IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

(7)

04.05.1992

OA/652/92

SHRI M.P. MISHRA ...APPLICANT

VS.

UNION OF INDIA & ORS. ...RESPONDENTS

OA 654/92

SHRI R.K.SAXENA ...APPLICANT

VS.

UNION OF INDIA & ORS. ...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT ...SH.B. KRISHAN

FOR THE RESPONDENTS ...SH.JOG SINGH

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)

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J)

Shri M.P. Mishra is Junior Engineer, CPWD working under respondent Nos.2 and 3 and Shri R.K.Saxena is Junior Engineer in PWD under Delhi Administration under respondent No.2. Both the applicants have sought the relief almost of the same nature with regard to the premises allotted to them on a temporary basis and now is sought to be got vacated for demolition and reconstruction having been earmarked for the construction of complex for Society of Prevention of Blindness

...2...

(8)

in India. The issues involved are the same and the facts are almost similar except that Shri R.K. Saxena is an alottee of the said premises since 1987 and Shri M.P. Mishra in OA 652/92 is an alottee since October, 1989.

In both these applications, the reliefs claimed by the applicants are that a direction be issued to the respondents to allot a suitable accommodation to them according to their entitlement and till such time they be allowed to continue in the earstwhile accommodation at thie normal licence fee after quashing the impugned order dt.3.12.1991 and the othier subsequent orders of January, 1992 and February, 1992.

I have heard the learned counsel of both the parties at length. As regards Shri R.K. Saxena, while he was in CPWD, Delhi Administration, he was allotted an accommodation on 6.6.1987 vide Annexure R1 attached to thie counter by respondent Nos.2 and 3. Condition No.2 of this allotment goes to show that the allotment is purely temporary. Along with this is another Memo dt.21.1.1987 which is on the subject of allotment of residential accommodation in demolition scheme in DIZ area and it goes to show that allotment is purely on ad hoc and temporary basis and liable to vacate at one month's notice and further that no alternative accommodation will be claimed by the allottees. The respondents have also annexed

...3...

(9)

alongwith their counter a duly signed application by the applicant addressed to the Chief Engineer, NDZ (CPWD) New Delhi on 30.4.1987 in which he has requested for allotment of an accommodation lying vacant in the DIZ area acquiring demolition. He has further prayed that till such time accommodation is demolished, it may be allotted to him. On the basis of this undertaking by the applicant, Shri Saxena, the respondents ~~have~~ was issued a notice in December, 1991 (Annexure A1) asking the applicant to vacate the said premises otherwise he shall be faced with proceedings under Public Premises (Eviction of Unauthorised Occupation) Act, 1971 and will also be liable to the payment of damages if he overstays beyond the period of notice.

Similarly the case of Shri Mishra who has also given an undertaking (Annexure R2 to the counter) wherein he has given on 14.9.1989 a written signed application to the Chief Engineer, NIZ II CPWD, Nirman Bhawan, New Delhi regarding allotment of quarter in DIZ area (Demolition Scheme) New Delhi and give undertaking that he will vacate the said accommodation whenever required. The formal letter alloting the said premises is annexed as Annexure R1 dt.11.1.1991. A similar notice was issued to the applicant on 3.12.1991 (Annexure A1 to the application of OA 652/92).

...4..

(10)

The case of the applicant on the one hand is that when they have already been allotted premises in their name, then they are to be governed by statutory rules of 1963 which apply to allotment of all general pool accommodation and are framed under SR 317'B' (b) and any ~~addition~~ administrative order superceding those terms and conditions or any addition to those which are already there cannot be given effect to and are not binding on the applicants. It is further stated that since the applicants have been allowed by virtue of allotment, then the word 'temporary allotment' loses its significance and for all purposes their ~~eviction~~ cases have ~~has~~ to be governed under the said rules of 1963 and cannot be uprooted without resorting to procedure under PP (EOU) Act, 1971. It is further argued by the learned counsel that since they are Central Government or Delhi Administration employees, they are entitled to general pool accommodation and in the event of their being evicted from the allotted premises, otherwise then prescribed under rules fo 1963, i.e., on superannuation or transfer or any other ground mentioned therein, they have to be provided with an alternative accommodation from general pool. The learned counsel has referred to the case of Jai Ram Yadav (OA No.1963/91) decided by a Division bench on 15.12.1991.

On the other hand, the learned counsel for the respondents in both the Original Applications argued that the

...5...

applicants are stopped from taking a stand contrary to what they have taken at the time when they requested for out of turn allotment from quarters which were lying in demolition scheme. The applicants cannot ~~resile~~ recede from undertaking given by them. The respondents are almost ashamed of not allotting land to National Society for Prevention of Blindness because of non vacation of these quarters which are earmarked for the very purpose, by the ~~applicants~~ Government. The said society has burdened them with reminders and they under compulsion have to resort to ~~coherisive~~ coercive measures against their own employees, i.e., the applicants. The learned counsel for the respondents further stated that the only purpose for which the quarters are to be got demolished is for the construction of the complex for the said society and to achieve that object, the impugned orders have been issued in the name of the ~~respondents~~ applicants. It is also stated that these houses which are so vacated, will not be allotted to third person in any circumatance and will go to the said scheme.

I have given a careful consideration to the rival contentions. Firstly, the allotment in favour of both the applicants shows that they were not given allotment on their own turn by virtue of their standing of stay at Delhi on the post on which they are still working. Secondly, the applicants very well knew at the time when they prayed for the

...6...

(12)

allotment of these residences that these are under demolition scheme and a perusal of the application moved by each of the applicants duly signed by them, though separately, at the time of getting the premises allotted, mentions this fact that the presmises are in demolition scheme. The applicants cannot, therefore, now take the stand that they are taken aback or by surprise.

Further the applicants represented to the respondents that they will vacate the said premises the moment it is required for the said demolition scheme and their undertaking in that regard binds them and they are estopped because had they not represented to the respondents, their willingness to vacate the premises, the allotment order would not come at all into existence and they would not have been allowed to occupy the said premises. In fact, the applicants are undoing ~~vanishing~~ the ~~same~~ undertaking ~~which held~~ given by them at one time by taking a plea quite contrary to they ~~are~~ have pleaded and ~~exerted~~ exhorted while moving for allotment of the aforesaid disputed premises.

The other point taken by the learned counsel for the applicants is that even in the case of essential services if an allotment is made in favour of any of such person, then in the event of transfer to som other place, an alternative accommodation is offered till the person gets a suitable

...7...

13

accommodation at the transferred place. It is not a rule, but it is a sort of principle of natural justice that if a person is allowed to occupy a premises by virtue of allotment on account of the services he was rendering, he should not be thrown on the streets unceremoniously and be provided with an alternative accommodation. The present case is different. The allotting authority of thie applicants, the Executive Engineer, very well knew that these quarters are in the demolition scheme. In order to help his subordinate engineers and knowing that it will take some time for the quarters to be demolished, he extended the help to the applicants by housing them temporarily as an act of ~~gratice~~ grace and now the respondents want that the premises be vacated because the time has come when the scheme of demolition is to be implemented for a public cause. The private interest has to be sacrificed for the public interest and the two individuals cannot in any way defeat the cause which is going to be in the public interest for those who need help, i.e., Society for Blind.

The learned counsel has laid more emphasis that the Directorate of Estates be made to allot an alternative accommodation and has relied on the authority of ~~Jethanand's~~ Jai Ram Yadav's case. The learned counsel has also referred to the other

Le

(IX)

cases of the Principal Bench, but the case of the present applicants is totally different. Here the applicants themselves knowingly with a broad vision and open mind accepted the allotment and at that time they gave an undertaking. Now when the time has come for them to fulfil that undertaking, they are ~~residing~~ resiling from their stand and the notice which was issued in December, 1991 has already outlived for more than one and a half years.

In view of the above facts, I do not find that the applicants have made out a case that they should be allowed to remain in the said premises.

The learned counsel for the applicants also stressed the fact that the applicants can only be evicted under due process of law and he has referred to the provisions of PP Act, 1971 and also relied on the authority of Krishan Singh Vs. UOI, 1981(2) RCR 207 at p-210. It is expected that the respondents shall observe the law and the Extant Rules in this regard. It is not necessary that an opinion be expressed on that aspect of the matter. The matter for adjudication before this Bench is whether the appllicants can continue in the said premises and whether they have to be allotted an alternative accommodation in lieu of the present one which has been ordered to be got vacated from them and the answer to both the

...9...

15

questions is in the negative. The applicants have also prayed that they should not be texed with penal rent. The learned counsel for the respondents, therefore, during the course of the arguments, has been briefed by the departmental representative, Shri Divakar Garg, Executive Engineer that they will not pursue for realisation of penal rent in case the applicants duly vacate the premises of their own. Also according to law, the award of damages for unauthorised occupation has to be done under PP Act, 1971 according to the Extant Rules. But since the concession has been given during the course of the arguments by the learned counsel for the respondents, so it is expected that in the event of the applicants vacating the premises, normal licence fee will be charged from the applicants.

In view of the above facts, I find that both the Original Applications are devoid of merit and are dismissed leaving the parties to bear their own costs.

(J.P.SHARMA)
MEMBER (J)
04.05.1992

AKS