

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

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O.A.1554/92

Date of decision: 19.2.93

K.K.Kapoor

.. Applicant

versus

Union Of India &

another

.. Respondents.

Sh.B.Krishan .. Counsel for the applicant.

Sh.P.P.Khurana .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.I.K.Rasgotra, Member(A).

J U D G E M E N T (ORAL)

(Delivered by Hon'ble Sh.I.K.Rasgotra, Member(A))

The case of the petitioner is that he was served a notice by the Dy. Director of Estates on 3.12.90 to show cause as to why the (1) allotment of the quarter No.518, Lodi Road Complex, New Delhi standing in his favour be not cancelled (2) he should not be made ineligible for allotment of quarter for further five years after 60 days from the service of the notice (3) he should not be charged rent from the date of the notice till the date he vacates the quarter, in accordance with

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F.R.45(A). He was further directed that if he had to say something in the matter, he should meet the Officer concerned on 15.12.90. A further O.M. was issued to him on 19.12.90 in continuation of the earlier notice on 3.12.90 directing him to meet the Dy. Director of Estates on or before 19.12.90 on any working day at 2.00 P.M. alongwith his written reply to the show cause notice and other documents such as ration card, C.G.H.S. card etc. The petitioner met the Dy. Director of Estates and explained his position. Nevertheless his allotment came to be cancelled vide order dated 5.2.91 when he was given 60 days time to vacate the said quarter failing which he would be liable to pay rent in accordance with F.R.45(A) and would further render himself liable to disciplinary action being taken against him. In the notice served on him on 3.12.90 he was advised that the said action is being taken against him as the premises in question were found to be not under his occupation. The petitioner filed an appeal against the said notice dated 3.12.90 before the Director, Directorate of Estates on 26.2.91. This was rejected vide order dated 29.4.91 with the direction to the petitioner to hand over the vacant possession of the government accommodation to the C.P.W.D. Inquiry Office failing which action would be taken for physical eviction under the Public Premises (Eviction of unauthorised Occupants) Act of 1971. He filed a review petition addressed to the Secretary of Ministry of Urban Development on 27.5.1991 to which no reply was received. In the meantime an eviction order was passed by the Estate Officer and the Assistant Director of Estates on 10.6.91 giving him fifteen days time to comply with the orders. The petitioner was

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further issued a bill on 15.6.92 for payment of licence fee and other charges as per the calculations given therein amounting to Rs.13,436/- . This includes recovery of rent at inflated rate of Rs.1,457/- per month for the period 5.4.91 to 31.12.91 i.e. for the period after the allotment to the petitioner was cancelled. The learned counsel for the petitioner submitted that on 12.2.92 the petitioner filed another appeal to the Director of Estates. After hearing the petitioner the Director of Estates passed the following orders:

"Case is under consideration, no physical eviction for the present and file be submitted to me"

2. This order was marked to Assistant Director(Litigation) and A.D.E. The petitioner submits that when the house was further inspected later he was found to be in occupation. He has however not filed a copy of the inspection report or furnished particulars of the officers who had inspected the said premises. It is in this background that the petitioner has filed this Original Application praying for the following reliefs:

a) Allotment in respect of Government quarter No.518, Lodhi Road Complex, be directed to be restored in the name of the applicant.

b) In the alternative the respondents be directed to allot some other government residence, according to his entitlement, if quarter No.518 is allotted to somebody.

c) The applicant may not be made liable to pay market rent, penal rent, damages for quarter No.518, Lodhi Road Complex, New Delhi.

d) The cancellation order dated 5.2.91 in respect of Government residence No.518, Lodhi Road Complex be quashed.

3. The stand of the respondents is that the allotment to the petitioner was cancelled as he was found to have sub-let the premises and therefore, a notice was served to him to show cause, as adverted to earlier. After considering his various representations the respondents came to the decision that there was no merit in his case and therefore, further action was taken to recover the licence fee in accordance with F.R.45(A) and to cancel the allotment order which was followed by the eviction order. It is not disputed that the petitioner was physically evicted on 22.5.92. The petitioner himself is not now pressing for the allotment of quarter No.518, Lodhi Road Complex, New Delhi. The grievance agitated by the ld. counsel for the petitioner is that the petitioner should be allotted an alternative accommodation and he should not be subjected to payment of damages. He justified the case of the petitioner on the ground that no show cause notice was given to him

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before passing the eviction order, as prescribed in Section 4 and 5 of the Public Premises (Eviction of unauthorised occupants) Act of 1971. In this context the learned counsel relied on **S.Gulab Jan Versus Estate Officer (1990(2) A.T.L.T. C.A.T. Bangalore, 152)** to fortify his case.

4. The learned counsel for the respondents, however, contested that stand and submitted that the petitioner cannot be provided any relief as he has not challenged the eviction order dated 10.6.91. Since the eviction order is not challenged and there is no relief prayed for in that behalf the petitioner cannot be provided any other relief on the ground that the provisions under Sections 4 and 5 of the Public Premises (Eviction of unauthorised occupants) Act of 1971 have not been followed. The learned counsel for the petitioner sought to meet this argument by referring to para 5.2 of the petition wherein it has been stated that the eviction order was passed *ex-parte* by deviating from the procedure prescribed in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The case of **Gulab Jan (supra)**, the learned counsel averred is not relevant in the facts of the present case.

5. Admittedly the petitioner has not challenged to the said order of eviction nor has he claimed any relief against the said eviction order. The plea taken by the learned counsel was that the cancellation order which is the core of the problem and, therefore, same has

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not been challenged by him. He further submitted that it would not be necessary to challenge the eviction order as the cancellation order itself is illegal.

6. The learned counsel for the petitioner also relied on the judgement rendered in O.A.1093/91 decided on 13th October, 1992. The facts of this case are distinguishable from the matter before me, inasmuch as that the controversy there was relating to the sharing of the accommodation and not of sub-letting. Infact the finding was required to be given only in that respect.

7. I have heard the learned counsel for both the parties and considered the matter carefully. The basic issue that arises is that the eviction order which came to be finally passed by the authorities has not been challenged. If that order is not challenged the consequential reliefs flowing therefrom cannot be allowed. The ^{purported} cancellation order was only a show cause notice. It was to provide opportunity to the petitioner to justify his case and the end result of the excercise was the vacation eviction order passed on 10.6.91. Since that order is not challenged, it is not possible for me to provide any of reliefs prayed for. In the circumstances the O.A. is dismissed. The licence fee shown as chargeable from the petitioner in the bill dated 16.1.92 is said to have been worked out according to F.R.45(A). It was submitted by the learned counsel for the petitioner that Rs.1457/- per month cannot be the licence fee recoverable under F.R.45(A) since no bills of calculation have been furnished. Accordingly, I direct the respondents to ensure that the rent is charged from

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the petitioner for the period of his stay in the said quarter in accordance with the rules mentioned by them in the order of cancellation till the date the order of eviction was implemented. No costs.



(I.K.Rasgotra)

Member (A)