

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 2470/92

DECIDED ON: February 11, 1993

A. T. Bhaskaran

... Applicant

Vs.

Union of India & Ors.

... Respondents

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

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

Shri Lajpat Rai, Proxy Counsel for Ms. V.
Mohana, Counsel for the Applicant

None for Respondents

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :-

The applicant is employed as a Class IV employee as Laboratory Helper Grade-II in the Central Soil & Material Research Station, Ministry of Water Resources, New Delhi and was allotted Government quarter No. 713, Sector-II, R. K. Puram, New Delhi in 1987. He is a permanent resident of Kerala and also an ex-serviceman. It is said that when he had gone to Kerala during October/November, 1989, leaving behind his nephew and his family, some of the officials of respondent No. 2 visited the quarter and made some inquiries. On coming back, he received a show cause notice dated 7.11.1989 (Annexure-A) in which it is stated that as a result of the inquiries made it had been reported that the applicant was not residing in the quarter allotted to him and in contravention of Supplementary Rule 317-B-20 of the Allotment of Government Residences Rules had completely/partly sublet the same to some unauthorised persons. He was asked vide this notice to explain on 29.11.1989 as to why (1) he should not be declared

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ineligible for Government accommodation for a period of five years; (2) should not be charged enhanced licence fee at the rate of four times the standard licence fee from the date of issue of orders to the date of vacation; and (3) should not be debarred from sharing the Government accommodation for a specified period in future. He was cautioned that if he wanted to be heard personally, he along with his reply may appear before the Deputy Director (Estates) at 2.30 p.m. on 29.11.1989 and that he may also bring with him all relevant documents like ration card, CGHS card, covers of registered letters, savings bank pass book, certificates from the educational institutions where his children were studying to prove that he was generally residing in the quarter allotted to him. It is contended that he appeared on the aforesaid date and submitted his ration card, CGHS card, voters list and some letters addressed to him at the said address from Kerala, and that the Deputy Director was satisfied with the documents submitted and assured him that he need not worry about eviction. However, he received an order dated 8.2.1990 (Annexure-B) by which on the ground of having completely sublet the above accommodation to some unauthorised persons in violation of the rules, it was decided to cancel the allotment of the above accommodation in his name which was to stand cancelled with effect from the date of vacation of the said accommodation or on the expiry of a period of sixty days from the date of issue of the order, whichever is earlier. He was also declared ineligible for allotment of general pool residential accommodation for a period of five years from the date of cancellation. He was to be charged four times the standard licence fee with effect from the date of issue of this order till the date of vacation of the above quarter within the

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aforesaid period of sixty days and if the quarter is not vacated as aforesaid, from the 61st day the allotment shall stand cancelled. He was accordingly directed to vacate and hand over the full vacant possession of the aforesaid quarter within a period of sixty days and he was also informed that disciplinary action was also proposed to be taken against him. It is further stated that in case he was aggrieved by the above order, he could prefer an appeal within a period of sixty days. He preferred an appeal dated 19.2.1990 (Annexure-C) which was rejected by an order dated 8.1.1992 (Annexure-F). ^{an order} ~~Annotice~~ under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was issued on 31.3.1992 (Annexure-G). This was passed in pursuance of a notice issued to him earlier under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. On 10.9.1992, the premises were sealed. It is in this background that the applicant has filed this O.A. praying for the following reliefs :-

- "a) the show cause notice No. DE/4/376/RKP/Sub/89 dated 7-11-89 and the consequent orders issued vide Directorate of Estates order No. DE/4/376/RKP/Sub/89 dated 8-2-90 be quashed and respondents 1 to 3 be directed to regularise quarter No. 713, Sector-II, R.K. Puram, New Delhi in the name of the petitioner and all other penalties imposed vide order dated 8-2-90 be quashed and set aside.
- (b) Order No. EC/141/ADP/LIT/90-T-I dated 31-3-92 of the Estate Officer, Directorate of Estates, New Delhi be quashed and the action of the Estates Officer in sealing Quarter No. 713, Sector-II, R.K. Puram, New Delhi be declared illegal and the seal be broken and the applicant be put back in possession of the said premises.
- (c) Sub Rule 2 of Rule 7 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 be quashed and declared null and void

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and unconstitutional for, conferring unguided and unfettered direction/powers on the Estates Officer or his authorised representative to seal the premises without any notice whatsoever.

- (d) any other order/direction/relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. When the case came up for the first time before a Single Member Bench on 23.9.1992, as an interim measure, it was directed that the applicant be not evicted. By another order passed on 30.9.1992, the respondents were directed to allow the applicant to have possession of the belongings inside quarter No. 713, Sector-II, R. K. Puram, New Delhi.

3. Despite service of notice and adjournments allowed to the respondents to file their reply, no counter reply has been filed by the respondents. However, the learned counsel for the respondents made available to us the relevant departmental file which we have perused. After the arguments of both the parties were heard on 16.11.1990, the applicant filed M.P. No. 3718/92 with which an affidavit of one D. Pushpalatha, daughter of Shri P. Diwakaran residing at 147-H Block, J. J. Colony, Shakur Pur, New Delhi was filed along with an additional affidavit of the applicant. Notice on the above M.P. was also issued to the respondents. They neither filed any reply to the above M.P. nor anyone appeared for them at the time it was heard on 14.1.1993. We have perused the material on record. The case of the applicant is that as he is a resident of Kerala, he keeps going to Kerala on leave and it was during one such occasion that some officials of the respondents had come to the house allotted to him to make some inquiries. At that time, the wife of his nephew was in the quarter and that she neither knows English nor

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Hindi and as such the visiting officials have drawn the conclusions allegedly on the basis of her statement which are not correct. In the affidavit by the nephew's wife with MP-3718/92 it is stated that she came to Delhi for the first time in March, 1989 with her husband who was working as a Laboratory Helper (Group 'D') in the Central Soil and Material Research Station, Hauz Khas, New Delhi and at that time she was not in a position to speak or write either English or Hindi or any other language other than Tamil and Malayalam. It is stated that she can write her name in capital letters in English which was taught by her husband but she cannot write any other names other than her's and that she cannot also write any sentence in English nor could she understand the same even if read over as such. It is further submitted that in October, 1989 she was at the quarters allotted to the applicant and the gentleman visited asking some details in Hindi. As she did not understand a word what he said, a girl from the neighbourhood from quarter No. 714 came there by chance and instructed her that he had come for inquiry about the health and other details of the family members and she told her to give the CGHS card of her husband and to give the details of her husband's family. She accordingly handed over the CGHS card and signed at the place shown by the man who had come but she had no idea about the contents of the paper on which she signed and that the same was not explained to her. She has further stated that she has two children and only on one occasion her younger son had come to Delhi and that her elder son had never been to Delhi till today. At the time the inquiring official came, she was alone at home and her husband had gone to the office. It is also deposed that

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no other person including her husband's parents ever stayed with them, and that they had never been to Delhi till date. It is further deposed that in December, 1991 two unknown persons came to the quarters when her husband was also there. Her husband explained to them that he is a nephew of the applicant and is working in the same department and that since he is a close relative of the applicant, they were not being accommodated by him for rent. It is also deposed that the applicant was not there even at this time since he had left for his native place as usual for the yearly visit. In the additional counter affidavit filed by the applicant, he has stated that his nephew Shri Thankappan had been staying with him from March, 1989 till about December, 1991 and that the nephew stayed with his family and nobody else has stayed with him. The applicant has also placed on record a photostat copy of the ration card, CGHS card, and a document which shows that he was a voter.

4. The case of the respondents, as is evident from a perusal of the departmental file made available to us, rests entirely on the inspection ^{by C. Officers of the} of the Directorate of Estates on 6.9.1989 and re-inspection on 8.12.1991. We have perused these inspection reports. The first inspection report shows that the applicant/allottee was not found at the quarter at the time of inspection but Smt. Pushpalatha wife of Shri Thankappan, Lab Technician in GSMRS was found residing in the quarter along with her two children named Vinod Kumar and Rajesh Kumar and parents named Shti P. J. Thomas and Smt. A. T. Chinamma, in all six members. The inspecting team reported that it was a case of full subletting as on the date of inspection. The inspection report also has a slip pasted thereon which reads as below :-

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"I am residing in Q. No. 713, Sec.-II, R. K. Puram with my family of six members for the last one year."

There is a signature below the above note and below the signatures Smt. Pushpalatha in capital is written. Column 23 of the inspection report also refers to the signed statement of occupant below. This report also states that the quarter is not being shared and CGHS card in the name of Thankappan was seen. It also states that the ration card was not shown nor any cooking gas consumer number was shown. Details of institutions where children of the allottee were studying are stated to be not known. Similarly, bank accounts, insurance, scooter/car registration book, telephone number and dak receipt on allotted quarter are also said to be not shown. The report of second inspection on 3.12.1991 at 2.45 p.m. indicates that neither the applicant/allottee nor any member of his family was found, but one Shri A. K. Thankappan, nephew (sister's son) was found. Thankappan's wife was also shown to be present. Ration card is stated not to have been shown. CGHS card of the allottee was shown. The inspection report states that the accommodation was not being shared. Rent was stated not to be paid by the persons found on the premises.

5. A number of grounds have been taken by the applicant in support of reliefs prayed for by him. However, the main ground urged before us was by the learned counsel for the applicant was that admittedly the impugned orders against the applicant have been issued on the basis of alleged subletting of the quarter in full by the applicant on the basis of departmental inspection reports but a copy of either of these reports was neither sent to him along with the notices issued to him nor was it supplied to him at any other time to enable

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him to explain to the department the correct facts. It was therefore, contended that orders passed on the basis of an inquiry conducted behind the back of the applicant amounts to violation of the principles of natural justice and is thus arbitrary and violative of Article 14 of the Constitution of India. In MP-3380/92 filed on 16.10.1992, it was also pleaded that the allotment rules permit close relations to stay with the allottees and such a stay would not amount to subletting. It is further stated that according to these rules nephew is a close relation but this fact has been disregarded by the respondents.

6. Subsidiary Rule 317-B-1(2)(1) defines "subletting" as including sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person. However, the ^{a.}Explanation below the above rule provides that any sharing of accommodation by an allottee with close relations shall not be deemed to be subletting. As per ^{c.}note in Annexure-II to the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, nephews are one of the categories of relations which are to be treated as close relations. The person who was found to be residing is stated by the applicant to be his nephew and as such ^{a. is} covered ^{a.} in the category of close relations who could stay with the applicant. In the notice issued to the applicant on the inspection reports no other name to whom the applicant is alleged to have sublet the accommodation is disclosed. Thus, prima facie, the case of the applicant seems to be covered by the relevant rules and if the finding of subletting has been arrived at by the respondents only on the ground of the nephew with his family residing in the quarter, then the matter deserves to be re-considered. It may also be mentioned here that the nephew

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is also a Central Government servant employee and it was permissible for the applicant to inform the respondents that he was sharing the accommodation with him. If the applicant had done so, which on the basis of materials placed on record we find that he has not done so, then also the applicant could not have been held guilty of having sublet the accommodation to him if the allegation of subletting is based only on the nephew and his family staying with him. For all these reasons we are of the considered view that the whole matter ~~is~~ ^{is} required to be re-considered by the respondents.

7. In the light of the foregoing discussion, the O.A. is disposed of in terms of the following directions :-

Order dated 8.2.1990 by which the allotment of quarter No. 713, Sector-II, R. K. Puram, New Delhi in the name of the applicant was cancelled is quashed and set aside. Similarly, the order dated 8.1.1992 by which the representation of the applicant was rejected is also quashed and set aside. The order dated 31.3.1992 issued under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 by which the aforesaid premises were ordered to be vacated on or before 7.5.1992 is also quashed and set aside. In view of these directions the action of respondents in locking and sealing the aforesaid premises on 10.9.1992 is also held as not sustainable. The applicant shall be put back into possession of the aforesaid quarter as expeditiously as possible but preferably within a period of one month from the date of receipt of a copy of this order by the respondents. Respondents shall, however, be free to initiate fresh action against the applicant on the allegation that he sublet the Government

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accommodation allotted to him in violation of rules and pass appropriate orders, after giving a reasonable opportunity to the applicant to show cause, in accordance with law/rules.

On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

J. P. Sharma

(J. P. Sharma)
Member (J)

(P. C. Jain)
(P. C. Jain)
Member (A)

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