

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2663/93

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New Delhi this the 28th day of July, 1999.

Hon'ble Sh. A.V. Haridasan, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. B.L. Deshawar,
S/o late Sh. Asha Ram,
R/o Q.No.1405-A,
Sector 35-B(CDA Colony),
Chandigarh.

..... Applicant

(through Sh. N.S. Verma, advocate)

versus

1. Union of India through
the Secretary,
Govt. of India,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. The Director of Estates,
Government of India,
Directorate of Estates,
Nirman Bhawan,
New Delhi.
3. The Controller General of
Defence Accounts,
West Block-V,
R.K. Puram,
New Delhi.

..... Respondents

(through Sh. P.H. Ramchandani, advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

Applicant, an Accounts Officer in the Defence
Accounts Department under the respondent, is challenging
herein Annexures A-7, A-9 & A-12 orders issued by Respondent
No.2. All these orders relate to directions to the
applicant to pay off the rental dues. In the communi-

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At Annexure A-12 dated 20.10.93, the applicant was informed that Rs.43.396 is now outstanding against him and that if the payment is not made the respondents will be constrained to initiate action against him for the purpose of recovering the government dues of licence fees as rentals for occupying Government accommodation.

2. It would be apposite to bring out the background facts, in brief, for proper appreciation of the legal issues involved herein. The applicant was allotted a Government accommodation (506-A, Sector-III, R.K. Puram) with effect from 1.6.90 by the Directorate of Estates/New Delhi i.e. Respondent No.2. He was, however, transferred from New Delhi to Chandigarh on 13.8.90. As per the applicant, he was required to retain the accommodation at Delhi on account of the transfer order having been issued in mid academic session when two of his children have been studying in a four-year degree course in the Jamia Milia Islamia University, New Delhi. That apart, the applicant submits that his wife was suffering from medical problems and she was under treatment at AIIMS. A surgical operation was also conducted on her on 15.7.91. The applicant claims to have made a representation on 13.8.90 to Respondent No.2 seeking permission to retain the aforesaid Government accommodation till his children education were over. But the respondents did not accede to his request. Consequently, Respondent No.1 served upon him a show cause notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants)

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Rules, 1971. The applicant sent a suitable reply on 3.6.91. The respondents did not allow the applicant to retain and passed the order of eviction on 19.6.91. Being aggrieved by this order of eviction, the applicant preferred an appeal on 5.7.91 to the District Judge, Tis Hazari, Delhi under Section 9 of the Act seeking relief from the Court in terms of grant of stay of the order of eviction dated 19.6.91 passed by Respondent No.2. The appeal was heard and the learned Judge gave the following orders:-

"In this case the appellant gave an undertaking on 25.5.92 to vacate the premises by 15.6.92 in case the examinations of his son were over before that date. It is stated that last examination of his son is fixed for 22.7.92. In view of the undertaking given, the date fixed for examinations and the fact that the respondent/UOI has got no objection in granting the time to retain the premises till 31.7.92, the appeal is allowed for limited purpose.....
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Accordingly, the impugned order is modified to the extent that the appellant shall not be evicted till 31.7.92....."

3. The stand of the respondents has been explained at Annexure A-12 dated 20.10.92.

The short issue that falls for determination is the legality of recoveries at the damage (market) rate when the accommodation has been allowed to be retained by the Court.

4. The position of law in respect of recovery of damage against unauthorised occupation is available in Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The relevant portion of the said Section is extracted below:-

"7. Power to require payment of rent or damages

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in respect of public premises--(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments, as may be specified in the order.

(2-A) While making an order under sub-section(1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14of 1978).

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue aof a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

5. It is to be noted that Government official, on being transferred to a different location is entitled to retain the accommodation normally for a period of 8 months in two spells. This is allowed on grounds of education and on medical grounds of dependent members of the family. Of course, the applicant has to seek permission at the appropriate point of time with payment of prescribed licence fee in advance. Though the applicant appears to have sought permission to retain the accommodation but there are no records to indicate that he did so after enclosing the necessary medical/school certificates as well as the licence fee required to be deposited in the name of Asstt. Director of Estates (Accounts). If that was granted, the applicant would

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have retained the house right upto 12.4.91 without entering into the process of litigation. It is, however, stated that when the case was heard at the level of Addl. Judge, the respondents did not have any serious objection in allowing the premises to be retained by the applicant till 3.7.92. In fact, it was on the basis of respondents no objection that the Ld. District Judge modified the relief with the order that the applicant shall not be evicted till 31.7.92. Based on this, we do not find any reason as to how the respondents could come up with a claim for recovery of damage (market) rate of rent for the premises retained by him.

6. We also find from the records that the respondents have been recovering rent from the applicant at the rate of Rs.300 P.M. from March 1992. This is probably at the rate of FR 45(B) i.e. double the normal rate of licence fee. Since the accommodation was allowed to be retained by the Court, and that too with the consent of the respondents, it would be only appropriate for the Directorate of Estates not to claim any rent at the damage (penal) rate.

7. In the background of the details aforesaid, we allow the O.A. with the following directions:-

(i) Annexures A-7, A-9 and A-12 shall stand set aside.

(ii) Our orders aforesaid shall not, however, stand in the way of the respondents recovering

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from the applicant licence fees, if any
due, as per provisions under law/rules
on the subject.

(iii) There shall be no order as to costs.



(S.P. Biswas)
Member(A)



(A.V. Haridasan)
Vice-Chairman(J)

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