

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.D.A.876 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

SMT.GITA MITRA & ANOTHER
... Applicants
Vs.

1. Union of India through the Secretary,
Ministry of Urban Development,
Department of Works, New Delhi.
2. The Director General, Central Public
Works Department, Nirman Bhawan,
New Delhi.
3. The Estate Officer, Govt. of India,
Estate Office, 5, Esplanade East,
Calcutta-69.
4. The Estate Manager C/o Office of .
the Estate Officer, 5, Esplanade
East, Calcutta-69.

... Respondents

For the applicants : Mr.Samir Ghosh, counsel.

For the respondents : Mr.S.P.Kar, counsel.

Heard on : 2.4.1998

Order on : 2.4.1998

O R D E R

Heard ld.counsel for both the parties over an application u/s 19 of the Administrative Tribunal Act, 1985, where the applicants have sought for the following reliefs :-

- "(i) Leave be given to the applicants to file this joint application in terms of Rule 4(5)(a) of the Administrative Tribunals (Procedure) Rules, 1987.
- (ii) To direct the respondents to cancel, withdraw and/or rescind the purported notice for eviction dated 20.1.1992 as contained in annexure-B hereof.
- (iii) To direct the respondents to cancel, withdraw and/or rescind the order for vacating the quarter in question vide memo dated 24.6.1996 as contained in annexure-E hereof, which was stated to be issued in terms of P.P.Appeal No.1 of 1992, filed by the applicant no.1 herein and the judgment and order passed therein on 23.5.1996 as contained in annexure-C hereto.

- (iv) To direct the respondents to allot the Govt. quarter in question to the applicant no.2 herein in consideration of representations of the applicants as contained in annexure-D hereof.
- (v) To direct the respondents to regularise the Govt. quarter in question of the applicant no.1 in favour of the applicant no.2 in consideration of her prayer as contained in annexure-D hereof.
- (vi) To direct the respondents not to deduct any damage rent and/or penal rent from the applicant no.1 in respect of occupation of the Govt. quarter in question, in any manner whatsoever.
- (vii) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue."

2. The case of the applicants in short is that applicant no.2, Prasanta Kumar Mitra, is the son of applicant no.1, Smt. Gita Mitra, a retired employee, who took pre-mature retirement on medical ground on 23.1.1990. The applicants who were residing in the Tollygunge Central Govt. Quarters, were allowed to retain the said quarters upto 21.9.1990. In the meantime, applicant no.2 applied for compassionate appointment due to the pre-mature retirement of his mother from service. After the expiry of the period of retention of quarters till 21.9.1990, no further extension has been granted in favour of the mother of the applicant no.2 i.e. the applicant no.1, for retention of the quarters. So legal action has been taken by the respondents for eviction ^{from} of the quarters which remained under unauthorised occupation of the applicants. Ultimately, a final order was passed by the Estate Officer for eviction of the applicants from the said quarters vide order no.18(16)/91-Eve dated 20th January, 1992. Feeling aggrieved by the said order of eviction, applicant no.1, Smt. Gita Mitra, approached the ^{Addl.} District Judge at Alipore ^{who is appellate authority} for quashing the said order. The Addl. District Judge at Alipore by an order dated 23.5.1996 (annexure 'C' to the application), dismissed the appeal preferred by her stating

the following facts:

"I have considered the submissions of the ld. lawyers for both the sides and by doing so, I quite agree with the ld. lawyer for the respondent to the effect that the present appellant can have no claim so as to accommodate her son officially in the disputed premises. I also quite agree that the allotment of official flats depends on many factors. But, still then I feel that the concerned authority for the allotment of official flats may take into consideration as to whether the prayer of the appellant can be considered in any way to be tenable."

After dismissal of the appeal with the aforesaid observation by the Addl. District Judge at Alipore, the applicant preferred a representation on 13.5.1996 and the same was rejected by an order dated 24.6.1996 (annexure 'E' to the application) holding that in view of the judgment delivered by the Addl. District Judge, 1st Court, Alipore, in respect of P.P. Appeal No.1 of 1992, the request of applicant no.1 had been considered carefully but it was not found possible by the authorities to accede to the same since it is not covered under the rules. He was, therefore, requested to vacate the Govt. flat immediately. Feeling aggrieved by the said order of the Estate Manager dated 24.6.1996, the applicants have approached this Tribunal for getting the reliefs mentioned above.

3. The respondents have contested the case by filing a reply. They deny the claim of the applicants stating inter alia that the application is hopelessly barred by limitation as well as by the principles of resjudicata. It is also stated that applicant no.1 has no locus standi to file this case before the Tribunal as she is not in service since 23.1.1990 and her claim for Govt. accommodation is not sustainable under law. It is also stated that the eviction order dated 20.2.1992 has been affirmed by the Addl. District Judge, Alipore, by order dated 23.5.1996 in P.P. Appeal No.1 of 1992. It is also stated that the applicant no.1 retired from service on 23.1.1990 and applicant no.2 got employment in Income Tax Department more than 3 years and 8 months

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after the date of premature retirement of his mother, applicant no.1, and as such, applicant no.2 is not entitled to have ad-hoc accommodation in general pool. Thereby the application is liable to be dismissed.

4. Ld.counsel for the applicants, Mr.Samir Ghosh, submits that in spite of dismissal of the appeal by the Addl.District Judge, Alipore, by the order dated 23.5.1996, both the applicants have locus standi to approach the authority for fresh consideration of their case for allotment of the quarters in view of the specific observation made by the Addl.District Judge, Alipore, in his order dated 23.5.1996, wherein while dismissing the appeal the Addl.District Judge had stated to see whether the case of the applicants can be considered by the concerned authorities to be tenable in any way. Thus the dismissal of the appeal by the Addl.District Judge, Alipore, would not create any resjudicata in this case because the applicants have come with a fresh cause of action being aggrieved by the order of the Estate Manager dated 24.6.1996 passed in view of the judgment dated 23.5.1996 in P.P.Appeal No.1 of 1992.

5. Ld.counsel for the respondents, Mr.S.P.Kar, has strenuously argued before me that the application is barred by limitation as well as by the principles of resjudicata. He contends that since the applicants have lost the battle before the Addl. District Judge, Alipore, who is the competent authority to dispose of the case in accordance with law with the specific observation that the applicants have no claim or right for enforcing their right for getting allotment of the quarters, as per rules, the applicants are not entitled to get any relief in this case. He states that the authorities considered the representation made by the applicant no.1 but regretted that their case could not be considered as the case was not covered by the rules of allotment.

6. In view of the divergent arguments advanced by the ld. counsel for both the parties, it is to be considered by me whether the applicants are entitled to get the reliefs as sought for in the application for allotment of quarters in favour of applicant no.2, who was admittedly appointed on compassionate ground on 21.9.1993 after more than 3 years from the date of pre-mature retirement of his mother, applicant no.1, on medical ground. Admittedly, the applicant was evicted from the premises in question after passing of the order of the Addl.District Judge, Alipore in P.P.Appeal No.1 of 1992. So question of retention of the quarters by the applicants does not arise. Now the question arises as to whether the applicant no.2 can enforce his right for allotment of the quarter out-of-turn on the basis of the order made by the Addl.District Judge, Alipore, at the time of disposing of the appeal on 23.5.1996. I have considered the order dated 23.5.1996 at annexure 'C' to the application and also the impugned order of the Estate Manager dated 24.6.1996 (annexure 'E' to the application). I am impressed from the order of the Addl. District Judge at Alipore in P.P.Appeal No.1 of 1992 where he, has observed that the concerned authority for allotment of official flats may consider the case of the appellant, after being fully satisfied with the fact that the appellant can have no claim to accommodate her son officially in the disputed premises. Allotment of Govt. quarters depends on many factors. Despite that fact, the Addl.District Judge, Alipore, felt that there should be some direction upon the authority for allotment of the official flat in favour of the present applicants. I find that the said direction has been given by the appellate court on compassionate ground. But that compassionate ground also cannot be enforced in the court of law unless there is some arbitrariness on the part of the authority in respect of refusing the prayer of the applicants.

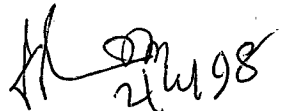
However, it is found that applicant nos.1 and 2 have vacated the said quarters after dismissal of their appeal and after the order passed by the authority in consequence of that appeal. But quarter was not allotted to applicant no.2 despite the fact that an observation to that effect was made by the Addl.District Judge, Alipore, in his order passed in the appeal.

7. In view of the aforesaid circumstances, I would like to emphasise that the observations were made by the ld.Addl.District Judge, Alipore, with a hope that the respondents being good employers, shall make sincere attempt or endeavour to allot a quarter to applicant no.2 under special consideration. But the respondents did not make any endeavour to allot any quarters taking the plea of rules regarding allotment of quarters.

Therefore, I also feel that the respondents should reconsider the case of the applicants, in accordance with ^{Rule as exceptional case} ~~law~~ for the purpose of allotment of quarters in favour of applicant no.2, who is a Govt. employee, if a vacant quarter is available as per his entitlement within the jurisdiction of the respondents in the light of the observations given by the Addl.District Judge in P.P.Appeal No.1 of 1992.

8. Accordingly, the application is disposed of with a direction upon the respondents to make a genuine endeavour to provide a quarter to applicant no.2, as soon as a vacant quarter is available for allotment at par with his status, if necessary out of turn.

9. Application is allowed with the aforesaid observation, awarding no costs.


(D. Purkayastha)
Judicial Member