (Annexure A-6). By letter dated 8.5.1990 he was sent a bill for payment of damages for alleged unauthorised occupation (Annexure A-5). By order dated 21.11.1990 he was asked to vacate the aforesaid premises within fifteen days (Annexure A-8). The applicant has impugned the above three annexures in this application under Section 19 of the Administrative Tribunals Act, 1985. He has prayed for that the aforesaid orders dated 18.1.1990 and 21.11.1990 be set aside; that the allotment of the aforesaid premises may be directed to be regularised in his name with effect from the date of cancellation thereof; that he may not be charged any sort of penal rent/damages/licence fee over and above the normal rate of licence fee under FR-45-A for the entire period of

Cc .

his occupation; and that he should not be made to suffer any penalty under the Conduct Rules on grounds of alleged subletting of the aforesaid premises. In pursuance of his prayer for interim relief, the respondents were directed by order passed on 29.5.1991, as an interim measure, not to dispossess the applicant from the aforesaid quarter subject to his liability to pay licence fee etc. in accordance with rules, till further orders. The interim order has continued since then.

2. Briefly stated, the case of the applicant is that in May, 1989, one Shri Gulab Singh who retired as SAO from Solid State Physical Laboratory, Ministry of Defence, Delhi, requested the applicant to accommodate him in the said accommodation as a sharer for a temporary period till such time he was able to get a permanent arrangement of his own, and as such sharing arrangement was permissible under the rules, he agreed to such arrangement without any monetary gain and also sent an intimation to respondent No. 2, i.e., the Director of Estates, Nirman Bhawan, New Delhi, vide his letter dated 8.5.1989 which was duly forwarded by his administrative authorities vide intimation dated 12.5.1989 (Annexure A-1). However, on the basis of some false complaint, he was served with a notice dated 9.10.1989 calling upon him to show cause as to why he should not be declared ineligible for allotment of Government residence for a period of five years and as to why he should not be charged four times the standard licence fee and as to why also he be not barred from sharing the said residence (Annexure A-2). His response to this notice was by means of a personal visit to the officer concerned on 8.11.1989 and subsequent dates

Ce.

15

when he is said to have shown the relevant documents, proofs, testimonials etc. in support of his contention that it was not a case of subletting but of sharing of Government residence. It is his contention that the officer concerned felt satisfied about the said sharing arrangement and he was assured that the matter shall be closed after taking approval of the senior officers. However, he was surprised to receive a show cause notice dated 25.4.1990 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 calling upon him to appear in person on 18.5.1990 (Annexure A-3). He replied to the same vide his letter dated 25.5.1990 in which he also submitted that no cancellation order dated 12.1.1990 had been served upon him and as such the show cause notice is prima facie illegal. He was also served a bill for recovery of damages at the rate of Rs. 20 per sq. mtr. of the living area vide bill dated 8.5.1990 in terms of the respondents' office memo dated 27.3.1987. He is also said to have been supplied with a copy of the cancellation order dated 13.1.1990 in pursuance of his request, by letter dated 16/17.8.1990 (Annexure A-6). He preferred an appeal to the appellate authority on 23.10.1990 (Annexure A-7) but without passing any orders on his appeal the eviction order was passed on 21.11.1990 by proceeding ex parte. It is also stated by the applicant that he has since got the said part of the premises vacated from the sharer and now the entire premises is said to be in exclusive use and occupation of the applicant. His appeal against the cancellation of allotment was subsequently rejected by letter dated 14.3.1991 (Annexure A-13). Admittedly, he has not filed any appeal before the District Judge as provided for in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Ce.

27

3. The case of the respondents, briefly stated, is that the applicant was not in occupation of the Government accommodation allotted to him when surprise inspection was carried out on 5.10.1989 by officials of the respondents and at 3.30 P.M. on that date the residence was found in occupation of Sardar Gulab Singh, Smt. Mahinder Kaur and Miss Ritu Kaur and that Miss Ritu Kaur gave a signed statement on the inspection report prepared at the site on 5.10.1989 that they were residing in quarter No. 100 (MS) Timarpur, New Delhi for the last two years. It is also stated that telephone No. 2915281 was also found installed in the residence in the name of Sardar Gulab Singh. It is contended that under the rules the allottee has to send prior information about sharing the residence to the Director of Estates in the prescribed form. But in this case, as per the signed statement of Miss Ritu Kaur, their family had been residing in the accommodation allotted to the applicant since 1987 while the applicant in his O.A. has stated that he sent the intimation to respondent No. 2 on 12.5.1989, and accordingly, the applicant cannot be said to have sent prior information about sharing as prescribed in the rules. The allegation of the applicant that a false complaint was sent against him is rebutted as the complaint was found to be correct on a surprise inspection. Similarly, the contention of the applicant that he was given any assurance that the matter shall be closed has been rebutted.

4. The main question which falls for adjudication in this case is whether this is a case of subletting or only of sharing of accommodation, and if it is a case of sharing accommodation, has this been done by the applicant in accordance with the rules. Supplementary Rule 317-B-2(1)

Cu.

29

defines subletting as below :-

"(1) "Subletting" includes sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person;

EXPLANATION.—Any sharing of accommodation by an allottee with close relations shall not be deemed to be subletting."

S.R. 317-B-20 provides that no allottee shall share the residence allotted to him except with the employees of the Central Government eligible for allotment of Government residences under the rules (Allotment of Government Residences (General Pool in Delhi) Rules, 1963), provided the allottee shall send prior intimation to the Directorate of Estates in the prescribed form intimating full particulars of the officer and his family in the quarter and full particulars of the sharer and his family. It is also provided that no allottee shall sublet the whole of his residence except when he proceeds on leave and in such an event he may accommodate any other officer eligible to share Government accommodation as a care taker for the period specified in SR-317-B-11(2), but not exceeding six months. Thus, it is seen that an allottee of a Government accommodation is not entitled to share accommodation with an officer who is ^{not} eligible for allotment of residence under the aforesaid rules. However, the Note regarding provisions in the Allotment of Government Residences (General Pool in Delhi) Rules relating to subletting, sharing of Government accommodation and penalties that can be imposed (as reproduced in Annexure II from page 402 in Swamy's Compilation of F.R.S.R. Part-I General Rules - Tenth Edition) states that apart from the Central Government employees eligible for general pool accommodation, nine other

C.

categories have also been declared eligible to share accommodation of General Pool residences by way of administrative orders. Retired Central Government servants is one of these nine categories. As such, the applicant could share the residential accommodation allotted to him with Shri Gulab Singh and his family as Shri Gulab Singh is said to have been a retired Central Government employee. This contention has not been disputed by the respondents. The applicant has also placed on record the intimation dated 8.5.1989 sent by him in this connection (annexed to Annexure A-1). This inter alia shows that the applicant has in all six members in his family and the sharer has three members, and that the applicant was charging rent of Rs.275/- per month from the sharer. Thus, admittedly the applicant sent the intimation for sharing to the authorities for the first time only on 8.5.1989 while as per the reply filed by the respondents the surprise inspection showed that he was sharing the accommodation with the family of Shri Gulab Singh from 1987.

5. At this stage, it may be stated that neither party has placed on record any information about the date on which the applicant occupied the quarter No. 100 (MS) Timarpur, Delhi allotted to him, and the date on which the sharer, Shri Gulab Singh, retired from service. If the date of retirement of Shri Gulab Singh had been mentioned, it would have been seen whether Shri Gulab Singh could have shared the accommodation with the applicant from 1987 or so, or not. The sharing intimation sent by the applicant on 8.5.1989 also discloses that the applicant had a house of his own in his name at C-9/83, Yamuna Vihar, Delhi. The applicant in his rejoinder has denied that telephone No. 2915281 ^{was} ever

Cc.

installed in the premises in dispute. He has further denied that on 5.10.1989 the family of Shri Gulab Singh was found living in the said premises, but he accepts that a minor daughter named Ritu Kaur aged about 12 years or so was found in the said premises. He, however, denies that the statement as alleged by the respondents was ever given by her. He has reiterated in his rejoinder that Shri Gulab Singh started sharing the accommodation allotted to him only in the beginning of the year 1989 and left the said premises in the beginning of the year 1990. It is in this background that the material placed by the applicant on record in support of his contention that he has been living in the aforesaid quarter, needs to be examined. At Annexure A-14 is a photostat copy of consumer card No. O15677 with the name of the applicant. In the address column, 1371, Timarpur, Delhi-7 was shown but later on 1371 was scored and 100 (MS) was added. The date of the issue of this card is not noted, nor the date of correction of the address has been shown. The modification in the address as aforesaid is also not initialed. At Annexure A-15 is the photostat copy presumably of the CGHS card and the date of issue is noted as 8.2.1988. Residential address in this card is shown as quarter No. 100 (MS) Type-III, Timarpur. However, it needs to be noted that this is a copy of only a duplicate issued on reporting the loss of the original, and that among the family members only three names are shown as against six in the consumer card. At Annexure A-16 there is a certificate by five residents of Timarpur, Delhi to the effect that the applicant, an allottee of quarter No. 100 (MS) Timarpur is residing in that quarter. However, this certificate is not dated. At Annexure A-17 is a certificate dated 21.6.90 by the President, Govt. Quarters Residents Welfare Association,

Timarpur, Delhi to the effect that the applicant, allottee of the aforesaid quarter, is a bonafide member of the association and resides there. At Annexure A-18 is a statement of account in the name of Smt. Krishna (presumably the wife of the applicant) of the United Bank of India for the period 1983 in which the address was 1371, Timarpur, Delhi-7 but in December, 1990, 100 (MS), Timarpur is shown as the new address. This modification is initialed and dated. At Annexure A-19 is the receipt of Punjab National Bank dated 10.11.1989 for the locker in the joint name of the applicant and his wife towards payment of rent of the locker for the period 14.11.1989 to 13.11.1990. At Annexure A-20 is the receipt of the gas connection dated 8.2.1983 in the name of the applicant where the address is shown as 1371, Timarpur, Delhi. At Annexure A-21 is a copy of receipt dated 26.11.1990 for the payment to the Police on a traffic offence challan and the address of the applicant is shown as 100 (MS), Timarpur. At Annexure A-22 is a prescription dated 3.9.1989 of Guru Teg Bahadur Hospital, Shahdra, Delhi in which the address of the applicant/patient is shown as Yamuna Vihar. At Annexure A-23 are receipts of payments of Rs.2/- each to the Govt. Quarters Residents Welfare Association issued on 6.9.1988, 27.5.1989 and 23.9.1990 and in the receipts dated 27.5.1989 and dated 23.9.1990 the address is shown as 100 (MS), Timarpur while in the receipt dated 6.9.1988 it is shown as D.Sc.C, Delhi-54 (presumably Defence Science Centre where the applicant was posted). At the same annexure there are photocopies of some purchases made from one Pahwa Store, 26, Nai Market, Timarpur. The date on most of these

Ce.

25

Ce. is not legible and one one receipts, which ~~are~~^{are} legible is of 1990. At Annexure A-23 there are also some receipts of C. Lal & Sons (Gas), Kashmere Gate, Delhi. The year of most of these receipts is not noted but on one of the receipts of Devender Kumar Vipin Kumar, 14-A, Old Market, Timarpur the date is shown as 21.11.90. At Annexure A-24 photocopies of some postal addresses showing the address of the applicant as Qr. No. 100 (MS), Timarpur, Delhi have been annexed but the date of the postal receipts is not legible. There is a refund order at page 42 of the paperbook on which the date is 7.4.1990. From the above documents, it is clear that neither the address of the applicant has been consistently quarter No. 100 (MS), Timarpur, Delhi nor all the documents establish even to a reasonable extent that the applicant has been continuously living in the aforesaid accommodation. Thus, on the basis of the material on record, I am not in a position to give any finding that this is a case only of sharing and not of subletting. It is in this context that the respondents were required by order dated 1.7.1992 to produce inter alia "the document/material on the basis of which the respondents reached the conclusion that the applicant had sub-let the accommodation allotted to him." Another adjournment was given on 17.7.1992 for this purpose. Still another adjournment was given on 31.7.1992 for the same purpose. But on the last date, i.e., 14.9.1992, the learned proxy counsel for the respondents submitted that despite his efforts he was not able to procure the relevant documents/material. Thus, the evidence placed by the applicant on record, as stated above, does not fully substantiate his case, and on the other hand, the respondents have not placed the required material in

Ce.

26

support of their case. In these circumstances, it would be appropriate and in the interest of justice to dispose of this O.A. in terms of the following directions :-

The impugned order dated 18.1.1990 cancelling the allotment of quarter No. 100 (MS), Timarpur, Delhi in the name of the applicant w.e.f. 18.3.1990 (Annexure A-6) is quashed and set aside. Similarly, the impugned order dated 12.11.1990 (Annexure A-8) by which the applicant was asked to vacate the aforesaid premises within fifteen days is also quashed and set aside. Letter dated 8.5.1990 containing the bill for payment of damages for alleged unauthorised occupation (Annexure A-5) is also quashed and set aside in consequence. However, the applicant is directed to make a self-speaking representation with all documents in support of his case to respondent No.2, namely, the Director of Estates, Directorate of Estates, Nirman Bhawan, New Delhi within fifteen days of this order and the aforesaid respondent No. 2 is also directed to consider his representation, to give the applicant a personal hearing, and then to pass a speaking order. The evidence in support of the case of the respondents may also be discussed in such an order. If the applicant, however, does not make a representation as directed above, the respondents shall be free to pass a fresh order which should contain relevant details of the basis for making such an order. If the applicant is aggrieved by the order to be passed as above, he will be free to approach the Tribunal in accordance with law, if so advised. No costs.

(P. C. Jain)
Member (A)