

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH. ALLAHABAD

O.A.No. 379/98

Allahabad, this the 4th day of feb, 1999.

CORAM : Hon'ble Mr. S.Dayal, Member (A)
Hon'ble Mr. S.L.Jain, Member (J)

Shri Rajbeer Sharma, S/o.late Shri Nanak Chand Sharma,
R/o. 2/R/55 Ayudh Nirmani Muradnagar, Distt.Ghaziabad.

....Applicant.

(By Shri H.N.Sharma, Advocate)

V s.

1. Union of India,
through Ministry of Defence,
New Delhi.
2. General Manager, Ordnance Factory Board,
Ordnance Factory, Muradnagar,
Distt. Ghaziabad.
3. Estate Officer, Officer Ordnance
Factory, Muradnagar, Distt. Ghaziabad.

.... Respondents.

(By Shri Amit Sthalekar, Advocate)

O R D E R (Reserved)

(By Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. S.L.Jain, Member (J)

This is an application under Section 19
of the Administrative Tribunal Act, 1985 to quash
the order dated 16-9-97 passed by the respondent No.2
and restraining the respondents from dispossessing
him from quarter No.2/N/35, Ordnance Factory, Muradnagar.

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There is no dispute between the parties in respect of facts that the applicant was allotted residential quarter No. 2/E/35, Ordinance Factory, Muradnagar while working on the post of Labourer in Ordinance Factory, Muradnagar, he was implicated as an accused in July'94, out of which Sessions Trial No.108 of 95 commenced, he was tried for an offence under Section 376 of I.P.C., convicted and sentenced to imprisonment for five years by Additional District Judge, Ghaziabad on 4-4-96, Criminal Appeal No.2219 of 1996 was filed by him before the Hon'ble High Court of Judicature at Allahabad and execution of sentence was suspended, his services were determined under Rule 19(1) of the Central Civil Services Classification Control and Appeal Rules, 1965 vide Annexure-I, he filed O.A.No. 1078/97 and an order dated 12-11-97 was passed rejecting the prayer for staying dispossession from the quarter against which he filed writ petition No.39665 of 1997 which was dismissed by the Hon'ble High Court of Judicature at Allahabad as not maintainable on 27-11-97.

The applicant's case in brief is that during the course of preliminary hearing of O.A.1078/97 the Hon'ble Bench was really pleased to take the view that petitioner should file a separate petition, if at all the order impugned in this petition was being treated as an order of eviction, otherwise according to the view of Hon'ble Tribunal the said order was only to be treated as a Notice and proceedings are yet to be followed under U.P. Public Premises Unauthorised

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Act. On account of the said view the Tribunal was not pleased to pass any order staying the dis- possession from the quarter in question. The residential quarter was allotted to the applicant during the course of his service and by virtue of his employment in Ordnance Factory, Muradnagar. The applicant is living in the said quarter with his wife, old mother, two sons and a daughter aged 15, 12 and 17 years respectively, who are getting education in Muradnagar itself in Educational Institutions run by the respondents and situated in the Factory area. The respondents have treated the same order not as a Notice, but final Order of Eviction. No proceedings under U.P. Public Premises Unauthorised Occupants Act are to be taken. The applicant is to be dispossessed shortly. Hence this O.A. for the above said relief.

The respondents have alleged that the applicant was convicted under Section 376 and 511 of I.P.C. after passing of the interlocutory order dated 12-11-97 in O.A.No. 1078/97 the applicant filed a writ petition in the High Court in which he concealed the fact of filing the Civil Suit No.415/97, the writ petition was dismissed, but on the under- taking given by the applicant as well as the assurance given by the learned counsel for the applicant that the petitioner would vacate the premises within three months, the Hon'ble High Court allowed the petitioner to remain in the premises only for three months on

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the payment of rent etc. M.A. 362/98 was filed by the applicant in O.A.No.1078/97 concealing of these facts, with a deliberate motive of misleading the Tribunal this O.A. is filed and thereby fraudulently obtained the Stay Order. His prayer for interim relief was rejected on 12-3-98 in O.A.No.1078/97. He filed the present O.A. challenging the eviction. The applicant is not entitled to any relief, hence prayed for dismissal of the O.A.

No Rejoinder Affidavit has been filed contraverting the said facts.

O.A.No.1078/97 was filed on 14-10-97 in which M.A.No.362/98 was filed on 4-2-98 which was decided on 13-5-98.

The interim relief was sought to the effect that he be permitted to continue in the premises and the said relief was rejected, against which applicant moved the Hon'ble High Court in Writ Petition No.39665/97 on 27-11-97. The said Writ Petition was decided and it was ordered that "the rejection of the application for interim relief in the given circumstances cannot be subject to judicial review".

In the same writ petition it is further mentioned that "However considering the undertaking given by the Petitioner before this Court as well as assurance of the learned counsel appearing on behalf

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of the petitioner that the petitioner would vacate the premises within three months from today it would be appropriate for the authority to allow the petitioner to remain in the premises only for 3 months on the payment of rent etc."

The applicant is guilty of concealing the facts even before the Hon'ble High Court of Judicature at Allahabad of filing Civil Suit No. 415/97 before Civil Judge (Junior Division, Ghaziabad). We are not aware of the fact whether the said Civil Suit is still pending or what is fate of the same.

While moving M.A.No.362/98 the applicant was guilty of again concealing the fact of his undertaking given before the High Court of Judicature at Allahabad in Writ Petition No.39665/97 which is stated above.

The applicant's act further preceded of concealing the fact of the said Civil Suit, decision in Writ Petition No.39665/97 his undertaking in the same writ petition while filing O.A.No.379/98 (present O.A.).

The applicant's prayer for interim relief in O.A.No.1078/97 was rejected. The said order was upheld by the Hon'ble High Court of Judicature at Allahabad in Writ Petition No.39665/97, in O.A.No. 1078/97 again his prayer was rejected for dispossession

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from the said quarter. Hence he is not entitled to reagitate the said matter on principles of resjudicata.

The applicant is estopped from raising the said matter on principles of estopped on the ground that on his undertaking given before the Hon'ble High Court of Judicature at Allahabad his dispossession was already stayed for three months. Hence he is estopped under Section 115 of the Indian Evidence Act.

In the result O.A. is liable to be dismissed and is dismissed with costs amounting to Rs.650/- (Legal Pactioner fee Rs.500/- plus other expenses Rs.150/-) payable by the applicant to the respondents jointly and severally within one month of the receipt of the order.

gvs/
MEMBER(J)

gvs/
MEMBER(A)