

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 3.4.2001/2.30 P.M.

In this Original Application filed by Benudhar Panda, an employee serving in the Office of the Chief Post Master General, Orissa Circle, praying for quashing Annexures-2, 4, 7 and 9, on the objection of the Registry as to the maintainability of this O.A. before this Tribunal, we heard Shri K.C.Kanungo, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel for the Respondents, on whom a copy of the application has been served.

The applicant was sharing accommodation along with Shri S.M.Jena, U.D.C. PLI Section in quarter No.172, Type-II Unit IV, Bhubaneswar which was allotted in favour of Shri Jena. Respondent No.1, viz., C.P.M.G. by order dated 14.9.1992 (Annexure-1) approved this arrangement subject to usual terms and conditions on the subject. It has been mentioned in the Original Application in Para-4.4 that the allottee of the quarter, i.e. Shri S.M.Jena had taken the voluntary retirement w.e.f. 31.10.2000 and the applicant having ^{known} enjoyed the same represented to Respondent No.1 on 27.10.2000 for allotment of the quarters. By order dated 16.2.2001, Respondent No.1 directed the applicant to vacate the quarters within seven days, specifically mentioning that his sharing of accommodation in that quarters had already been cancelled through Memo dated 1.12.2000 and the retention period in respect of the said quarters having since been completed, as per the report of Shri Jena, the applicant having not vacated the quarters was treated as staying therein unauthorisedly. There is no mention in the Original Application that the applicant is not aware of this cancellation order passed in Office Memorandum dated 1.12.2000. Under Annexure-3 dated 20.2.2001, the applicant represented to Respondent No.1 permitting him to stay in the quarters till 31.05.2001 or to allot quarters to him. But under Annexure-4 dated 23.2.2001, the Estate Officer-cum-Vigilance Officer (Res. 3) in the Office of the C.P.M.G., Orissa issued notice under Section 4(1)(b)(ii) of

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the Public Premises (Eviction of unauthorised Occupants) Act, 1971, (in short Act, 1971) on the applicant directing him to show cause on or before 9.3.2001 why the eviction order should not be passed mentioning that retention of the quarters by Shri Jena was extended upto 31.1.2001 and that the allotment of quarters in favour of Shri Jena, on his request was cancelled on 6.2.2001 and that though the applicant was asked by this Respondent in letter dated 16.2.2001 to vacate the said quarters within 7 days, he did not vacate the same and retained the quarters unauthorisedly. In response to this notice the applicant submitted two representations to Res. 1 vide Annexures-5 and 6. However, under Annexure-7 dated 12.3.2001, Respondent No.3 allowed time for vacation of the quarter till 6.4.2001. However, the applicant had not yet vacated the quarters. Under Annexure-9 dated 20.3.2001, Respondent No.3 intimated that his representations to the C.P.M.G. were rejected by the latter and directed the applicant to vacate the quarters positively by 6.4.2001, failing which action under the Public Premises (Eviction of unauthorised Occupants) Act, 1971 will ^{be} deemed to have been initiated with the receipt of the notice dated 28.2.2001 by him.

The Registry has objected to maintainability of this application on the ground of the decision of the Apex Court in Rashila Ram's case decided in Civil Appeal Nos.1301-1304/90 on 16.9.2000, xerox copy of which finds place in the record. Shri Bose, the learned Sr. Standing Counsel vehemently contended that this application cannot be entertained by this Tribunal in view of this decision of the Apex Court.

The point involved before the Apex Court was whether an order passed by the competent authority under the Act, 1971, ~~wix~~ come within the purview and jurisdiction of the Administrative Tribunal, constituted under the AT Act, 1985. This point was earlier decided by the Full Bench of this Tribunal holding that this Tribunal has jurisdiction to entertain applications against orders passed under that Act. The Apex Court overruled the view of the Full Bench and held that once a Government servant is held to be in occupation of the public premises as unauthorised occupant within the meaning of the Eviction Act

and appropriate orders are passed thereunder, the remedy to such occupant lies as provided under the said Act, and by no stretch of imagination the expression 'any other matter' in Section 13 of the A.T. Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of Act, 1971.

Shri Kanungo, the learned counsel for the applicant submitted that under Section 9 of the Act, 1971, an appeal lies to the District Judge of the concerned District not from each and every order of the Estate Officer, but, such orders which are passed in respect of Sections 5, 5(b) or Section 5(c) or Section 7 of the Act, 1971, and as at present Estate Officer has not passed any order under those Sections, he can have no remedy to redress through an appeal before the concerned District Judge.

In this case we are concerned only with Section 5 and not with Section 5(b), dealing with the order of Demolition of Unauthorised Construction under Section 5(c), Ceiling of Unauthorised Construction and Section 7 directing payment of rent and damages in respect of Public Premises. Under Section 5 the Estate Officer is competent to pass an order after issuing notice under Section 4 and after considering the show cause received pursuant to such notice and any evidence produced, by the occupant and after personal hearing, if any and on being satisfied that the premises in question is in unauthorised occupation, directing that the premises shall be vacated on such day as may be specified in such order. Shri Kanungo, learned counsel for the applicant submitted that Res.3 had not made any independent assessment as to whether the applicant was unauthorised occupation or not and simply relied on the rejection orders of Respondent No.1 and as such it would be deemed that the stage of passing orders under Section 5 had not yet come and this is all the more apprent from the fact that the applicant was allowed to remain in that quarters till 6.4.2001. However, Shri Kanungo could not explain under what Section, of the Act, 1971, Respondent No.3 had

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passed orders under Annexures 7 and 9. These two orders were passed only after issuing notice under Section 4 of the Act, 1971, vide Annexure-4 dated 28.2.2001 and the show cause submitted by the applicant on 5.2.2001, as mentioned in Para-4.7 of this O.A. Whether Res.3 had come to an independent finding as to the unauthorised occupation before passing the aforesaid orders under Annexures-7 and 9, directing the applicant to vacate the quarters by 6.4.2001, is not a matter to be judged by this Tribunal, because the Apex Court in Rashila Ram's case (Supra) had clearly held that once a Government servant is held to be in occupation of a public premise as an unauthorised occupant within the meaning of the Act, 1971, and appropriate orders are passed therein, the remedy to such occupant lies, as provided under the said Act.

Annexure-4, the show cause notice reveals that the allotment of the quarters in favour of Shri Jena was cancelled on 6.2.2001 and that the applicant was asked in letter dated 16.2.2001 to vacate the quarters within seven days. Thus the Department holding the applicant to be an authorised occupant referred the matter to the Estate Officer, who in turn initiated action and issued notice to the applicant to show cause under Section 4 of the Act, 1971. Under Annexure-9, the Estate Officer (Res.3) directed the applicant to vacate the quarters by 6.4.2001 positively by intimating that his representations for extension of time were rejected by Respondent No.1, which would imply that Respondent No.1 held that the applicant was an unauthorised occupant and still allowed time till 6.4.2001 to vacate the quarters. This being the factual position and in view of the ruling of the Apex Court in Rashila Ram's case, this Tribunal lacks jurisdiction to entertain an application of this nature.

In the result, O.A. being not maintainable is not admitted and accordingly dismissed.

V. Ramnarayan
VICE-CHAIRMAN
3.4.2001

2.7.2001
MEMBER (JUDICIAL)