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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

DA No.1006/1993

NEW DELHI, this 16th day of February, 1994.

Shri C.J. Roy, Hon'ble Member(J)

Shri Ramesh Kumar
s/o Shri Babu Lal
5/55, Panchkuin Road
New Delhi

.. Applicant

By Shri B. Krishan, Advocate

Versus

1. Director of Estates
Nirman Bhavan, C Wing
New Delhi-110 011

2. Shri P.M. Mishra
Estate Officer
Dte. of Estates
Nirman Bhavan, New Delhi

.. Respondents

By Shri P.P. Khurana, Advocate

O R D E R

The applicant is aggrieved by the order dated 12.5.88 cancelling the allotment of quarter No.5/55, Panchkuin Road and also the eviction order dated 16.4.93 on the ground of alleged subletting of the quarter.

2. Briefly stated, the facts of the case are that the above mentioned quarter is stated to have been allotted and regularised in the name of the applicant on his compassionate ground appointment after the death of his father in harness. On an alleged complaint that one Shri Ram Chander had been residing in the said quarter, who is also a Central Government employee and allottee of quarter No.9/101, Panchkuin Road, the quarter was inspected by Respondent No.1 on 2.12.87, and by letter dated 3.12.87, the applicant was called upon to show cause as to why the allotment should not be cancelled for sub-letting. The applicant denied the charge by his letter dated 3.12.87. The applicant also submitted his written reply on 26.3.88 alongwith

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copies of ration card, CGHS card and school certificates in support of his claim that he is residing in the said quarter. But without considering this, the respondents issued the cancellation order dated 12.5.88, against which the applicant preferred an appeal to the appellate authority on 25.6.88. This also was rejected by letter dated 8.8.1988.

3. The eviction proceedings were started by one Shri V.N.S.Asthana, Estate Officer, who is stated to have allowed the applicant to adduce his evidence in support of his contention of denial of subletting by order dated 9.3.89. After the transfer of Shri Asthana, the matter came up before one Shri R.S.Bhagat, another Estate Officer, on 4.9.1991, when the applicant again submitted all documents to adduce his evidence. The applicant alleges that without considering his plight, the eviction order was passed on 24.9.1991. He assailed the eviction order before the District Judge, Delhi under Section 9 of PP Act, 1971, who set aside the eviction order on 19.12.91 and the matter was remanded back to the Estate Officer for adjudicating the matter afresh. As per fresh show cause notice, the applicant appeared before another Estate Officer (Shri P.M.Mishra), who concluded that the cancellation of allotment is valid and a final eviction order was passed on 16.4.93 directing the applicant to vacate the quarter within 15 days. The applicant apprehends eviction by force and hence this application.

4. The respondents have filed their counter affidavit denying the averments made in the OA. They say that on the date of surprise inspection on 2.12.87, it was found that one Shri Ram Chander, a retired EME employee, was in occupation of the impugned quarter with his family and neither the applicant nor his family were present in the house on that day. They have annexed a inspection report in which the said Shri Ram Chander has endorsed

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that "I am staying in the quarter for some period on rent and will be shifting shortly". They say that at that time one Shri Sohan Lal was the allottee of Qr. No.9/101, Panchkuin Road and not Shri Ram Chander, who is retired person. They contend that mere possession of Ration Card, CGHS card etc. do not prove that the applicant did not sublet the quarter to Shri Ram Chander and therefore cancellation of allotment was done after considering all the submissions made by the applicant. They, therefore, say that the cancellation as well as eviction orders were rightly passed with due application of mind. They however say that the applicant can file an appeal against the eviction order under the PE Act.

5. The applicant has, alongwith the main OA, filed MP 1352/93 for condonation of delay, giving reasons of litigation proceedings from one forum of law to the other and finally to this Tribunal. I have considered the reasons and the delay is condoned.

6. The applicant has also filed rejoinder reasserting the averments made in the OA.

7. I have heard the learned counsel for the parties and perused the records.

8. The case of the applicant is that cancellation can be done in terms of SR 317-B-20 only in proved cases of subletting but the respondents have failed to adduce any sort of evidence for providing the said cancellation. Also the Estate Officer passed the eviction order merely relying upon the inspection report as well as the cancellation letter dated 12.5.88 but he failed to accept the evidence produced by the applicant in support of his

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denial of alleged subletting. The applicant also prayed for reinspection of the premises at any point of time but that was never acceded to by the respondents.

9. It is also the case of the applicant that the cancellation order was based on a mere suspicion. It is a well settled law that however great a suspicion may be, it can not take the place of truth. Besides, Sections 4 & 5 of the PPE Act provides for a notice to be issued to a person alleged to be in unauthorised occupation specifying the grounds on which the eviction is proposed to be made and that all persons concerned to show cause against the proposed order and to appear before the Estate Officer alongwith evidence in support of his case, they should be given a personal hearing and if the Estate Officer is not satisfied with the same, he may make an order of eviction for reasons to be recorded in writing therein. In the instant case, the applicant was not given a copy of the inspection report, which was relied upon for cancellation order, nor the documents produced by him in support of his denial of subletting the quarter were considered by the Estate Officer. Also Shri Ram Chander, who is stated to have endorsed in the inspection report that "I am staying in the quarter for some period on rent and will be shifting shortly" was not examined properly and neither the applicant was afforded an opportunity to cross examine the said Shri Ram Chander. Again, no show cause notice was given to the applicant, which is a pre-requisite as per Rules.

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10. The learned counsel for the applicant has drawn my attention to the decision dated 14.3.90 in OA 155/1990 decided by the Bangalore Bench of the Tribunal in the case of Shri S. Gulab Jain Vs. the Estate Officer & Ors. (II-1990-ATLT(CAT)-152), which while quashing the impugned order, has held that "Starting from the inspection report where the conclusion of subletting is a pure surmise and ending with the impugned order of eviction, which is delightfully vague, there is a total lack of elementary fairness in the entire procedure adopted".

11. The above ruling equally applies in the instant case inas much as that the applicant was not given a copy of the Inspection Report, nor Shri Ram Chander, alleged to have endorsed about his staying in the quarter in the Inspection Report was properly examined niether allowed to be cross-examined by the applicant and also that no show cause notice was issued to the applicant as per PPE Act. The cancellation order was passed merely relying upon the Inspection Report without application of mind. Therefore, I have no hesitation to hold that applicant has made out a case. The application is allowed.

12. The impugned cancellation order dated 12.5.88 and the eviction order dated 16.4.93 are set aside and quashed. The OA is thus disposed of. No costs.

[Signature]
(C.J. Roy)
Member (J) 16/2/94

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