

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.974/93

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 26th day of September, 1996

Shri S.K.Saini
Upper Division Clerk
Directorate of Transport
Government of National Capital
Territory of Delhi
(Earstwhile Delhi Administration, Delhi)
presently posted in Motor Accidents Claim, Tribunal,
New Delhi
R/o Village Hiran Ki Kushak
Delhi - 36.

... Applicant

(By Shri B.Krishan, Advocate)

Vs.

Government of National Capital Territory
of Delhi through:

1. The Chief Secretary
Delhi Administration, Delhi
Vikas Bhawan
Land & Building Department, 'A' Block
Indraprastha Estate
New Delhi - 110 002.

2. The Estate Officer
(Shri T.P.Joseph)
Delhi Administration, Delhi
'A' Block, Ground Floor
Vikas Bhavan, Indraprastha Estate
NEW DELHI - 110 002.

... Respondents

(By Shri Anant Mishra, Advocate)

ORDER

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant who is an Upper Division Clerk(UDC)
in the Transport Department of Govt. of National Capital
Territory of Delhi (NCT, Delhi) was allotted Government quarter
No.174, Nimri Colony, Delhi on 04.09.1991. Though ^{he} claims
that he took over possession on 11.9.1991 he was served

Contd.....2/-

22

with a show cause notice on 20.9.1991 on the ground that he had not taken possession on 04.09.1991 itself. A representation was filed stating that the delay had been caused because electricity and water connections had to be obtained. It was also stated that he would be shifting to the flat which was in his possession after arranging the admission of his children in the near-by schools. Ignoring his representation, Respondent No.1 issued an order dated 13.4.1992 stating that since the applicant had not physically occupied the flat within the stipulated period of eight days, the allotment stood cancelled w.e.f. 07.11.1991. The applicant thereafter, made a representation for review of the cancellation order by giving necessary details about the occupation of the flat including intimation sent to his childrens' school regarding the change of address. While his representation was still pending, Respondent No.2 i.e. Estate Officer served him a notice dated 19.6.1992 under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to show cause why an order of eviction should not be passed against him. At that time, the respondents took another ground that the applicant, on inspection, was not found living in the said premises but had actually sublet it the same. Applicant alleges that Respondent No.2 proceeded to pass the impugned order of eviction dated 11.1.1993 and he was evicted on 15.3.1993. The applicant preferred an appeal before the District Judge on 29.3.1993 but on coming to know that he could assail the cancellation and levy of heavy damage rent etc. before this Tribunal, he submitted an application for withdrawal of his appeal on 08.04.1993. The appeal was however dismissed for default as no one was present on that day in the Court of District Judge. He has now filed

Contd....3/-

Re

31

this Original Application alleging that as he had occupied the house within the stipulated period and had not sublet it, the order of eviction was illegal and liable to be set-aside and he should be allotted the same or an alternative accommodation and the demand of damages in respect of the said premises raised in the impugned letter dated 22.6.1992 be also quashed.

2. The respondents controvert the allegations of the applicant and submit that as the appeal against the order of the Estate Officer has already been dismissed in default the application is barred by res-judicata as well as limitation. The respondents assert that the order of eviction was justified since it had been established that the applicant had not occupied the allotted accommodation but instead had sublet it.

3. I have heard the learned counsel on both sides. As regards the preliminary objection of the respondents, the learned counsel for applicant, Shri B. Krishan argued that application was not barred by ^{res judicata} ~~limitation~~ ^{in seeking} ~~having sought~~ redressal before the Tribunal on the ground that the applicant had already agitated the matter before the Court of District Judge. I am in agreement with the learned counsel for the applicant. The dismissal of the application before the District Judge on grounds of default cannot act as a bar since the same was not a dismissal on merits of the case. Further more, the Full Bench of this Tribunal has also held, in Rasila Ram & Others Vs. Union of India & Others, II(1989) ATLT(CAT) 101 that if the Government employee is aggrieved against an order of cancellation by the administrative authority, 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 application before the Tribunal until completion of

Contd.....4/-

Dr

37 38

proceedings before the appellate authority i.e. the District Judge. Thus, even if the matter had been decided on merit by the appellate authority, the applicant could still have approached the Tribunal. The Hon'ble Supreme Court in a Special Leave Petition (SLP), by a non-speaking Interim Order stayed the operation of the Judgment. However, as held by another Full Bench of CAT in Ganga Ram and Others Vs. Union of India & Others, Full Bench (CAT) Vol. II Page 441 this Interim Order of the Hon'ble Supreme Court ^{held to be} was not ^h binding under Article 141 and the decision of the Full Bench in Rasila Ram's case remained effective.

4. As regards merits of this case, applicant has assailed the eviction order on the ground that the reasons given for cancellation of the allotment were actually incorrect. The second ground taken is that when the matter was referred to the Estate Officer, there was no allegation of subletting of the said accommodation. In this connection, the learned counsel for the applicant drew attention to the grounds stated in the show cause notice dated 19.6.1992 which read as follows:

"The above noted flat was allotted to you and the same has been cancelled in your favour w.e.f. 07.11.1991 as you had not physically occupied the flat within the stipulated period of 8 days of the receipt of the occupation slip. But you have not vacated the flat so far and occupying the same unauthorisedly"

The matter regarding the survey came up only on a rejoinder filed by the applicant. Learned counsel for the applicant, Shri B. Krishan also submitted that the cancellation order itself, had never been received by the applicant.

Contd.....5/-

fu

39

None of these arguments I find make out a case in favour of the applicant. The initial allegation against the applicant was that though he had taken possession of the flat on 04.09.1991, he was ^{not} physically using the allotted premises. The show cause notice was given on 25.9.1991 and in his representation dated 26.9.1991 (Annexure A3) the applicant admitted in para 3 that "until and unless the deficiencies existing in the flat are made good and the admission of my children in the nearby school are arranged/managed, it is not possible for me to start living therein". It is clear thus that he was not physically residing in the house at the time the show cause notice was issued to him. This lead to the cancellation order. The cancellation order is addressed to him. His allegation, therefore, that he never received it does not stand to reason. Even assuming that he did not receive it at that time, the same was also served on him by the Estate Officer and hence, the applicant had full opportunity to assail the grounds of the cancellation. As regards the question of subletting, it also came out up before the Estate Officer that the ^{he-} survey was ordered since the applicant had represented against the show cause notice of cancellation, claiming that he was actually ⁱⁿ occupation of the flat in question. The survey had only shown that some unauthorised persons were living in the said quarter. The fact that some other people were living unauthorisedly in the flat only ~~to~~ went to corroborate the initial charge that the applicant was not in occupation ^{of} the flat. Since the applicant had been given full opportunity to present his case before the Estate Officer, I find no ground whatsoever to interfere with the order of eviction.

5. The learned counsel for the respondents also submits that in case the eviction order is not set-aside, the question

Contd.....6/-

ju

29
40

of calculation of damage rent should be examined since the same was arbitrary and had been fixed without affording the applicant an opportunity to be heard.

There is nothing in the application to show as to how the damage rent as demanded is illegal or unjustified. The applicant does not have to be given a show-cause notice as regards the damage rent since the same becomes due once the allotment is cancelled and the original allottee becomes an unauthorised occupant. Since it has already been held that the order of cancellation of allotment as well as order of eviction suffer from no legal infirmity, the claim of damage rent will automatically follow. Since nothing has been said as to how the damage rent has been wrongly calculated, This plea of the applicant cannot also be considered. In the result, finding no merit in the application, the same is dismissed. There shall be no order as to costs.

R. K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

/rao/