IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 219/92 16.07.1992

Shri Raghubir Prasad ...Applicant

Vs.

Union of India & Anr. ...Respondents

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

For the Applicant ...Sh.B. Krishnan

For the Respondents ...Sh.R.P. Khurana with Sh.J.C.Madan

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 (ORAL)

The applicant, a Class-IV employee, R.M.L. hospital, New Delhi is aggrieved by the order of cancellation of allotment of the premises-III/8, M.B. Road, Pushp Vihar, New Delhi which was allotted to him. He has also assailed the factum that he should not be evicted on the basis of the disciplinary proceedings initiated under Sections 4/7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the show cause notice of which is dated 21.1.1991. The relief claimed by the applicant is that the order of

...2...

(18)

cancellation dt. 5.11.1991 as well as the eviction proceedings initiated by the impugned notice be quashed and set aside with a further direction to the respondents not to recover the penal rent/market rent/damages and that he should not be made to suffer the penalty under the relevant disciplinary rules on the ground of alleged subletting.

2. It is undisputed that the applicant was allotted the said premises on 19.5.1990. It is also stated by the applicant that his two daughters and one son besides himself and his wife resided in the said premises, the remaining members of the family used to live at the native place in Aligarh, U.P. The applicant was served with a notice dt. 4.9.1990 to show cause why he be not debarred for allotment of the Government premises for a period of five years and four times the licence fee of the said premises be not recovered from him. The applicant was also summoned to the office of the Directorate of Estates on 8.10.1990. However, the applicant was served with a final order of 5.11.1990. The applicant also preferred an appeal and same was not entertained at the first instance and was returned with the direction to be processed through proper channel. It was also sent

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(14)

through proper channel, but no communication of its decision till the filing of the application or subsequently has been made to the applicant. The averment made in the application is that the said order of cancellation is bad in as much as the premises were never shared by any other person nor sublet and the applicant and his family members resided therein, is evidenced by the ration card, a photocopy of which has been annexed. It is further averred that the proceedings of eviction have been taken up prematurely and are bad in law and that the applicant has not been told about the proceedings subsequently till the filing of this application when he obtained an interim direction against the respondents by the order dt. 29.1.1992 that the applicant should not be dispossessed from the said premises. However, ill luck has fallen on him. The interim direction issued was from date to date and in the order dt. 25.5.1992, the interim direction issued on 29.1.1992 was not further extended. Taking advantage of this fact, the respondents who were in readiness evicted the applicant from the said premises as a result of which the applicant moved MP 1756/92 before the vacation bench and the vacation bench ordered that the said premises be not allotted to any other person. This MP has also been taken up for final disposal along with the merit of this application.

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(15)

3. The respondents contested the application stating therein that as usual there is a surprise inspection made from time to time to curb the evils of subletting and the Directorate of Estates sent an inspection unit on 4.8.1990 and the quarter was found in occupation of Smt. Guddi and two children, Vijay Shree and Kasturba. On the basis of the report of this surprise inspection unit, the show cause notice was issued to the applicant and he submitted the reply after consideration of the same, the impugned order dt. 5.11.1990 giving detailed reasons was passed against the applicant debarring him for a further allotment of 5 years of Government premises. It was further ordered that four times the standard licence fee under FR 45-A with effect from the date of the issue of the order till the date of vacation shall be charged in case if the same is not vacated within 60 days. The counter of the respondents is a bit shaky and it does not stand to reason that the department did not give any reply to various averments made in para-4.7 and 4.8 of the application. To the utter surprise, the direction issued by this Tribunal, after hearing the learned counsel for the respondents for filing a reply to these averments in the OA by the order dt. 29.5.1992, has also not been complied

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18

with. It is not necessary to detail on this matter any further. The case is to be decided on the pleadings placed before the Court supported by the arguments advanced at the time of hearing.

4. The emphasis of the learned counsel for the applicant has been that the applicant is a Safaiwala, an illiterate Class-IV employee and that he is living in the said allotted quarter with some of his children, the remaining living at Aligarh, the native place. Be that it may be, if the pleadings of the parties are clear and unambiguous, then they have to be read in the sense which they mean. The learned counsel for the applicant has referred to the meaning of subletting as defined in SR 317-B-21 Sub Clause 2 which means a sharing by some other person other than the Government employee with or without consideration. If the pleadings are to the effect that there were certain other persons at the time of surprise inspection units, then there is a heavy burden to be discharged by the applicant himself that those persons were not placed in such a position as to come up within the aforesaid definition of subletting referred to above. In the reply (Annexure A3) p-10 of the application, the applicant in para-2 stated that the children found by

17

the surprise inspection unit were the children of his relative. Normally a person is expected to know the name of such a relation and the relationship he has with them. Ommission to mention such an important fact makes such a statement less credible. The learned counsel gave an explanation to this that the applicant, being illiterate, though of course he has signed in Hindi, yet without entering into any further querry on this point, the rejoinder filed by the applicant himself further complicates the issue. In the rejoinder, the applicant stated at the time of alleged inspection, that the house was locked and the children were of the neighbour. The rules of appreaciation of evidence make it implicit and clear that when there are two statements on a fact in issue, then either of the facts is not keeping with the truth. In this case at one time it is stated that the children are of relation and after pleadings in the case, it was stated that the children were of the neighbourhood. Such a statement of facts, therefore, can easily be classified as de-horse the truth. However, this statement goes to show a meak admission on the part of the applicant himself that they were not the family

(18)

members, who were seen by the surprise inspection unit and that is subletting as per the definition under the common law of land and also has been laid down under SR 317-B-21. It is not necessary to stress any further on the point of cancellation. The rules are statutory in nature. Any breach of the rule has to be enforced with a penalty and that is an admission by the applicant himself when he accepted the allotment in pursuance of the said Rules.

5. Though the respondents have not given any reply to the appeal filed by the applicant against the cancellation of the allotment and they kept complete silence on this point which is not expected from a Government department. Since the applicant has himself come earlier to the Tribunal and he has, of course, a right under Section 21 of the Administrative Tribunals Act, 1985 after waiting for a period of six months from the date of the appeal. As such the pendency of the appeal with the respondents by itself will not come in the way of consideration of the order of cancellation dt.5.11.90. The position could have been different had there been an argument on the point that the matter be not disposed of

(19)

and left at the mercy of the department to dispose of the appeal. Since neither there is an averment in the application nor there is an argument advanced, so this aspect of the matter cannot be considered.

6. The learned counsel for the applicant argued that in theproceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, notices were issued under Section 4/7, the applicant has a right to show that he is not an unauthorised occupant of the premises. Actually the title of the Act itself goes to show that it covers only those cases of public premises where the occupants thereof are unauthorised occupants of the same. The jurisdiction of the prescribed authority under that Act can only be when a person is in unauthorised possession of the Government premises. Thus the applicant has every right to show and assail the correctness of the averments in the notice itself that he is not an unauthorised occupant and is residing as per the rules under which he was allotted the said premises. However, the applicant has been evicted. There is no order of eviction

...9...

(20)

filed in this case nor along with this MP. No order of eviction has been assailed, so it is not required to go into the merit of those proceedings. On the basis of the cancellation of the allotment, the applicant was to be evicted and also to pay penalty.

7. Taking all these facts into account and the reliefs claimed in the application, I find that the impugned order dt. 5.11.1990 is an order properly passed by the authority on the basis of various averments and explanation by the applicant and it needs no interference Regarding the other prayer that the eviction be not carried out on the basis of the notice dt. 21.1.1991, that relief has become infructuous because the applicant has already been evicted.

8. However, the applicant should not be denied the right to judicial review of the eviction order of the prescribed authority if he wants to assail the same. Thus this order will not be a hurdle in the way of further assailing any order of eciction against the applicant in the competent forum if he is subject to limitation. so advised. The application is, therefore, disposed of along with the MP as devoid of merit and leaving the parties to bear their own costs.

(J.P. SHARMA)
MEMBER (J)
16.07.1992

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