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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA-162/93

Dated: 24.9.93

Smt. Poonam Gehaney

Applicant

Vs.

Union of India & Anr.

Respondents

Shri B. Krishan, Counsel for the applicant.

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Hon'ble Mr. B.K. Singh, Member (A))

This OA No.162/93, which is in the form of a civil suit has been filed against the cancellation of allotment of Government residence No.1166, Laxmibai Nagar, New Delhi vide letter No. DE/4/256/LBN/Eng./89 dated 1.11.89 (Annexure A-2) and rejection of appeal dated 2.2.90 issued by the Directorate of the Estates (Annexure A-2) and against the eviction orders passed by the Estate Officer, Shri R.s. Phogat, Nirman Bhavan, New Delhi vide letter No. EC/67/ADP/LIT/90/T-B dated 4.1.93 based on cancellation dated 15.1.90 (Annexure A-16).

2. The reliefs prayed for include quashing the orders dated 1.11.89 (annexure A-2), eviction order dated 4.1.93 (annexure A-16) and stayal of orders in regard to the realisation of penal rent from the applicant. The interim relief sought is prayer for staying the eviction orders passed on 4.1.93.

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3. Heard the learned Mr. B. Krishan for applicant and Mr. P.P. Khurana for respondents and perused the records of the case. The applicant was allotted the quarter No.1166, Laxmibai Nagar, New Delhi in January 1986 in her turn. Prior to this allotment the applicant was living in government residence No.1062, Laxmibai Nagar (Type B) allotted to Ms. Devaki T. Gehaney, sister of the applicant's husband. It is stated that the applicant has a joint family consisting of mother-in-law, brother-in-law, sister-in-law and her husband and two children. The applicant's contention is that she has been living in the quarter allotted to her from the very beginning and the premises is in her bonafide use and that she had never sublet the same.

4. The applicant was served with a notice on 18.9.89 to show cause as to why (i) she should not be declared ineligible for government accommodation for a period of 5 years, (ii) she should not be charged penal rent i.e. 4 times of the license fee under FR 45(A) and (iii) she should not be debarred from sharing accommodation. This is annexure A-1 enclosed with the original application. On receipt of the notice the applicant denied the charge of subletting the premises. The Estate Officer did not believe her statements since the action was based on a spot inspection by a team of two Estate Officers who had visited the premises and had also recorded the statements of a lady available on the date of surprise inspection. It was in the light of this surprise spot inspection that a decision was

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taken to cancel the allotment of quarter No.1166, Laxmibai Nagar standing in the name of the applicant. This is annexure A-2 annexed to this petition.

5. The petitioner submitted an appeal dated 18.12.87 refuting the charge of subletting the premises. This is annexure A-3 enclosed with the application. The said appeal was rejected vide letter dated 2.2.90. This is annexure A-4 of the paper book. Subsequently the applicant sought personal interview with the Estate Officer, Deputy Director Estates, and Director States. It was stated by the learned counsel on behalf of the applicant that during the course of inquiry the petitioner produced documents such as her ration card, CGHS token card and other relevant documents to controvert the charge of subletting. And she made a further request that the order of cancellation be withdrawn. This is annexure A-5 enclosed with the application. The petitioner also filed a review petition dated 27.2.90. This is annexure A-6 attached with the application. The learned counsel for the applicant stated during the course of arguments that the fate of the review petition filed by the applicant was known only when the show cause notice under section 4 of the Public Premises (Eviction of Unauthorised Occupation) Act 1970 duly signed by Shri G. George Parackal, Estate Officer dated 5.3.90 was served on her. This is annexure A-7 annexed to the application. It is argued that the applicant on receipt of this notice requested the Estate Officer concerned to supply her copies of cancellation order of allotment dated 15.1.90 vide rejection of her petition dated 11.4.90 to assail the same in the court of law. This is annexure A-8 of the paperbook. The learned counsel stated that in spite of her meeting with the officers concerned and assurances given,

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nothing concrete was done. In response to the notice regarding eviction the applicant submitted her written reply on 2.4.91. This is marked as annexure A-10. This is nothing but a reiteration of the demand to supply a copy of the cancellation order dated 15.1.90.

6. The main contention of the learned counsel for the applicant is that the applicant never sublet the premises to anybody and that the same are in bonafide possession of herself and in the bonafide use of her family members. During hearing also in the Court of Mr. Phogat, Estate Officer she submitted her written statements to the same effect. It was further stated that at the time of surprise spot inspection the inmates living there were her guests and friends. The learned counnsel relied on the judgment delivered by CAT, Bangalore Bench inn the matter of Gulabjan (applicant) Vs. Estate Officer and Ors. (respondents) 1990, 80 LT CAT (page 152). It was held that the applicant should have been confronted with a copy of inspection report of the Estate Officer by giving her opportunity to show cause and since this was not done the order was set aside by Bangalore Bench of the CAT. In another case, the Hon'ble Supreme Court stayed the order of Full Bench of the Tribunal in Rasila Ram's case which was also in respect of Public Premises (Eviction of Unauthorised Occupants) Act 1971 under Section 4 and 5. It is imperative that Section 4 and 5 should be read together. Section 4(i) says, "If the Estate Officer is of the opinion that any person or persons who are in unauthorised occupation of any public premises and they should be evicted but the Estate Officer shall issue a notice calling upon all such persons to show cause as to why an order of eviction should not be made. The notice shall (a)

specify the grounds on which the order of eviction is proposed to be made, and (b) require of persons concerned who are in occupation, or claim an interest in the public premises to (i) show cause, if any, against the proposed order on or before such date as is fixed giving atleast 7 days notice, (ii) appear before the Estate Officer on the date specified in the notice along with the evidence and for personal hearing and for written submission, if any (iii) the Estate Officer shall cause a notice to be served by having it affixed on the outer door or at some conspicuous part of the premises or any place as deemed fit, (iv) where the Estate Officer knows or has reasons to believe that any persons are in unauthorised occupation of public premises, then without prejudice to the provisions of the sub-section (3), he should cause a copy of the notice to be served on every such person by post or deliver or tender it to them personally through post or by hand.

7. Section 5 of the PPE Act 1971 reads : (i) "If after considering the cause if any shown in pursuance of notice under Section 4 or any evidence produced by him in support of the same and after personal hearing, if any, the Estate Officer is satisfied that the public premises are in unauthorised occupation, the Estate Officer may make an order of eviction for reasons to be recorded therein directing that public premises shall be vacatged on such dater as may be specified in the order, (ii) if any person refuses or fails to comply with that order of eviction of or before the date specified in the said order or within 15 days from the date of it is published under sub-section (i) whichever is later the Estate Officer or any other officer duly authorised by the Estate Officer by the Estate Officer in this behalf may,



after the date so specified or after the expiry of the period whichever is later, evict that person and take possession of the public premises and may for that purpose use such force as may be necessary. Section 6 and section 8 vests in the Estate Officer for the purpose of holding inquiry under the Eviction Act the same powers as are vested in Civil Courts under the Code of Civil Procedure when trying a suit in respect of summoning and enforcing attendance of any person examining him on oath and requiring discovery and production of documents. Under the provision of Section 9 an appeal lies from every order of Estate Officer in respect of any public premises with the District Judge of the district in which the public premises are situate or such other officer in that district of not less than 10 years standing as District Judge may designate in this behalf. Under Section 10 of the PPE Act of 1971 the orders of the Estate Officer and the appellate officer are made final and cannot be called in question in suit. In the instant case instead of preferring an appeal to DJ, the applicant preferred a civil writ petition.

8. From the foregoing paragraphs it would be seen that the law is absolutely clear on the subject. If the Estate Officer is satisfied that the public premises are in unauthorised occupation, he may make an order of eviction. Section 4 and Section 5 must be read together and harmoniously to understand the spirit of the provisions contained in this section. The word 'may' in section does infact mean 'may and that if the Estate Officer may be satisfied that the public premises are in unauthorised ocupation, he is not obliged to make an order of eviction unless he is satisfiedd that the person in unauthorised



occupation should be evicted. In the present case the satisfaction is based on solid grounds that a spot inspection by a team of two Estate Officers who visited and took in writing the evidence of the wife of Shri Surender living in Quarter No.1166 allotted to the applicant. The lady gave it in writing that she along with her husband and children aged 3 and 1 years have been living in Quarter No.1166 for last one and half years. The name of the lady is Laxmi Varikkoo. Mr. Inder Kumar Gehaney, husband of Smt. Poonam Gehaney also admitted that he along with his wife and children have been living in Quarter No.1162 since 1980. He also showed ration card and CGHS card issued at the address of Quarter No.1162, Laxmibai Nagar and the CGHS card which include the name of the applicant also. These facts were given in writing also. Detailed questioning of Smt. Poonam was done by Estate Officer and she was given full opportunity to present her case in person and after taking all the facts and circumstances of the case this order of eviction was passed following strictly the provisions of Section 4 and Section 5. The written statements of the applicant were also duly considered by the State Officer, Mr. Phogat before passing the final orders. The Departmental File which was presented to us for inspection throws a flood of light how the inquiry proceedings were conducted by the Estate Officer in respect of Quarter No. 1166, Laxmibai Nagar and how the applicant was given full opportunity to present her case. Taking a synoptic view of all the facts and circumstances the Estate Officer Mr. R.S. Phogat passed the orders of eviction. The applicant instead of vacating the premises within 15 days as specified approached the Tribunal and has been retaining the quarter in an unauthorised manner on the basis of interim stay granted by the Hon'ble Division Bench of the Tribunal.




9. We have carefully gone through the departmental file, the averments made by the learned counsels for the applicant and respondents and the provisions of law. We have come to the conclusion that the inquiry proceedings are not flawed in any manner nor is there any denial of justice to the applicant. The principle of natural justice have been followed meticulously and there is no scope for us to interfere with the orders passed by the prescribed authority. The orders passed on 24.10.89 are valid and legal. Thus the Court of Shri R.S. Phogat has also upheld these orders after following the provisions contained in Sections 4 and 5 on absolutely solid grounds and we are inclined to believe that filing of this OA has delayed the execution of the orders passed on 24.10.89 and subsequently upheld by Mr. R.S. Phogat dated 4.1.93. In a metropolitan city like Delhi where thousands of people are standing in queue for house, subletting of premises is a crime. People wait for their turn for years together to have a roof over their head and in a scenario like this, it would be a case of misplaced compassion if any mercy is shown to the applicant.

10. The Statement that another inquiry was held by Mr. Abel Bains to whom the applicant showed her ration card, CGHS card etc. are not borne out by facts. The departmental file nowhere shows the second inspection having been done by Mr. Abel Bains and therefore no reliance can be placed on the statement of the applicant. We hold the impugned order

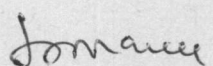
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needs no interference. The application is dismissed as devoid of any merit and/or substance.

There will be no order as to costs.


(B.K. Singh)

Member (A)


(J.P. Sharma) 24/9/93

Member (J)

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