

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3035/92

New Delhi this the 20th Day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (Judicial)

S.Grover,
S/o Sh.R.L.Grover,
working as Judicial Member of
the Income Tax Appellate Tribunal,
Amritsar Bench. ...Applicant

(In person)

Versus

1. Union of India through
its Secretary, Ministry of
Urban Development,
Nirman Bhawan, New Delhi.
2. The Director of Estates,
Directorate of Estates,
'C' Wing, 4th Floor,
Nirman Bhawan,
New Delhi.
3. The Estate Officer,
(Sh.Paramjit Singh)
Directorate of Estates,
'B' Wing, 4th Floor,
Nirman Bhawan,
New Delhi.
4. The Estate Officer,
(Sh.P.M. Mishra)
Directorate of Estates,
'B' Wing, 4th Floor,
Nirman Bhawan,
New Delhi. ...Respondents

(By Advocate Sh. P.P. Khurana)

ORDER(ORAL)

(Hon'ble Mr. N.V. Krishnan)

The applicant's grievance is against the eviction proceedings initiated against him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (P.P. Act for short) and the proceedings to recover damages for the period of unauthorised occupation.

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2. The facts of the case are as follows:-

2.1 The applicant was transferred with effect from 2.5.89 from Delhi to Amritsar, as Judicial Member of the Income Tax Appellate Tribunal where he took over charge on 3.5.89. Before such transfer, the applicant was in possession of a Government accommodation No.C-II/58, Bapa Nagar, Dr. Zakir Hussaun Marg, New Delhi. Before leaving Delhi, the applicant handed over the Annexure A-1 letter dated 2.5.89 to the second respondent, i.e., the Directorate of Estates, stating that he would like to retain the house for the entire period of his stay at Amritsar, for which purpose he would take up the matter with his Department and that, in the meanwhile, he be permitted to retain the house for 8 months, i.e., 2 months as provided in SR 317-B-11(2) and for a further period of six months on twice the licence fee under S.R. 317-B-22.

2.2 Apparently, this was not allowed and the allotment was cancelled w.e.f. 3.7.89.

2.3 Admittedly, an order of eviction was passed on 19.6.90 by the Estate Officer under the P.P. Act.

2.4 Against this eviction order, the applicant filed an appeal in the Court of the Additional District Judge, Delhi which was disposed of by the judgement dated 18.9.92 (Annexure A-5). The appellate authority found that the applicant was not given an opportunity of being heard in the proceedings and, therefore, it allowed the appeal and remanded the matter to the Estate Officer for deciding it afresh after giving proper opportunity to the applicant of being heard.

2.5 The eviction proceedings are still pending before the Estate Officer.

2.6 What was done in the meantime is set out in the Annexure A-2 letter dated 1.6.92 addressed by him to the Ministry of Law, Justice and Company Affairs, to which a reference will be made shortly. The applicant addressed a letter on 11.10.89 to the Ministry of Urban Development and he states that an order was passed permitting him to retain the accommodation for one year. However, he was informed by the letter dated 31.10.89 of the Assistant Director of Estates that the allotment of house is deemed to be cancelled from 3.7.89. The matter was taken up by the Vice President of the Income Tax Appellate Tribunal with the Ministry of Law - on 12.6.90 Mr. R.Laxman, Additional Secretary, Ministry of Law is stated to have requested her counterpart in the Ministry of Urban Development to withhold the eviction proceedings as the Ministry wanted to take up the matter with the Accommodation Committee of the Cabinet. Without waiting for the result of this effort, the Estate Officer passed the eviction order on 19.6.90. The applicant pursued the matter with the Law Ministry and has been told on 21.5.92 that the reference of the Cabinet Committee on Accommodation will be expedited.

2.7 He set out these facts in his letter dated 1.6.92 (Annexure A-2) to the Law Minister and prayed a) to be posted back to Delhi; preferably as Vice President and b) that as the Law Minister was also the Chairman of the Cabinet Committee on Accommodation, his case should be expedited and the eviction order got vacated and permission granted to deposit the normal licence fee.

2.8 In reply to this representation, he was informed by the Law Ministry on 10.6.92 (Annexure A-3) that the matter would be expedited.

2.9 While so, he was served with the Annexure A-4 notice dated 14.9.92 under the P.P. Act to pay Rs.1,74,516 as damages for the period from 3.7.89 to 30.6.92.

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2.10 The Additional Secretary, Ministry of Law has again requested on 4.11.92 her counter part in the Ministry of Urban Development to have the matter processed for a decision of Accommodation Committee of the Cabinet for retention of the house and for keeping the eviction proceedings pending.

3. It is in these circumstances that the applicant filed this OA on 20.11.92. He has pointed out that in similar cases of persons posted to North East Region, Jammu and Kashmir or even Chandigarh, Government had permitted them to continue to occupy their residence at New Delhi. As Amritsar is still declared as disturbed area, he too should be given the same facility. He should, therefore, not be treated as an unauthorised occupant. It is contended that in the absence of any rule, respondents cannot either charge or claim damages under authority of the office memo dated 27.8.87 (Annexure A-10) and 1.4.91 (Annexure A-11). He has, therefore prayed as follows:-

"8.A. That an appropriate direction may please be issued to the respondents 1 and 2 to regularise the allotment of Government Residence bearing No.C-II/58, Bapa Nagar, Dr. Zakir Hussain Marg, New Delhi in the name of the applicant from the date of cancellation on payment of concessional rates of licence fee as applicable in the case of Officers posted in the States and Union Territories of North Eastern Regions.

8.B. That the eviction proceedings pending before the respondents No.3 in respect of the above said premises may also please be quashed. In the event of passing of an eviction order on the strength of the said proceedings the same may also please be quashed.

8.C. That the recovery proceedings pending with respondent No.4 may also be quashed.

8.D. That the applicant may not be made liable to pay any sort of penal rent/market rent/damages etc. in respect of the premises mentioned above.

8.E. The the respondents No.1 and 2 may also please be directed to formulate necessary guidelines and also to take a viable decision to cover such cases like that of the applicant and make suitable rules on the subject.

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8.F That the Office Memorandum dated 27.8.1987 and 1.4.1991 may also please be quashed."

4. When the matter was taken up for admission, an ad interim order was issued on 25.11.92 staying the eviction of the applicant from the said quarter. On 8.12.92, this order was made effective until further orders.

5. The respondents have filed a reply on 21.12.93. The main points are as follows:-

5.1 The applicant was transferred on 3.5.89. Therefore, after 2 months, his allotment was cancelled in accordance with the rules which allows only this period for vacation.

5.2 The order of eviction was passed on this ground. As it has been set aside, by the appellate authority, the eviction proceedings are still going on and, therefore, the O.A. is premature.

5.3 The applicant's representation dated 1.6.92 was considered and rejected and the Ministry of Law was informed on 22.9.92 accordingly.

5.4 His plea for retention of the flat at Delhi on the ground that he has been posted to Amritsar, which is a disturbed area, is not covered by rules.

5.5 It is contended that the applicant cannot compare himself with officers posted to N.E. Region or to J & K State.

5.6 In so far as the specific cases of some officers cited in the OA are concerned, they have been given permission to retain the house at Delhi because they are directly engaged in dealing with the terrorists in Punjab and Jammu and Kashmir.

5.7 Government is competent to issue executive instructions regarding charging of penal rent/damages. It is contended that for these reasons, the OA deserves to be dismissed.

6. The applicant states that he received the reply on 14.1.94. He has filed a rejoinder on 19.1.94 reiterating the points raised in the O.A.

7. The case has come up before us for final disposal as ^{was} indicated in the order dated 21.12.93.

8. The O.A. was filed by Counsel Shri B.Krishan, who represented the applicant till 7.9.93. On 8.9.93, the applicant appeared himself without counsel. On 21.12.93, Ms. Monika Puri, Advocate submitted that Sh. G.D. Gupta was the applicant's counsel and he was waiting for instructions. When the case was heard today, the applicant stated that he had no counsel and he argued the case himself. After both parties were heard and we were ready to pronounce our order, the applicant requested that he be given a short adjournment to engage a counsel. This was opposed by the respondents. Considering the above background and the merits of the case, we declined to accede to this request.

9. The applicant's case is that Amritsar being a disturbed area it was not safe for him to take his family and, therefore, he had requested the authorities concerned to relax the rules in this behalf and permit him to continue his occupation of the Government quarter

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on payment of normal licence fee. He produced for our perusal, the D.O. letter No.D-11011/1/90-Adm.III(LA) dated 23.12.92 of Sh. R.Venkateswaran, O.S.D, Ministry of Law stating that the Ministry of Urban Development has advised that the Law Department may take up the matter with the Cabinet Committee on Accommodation and that such a note is under preparation. He contends that neither eviction proceedings should be continued nor penal rent/damages levied until a decision is taken by the Cabinet Committee on Accommodation. He also contends that like officers posted to N.E. Region and J.&K. he is also entitled to retain the house at Delhi till he is posted back. He also states that he is due to retire on 4.3.94 and, therefore, he, be permitted to vacate the house thereafter.

10. The respondents submit that the action taken by them cannot be assailed. The applicant has already had considerable time to vacate the house and make alternative arrangements. Therefore, the present O.A. will have to be dismissed as it has not merit.

11. The issue before us is not whether the applicant should be permitted to stay in the house or not. The only issue is whether the respondents can be faulted in initiating the eviction proceedings. It is worthy of note that the order, cancelling the allotment of accommodation from 3.7.89 has not been challenged. The appellate order dated 18.9.92 (Annexure A-5) remanding the eviction proceedings to the Estate Officer has also not been challenged. As a matter of fact, if the order canceling the allotment is not challenged, other conse-

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quences would, normally, follow. We do not like to express any views on the merits of the applicant's claim because proceedings under the P.P.Act are pending and it is for the Estate Officer to take a decision in accordance with law. We, therefore, restrict our consideration to the issues which cannot be decided by the Estate Officer e.g. the vires of the Annexures A-4 and A-10 instructions.

12. Whether any relief should be given to the applicant outside the purview of the rules, is purely for the executive to decide. It is significant that the Law Minister, who was not only incharge of the Ministry, under whom the applicant was working, but was also the Chairman of the Cabinet Committee on Accommodation did not pass even an interim order on the applicant's letter dated 1.6.92 addressed to him (Annexure A-2) directing the authorities to suspend all proceedings - both regarding eviction and recovery of rent - until the Cabinet Committee on Accommodation had considered the matter and passed orders. Admittedly, no such order has been passed till date, notwithstanding, the D.O. letter dated 23.12.92 of Sh. Venkateswaran that a note for the Cabinet Committee was being prepared. That being so, the action of the respondents cannot be faulted.

13. That apart, if the applicant had any grievance against the competent authority (i.e. the Ministry of Law), that they have not protected his interests or not pursued his case vigorously, he should have impleaded that Ministry and sought appropriate relief. Neither the Ministry of Urban Development (Respondent No.1) nor the Director of Estates (Respondent No.1) or the Estate Officers (Respondents Nos. 3 and 4) can be blamed for taking action which is permitted by law. We also do not find any justification to keep the case pending either till the applicant retires or the Cabinet Committee considers

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the case and passes suitable orders. For, that is purely an administrative matter to be decided by the executive.

14. The applicant's challenge to the OM dated 27.8.87 and OM dated 1.4.91 (Annexure A-10 and Annexure A-4) cannot be sustained. According to the applicant himself, there are no rules governing the subject of recovery of licence fee/penal rent/damages from unauthorised occupants. If that be so, Government has the undoubted right to issue instructions to regulate the matter. The instructions are intended to forewarn employees of the consequences that would follow if allotment of accommodation stands cancelled, eviction proceedings under the P.P. Act are finalised and the period allowed for vacation has expired. They are informed that damages would be recovered. These two OM also contain the guidelines to be followed by the competent authorities, when occasions arise to charge damages. These instructions cannot be held to be illegal.

15. In so far as the demands are concerned, which have been impugned (Annexure A-4), these are in pursuance of the standing instructions on the subject referred to above and the provisions of the P.P. Act. The applicant is already aware, as is clear from his rejoinder, that the Annexure A-10 OM dated 27.8.87 provides that if an employee is not agreeable to pay the damages as demanded, he can place before the Estate Officer as to what is the proper demand. It is not the applicant's case that he has already exhausted the remedy. For these

reasons, there is no case for interfering with the Annexure A-4 demand notice.

16. The last issue is that he has been discriminated in this matter as compared to persons posted to North East Regions and J & K State, in respect of whom orders granting this concession have been issued (Annexure 8 and Annexure 9). We are unable to agree. It is entirely for the executive to decide whether officers transferred and posted to any State, should be permitted to keep the house allotted to them at the place from where they are transferred. Their appreciation of the circumstances warranting the necessity to grant such concession cannot be questioned. No such order exists in respect of transfer to Amritsar and we cannot issue any direction to the respondents to extend this concession, when officers are transferred to Amritsar, as that will be beyond our jurisdiction.

16. The respondents are also right in contending that if such concession has been given to officers directly connected with elimination of terrorists in Punjab and Jammu and Kashmir, that cannot be a ground for the applicant to demand the same facility for him as a right.

17. The learned counsel for the applicant has drawn our attention to the judgement of the Bombay High Court in Minoo Framiroze Balsara Vs. Union of India

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AIR 1992 (Bombay) 375 in support of his contention that the eviction need not automatically follow cancellation of the allotment. He, therefore, seeks a direction from us, restraining the respondents from evicting him until his case is decided by the Cabinet Committee on Accommodation.

18. We have seen that judgement. It has been held that the Act requires the Estate Officer to take two decisions separately, one after the other. The first decision is whether the occupation of any public premises is unauthorised. The Estate Officer can satisfy himself on this ground only after issuing a notice under Section 4 to the person concerned and he has to come to this conclusion as to the nature of occupation as being unauthorised under Section 5 of the Act. Thereafter, he has also to satisfy himself that the person in unauthorised occupation should be evicted. In other words, the Estate officer should be satisfied that, on the basis of the records and after hearing the person, that not only the person is in unauthorised occupation but he should also be evicted. In fact, this decision does not lend any support to the applicant's case. For, in the present case admittedly the proceedings before the Estate Officer under the P.P. Act are still pending and it is open to the applicant to make these submissions before that authority for proper consideration. In our view, it is primarily for the Estate Officer to apply his mind to these issues.

19. The applicant then referred us to the judgement of the Full Bench of this Tribunal in Rasila Ram & Ors. Vs. Union of India & Ors. Full Bench Judgements (CAT) (1986-89) 346. That decision has been cited in support of his contention that this Tribunal can issue directions to the Estate Officer even in proceedings pending under the P.P. Act.

20. We are aware of this judgement and it has been held that the Tribunal can stay or quash either the eviction proceedings or the order of eviction by declaring the order cancelling the allotment as illegal. Apart from the fact that, as pointed out above, the order cancelling the allotment has not been challenged before us. The Tribunal also observed in paragraph-10 of its judgement as follows:-

"We, however, feel that in order to have harmonious interpretation between Section 33 of the Administrative Tribunals Act and Section 51 of the P.P. Act, it would be proper that when a person is aggrieved against an order of cancellation by the administrative authority, he can approach the Tribunal at that stage if he is aggrieved by such orders after making necessary representations to the administrative authorities, but where proceedings have been started under the P.P. Act, it would be proper for the aggrieved employee to contest his case before the Estate Officer and may approach the Tribunal only after final orders have been passed by the Estate Officer under the P.P. Act. If the Government employee is aggrieved by the orders of the Estate Officer, he can approach the Tribunal at that stage, but if he chooses to file an appeal before the District Judge, he may not file any appellate authority (District Judge). This would provide an opportunity to aggrieved Government employees to argue their cases before one more authority before approaching the Tribunal."

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21. That principle also applies where proceedings have been initiated against the person by the Estate Officer as in the present case. *Prima facie*, we are not inclined to interfere in the matter, as the applicant has an opportunity to represent his case before the Estate Officer who has to take a decision in accordance with law under the P.P. Act. We do not want to prejudge this issue in any manner.

22. In the circumstances, we are of the view that this application has no merit and, therefore, this has to be dismissed and we order accordingly.

23. We, however, make it clear that our order does not prevent any executive authority from granting to the applicant any of the reliefs sought by him in this O.A.

24. The O.A. is, therefore, dismissed without costs.

B.S. Hegde
(B.S. Hegde)
Member(J)

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N.V. Krishnan
(N.V. Krishnan)
Vice-Chairman

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