

In the Central Administrative Tribunal
Calcutta Bench

OA No.893 of 1996

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

Manahari Mallick

.... Applicant

Vs.

- 1) Union of India through the Director of Estate, Nirman Bhawan, New Delhi.
- 2) Director of Estate, Nirman Bhawan, New Delhi.
- 3) Estate Manager, Office of the Estate Manager, 5, Esplanade East, Calcutta.
- 4) Assistant Manager(Admn.), Govt. of India Farms Stores, Directorate of Painting, Lenin Sarani, Calcutta.
- 5) Assistant Director of Estate(R) Govt. of India, Directorate of Estates, Nirman Bhawan, N.Delhi

.... Respondents.

For the Applicant : Mr. P.K. Dutta, Lt. Advocate

For the Respondents: Mr. B. Mukherjee, Lt. Advocate

Heard on 14.7.98

Date of Judgement : 14.7.98

ORDER

The main question involved in this case is whether order of cancellation of allotment of quarters issued by the respondents Estate Manager vide letter 14.3.96 (Annexure 'A-4' to the application) and the order of Appellate Authority communicated to the applicant rejecting the appeal vide order dated 18.6.96 (Annexure 'A-10' to the application) alleged on the ground the applicant as Allottee made subject the quarters to unauthorised person is sustainable.

2. The case of the applicant, in short, is that while the applicant was working as Group 'D' employee (Daftary) in the Office of the

Government of India Farms Stores, 166, Lenin Sarani, Calcutta-13 since April, 1971, the said quarters was allotted to him on his prayer in the month of August, 1994. According to the applicant, due to lack of education facilities and other inconveniences at Calcutta, he could not bring his family members in the said quarters bearing No. 848, Type-II Block IC, Salt Lake, Calcutta-9118 but he started residing in the said quarters permanently alone from the date of allotment. It is alleged by the applicant that he received suddenly a show-cause notice from the Estate Manager (respondent No.3) vide letter dated 20.12.95 (Annexure 'A-1' to the application) asking him to show-cause on or before 29.1.96 as to why he should not be declared ineligible for govt. accommodation for a period of 5 years and he should not be charged 4 times standard licence fee under F.R. 46-A on the ground of accommodation to some unauthorised persons in the said quarters in contravention of the provisions contained in S.R. 317-B-20 of the Allotment Rules. According to the applicant, he appeared before the Estate Manager (respondent no.3) on 29.1.96 and produced material documents before the authority denying the allegation brought against him. But the Estate Officer (respondent no.3) without considering his defence, had passed the impugned order of cancellation vide letter dated 14.3.96. Being aggrieved by and dissatisfied with the impugned order (Annexure 'A-4') he preferred representation to the Director of Estate (respondent No.2) on 12.4.96 and thereafter, the applicant served notice on behalf of his Advocate on 30.4.96 (Annexure 'A-7' to the application) for getting appropriate relief on the grounds stated in the representation. Thereafter, the respondent i.e. Assistant Director of Estate (respondent no.5) intimated the decision treating the representation as an appeal preferred by the applicant vide letter dated 18.6.96 (Annexure 'A-10') stating that appeal against the penalty on the charge of unauthorised sub-letting of the above mentioned govt. accommodation allotted to the applicant has been considered by the Appellate Authority who has decided to reject the application and accordingly, he was requested to hand over the vacant possession of the said quarters to the authority of the CPWD immediately failing which action of physical eviction under

the Public Premises Eviction of Unauthorised Occupants Act, 1971 will be taken.

3. Feeling aggrieved by and dissatisfied with the decision contained in the letter dated 18.6.96 (Annexure 'A-10') the applicant approached this Tribunal for getting appropriate relief as prayed for on the ground that entire actions of the respondents are based on no evidence and order of allotment was cancelled by the authority arbitrarily and illegally denying the reasonable opportunity to the applicant to state his case. So, order of the impugned order of the respondents is liable to be quashed.

4. Respondents resisted the case by filing a written statement denying the allegations made against the respondents in the application and stating that the applicant took possession of the quarters on 8.8.94 and as a result of the enquiry made on 7.9.95 at 3.15 p.m. it has been proved that Shri M. Mallick has not been residing in the govt. flat No.848, Type-II, Block-IC, Salt Lake and allotment of the said quarters was cancelled accordingly w.e.f. 2.5.96 vide letter dated 14.3.96 (Annexure 'A-4'). Accordingly, he was also directed to vacate the said flat within 60 days from the date of issue of the above memo. It is also stated by the respondents that the applicant did not vacate the flat and he made an appeal to the Director of Estate, New Delhi with the request to allow him to stay in the said quarters. But the Director of Estate rejected his appeal and requested him to vacate the flat immediately, otherwise he will be physically evicted as per Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is also stated that it is evident from the inspection report that Shri Nirmal Kumar was found living in the said flat on 7.9.95 at 3.15 p.m. and refused to open the door and from the deposition of the applicant made before the Estate Officer, it is found that one brother-in-law, who was not authorised to reside in the said quarters, was allowed by the applicant to reside in the quarters and brother-in-law has no blood connection with the applicant. It is further stated that

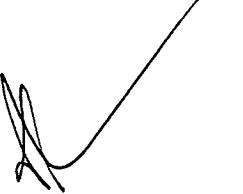
definition of "Family" as given in the allotment rules does not include the brother-in-law. So, action of the respondents are correct in accordance with the law and thereby, application should be dismissed.

5. Id. Advocate Mr. A.N. Ghosh has filed fresh Vokalatnama to-day as per direction passed by this Tribunal earlier and submits that there is no evidence available in the records to come to this conclusion that the applicant had not been residing in the said quarters and the applicant, being allottee, made out the sub-let of the quarters to any body as alleged. He has drawn my attention to the report marked as Annexure R-3 to the reply which was submitted by the Inspecting Authority after inspection of the quarters on 7.9.95. Id. Advocate submits that in the inspection report (Annexure R-3), no allegation was made to the effect that the applicant had sub-let the quarters to any person and he further submits that the applicant appeared before the authority on 29.1.96 as asked by the authority by a letter dated 20.12.95 (Annexure A-1) and he made a statement before the authority denying the allegation brought against him and it would be evident from the Annexure R-1 to the reply of the respondents. So, the reason for cancellation of the order of allotment is based on no evidence and made on perverse findings that the quarters was sub-let to unauthorised person. So, all the actions of the respondents are arbitrary, illegal and violative of principle of natural justice. So order of cancellation is liable to be set aside.

6. Id. Advocate Mr. Mukherjee, appearing on behalf of the respondents, strenuously argues before me that it was proved that the applicant does not reside in the quarters as per his statement made in the sub-para (iii) of para 4 of the application. Moreover, applicant appeared before the authorities and made statement as per Annexure R-1 to the reply that the brother-in-law of the applicant was residing in the quarters and thereby, reasonable conclusion would be that applicant had made out sub-let of the quarters to that person. So, the question of further inquiry in this regard was not necessary and did not arise and the order of cancellation is operative and sustainable in law. Mr. Mukherjee further submits that the applicant failed to produce the ration card to support his case.

7. I have considered the submissions of Ld. Advocate of both the parties and also perused the documents in this regard including the Annexures R-1, 2 and 3. The applicant is not disputing the power of the Estate Manager (Respondent No.3) for the cancellation of the order of allotment of the quarters. But he challenged the validity of the order of cancellation on the ground that the allegations are false, and the grounds of the cancellation are not based on evidence and order of cancellation was passed by the authority denying the principles of natural justice. I have gone through the sub para (iii) of para 4 and it is found that applicant made unambiguous averments stating that he had been residing in the quarters alone and he could not bring his family members in the said quarters due to some inconveniences regarding education of his children and for other reasons. From Inspection Report dated 7.9.95 (Annexure R-3 to the reply) it is found that no allegation was made by the Inspecting Authority that the applicant had sub-let the quarters to any person. In that report (Annexure R-3) it is mentioned in first page "Refused to open the door" without indicating the name of the person who refused to open the door during inspection in the quarters. Another remark has been made in the 2nd page of the inspection report that "One person opened the door slightly and identified himself as Nirmal and refused to open the door". The report (Annexure R-3) was signed by one Mr. R. Ghosh, a neighbour of the quarters as witness; but no statement of the said neighbour was recorded by the Inspecting Authority. In the instant case as per note mentioned in Annexure R-1 to the reply the applicant specifically stated that the person found in the quarters was his brother-in-law and he came to reside with him for treatment and he denied that he had sub-let the quarters to anybody. Respondents did not make any further enquiry to ascertain whether such statement of the applicant was correct or not and from the very order contained in note (Annexure R-1) it is found that the order was passed as follows :

"Cancel allotment of order No.848 as it is a case of sub-letting".

So far evidences collected by the authorities before order of cancellation (Annexure R-1) did not lead to a reasonable conclusion

that applicant had sub-let the quarters to any unauthorised person. It is to be noted that the Inspecting Officer did not mention in his report (Annexure R-1) that he found any unauthorised person in the quarters. The temporary residence of any relative of the applicant for treatment in the quarters does not lead to a reasonable conclusion that he made a sub-let of the quarters to his relative, unless it is proved that he allowed the said relative in the said quarters for wrongful gain. In Maneka Gandhi's case reported in AIR 1978 SC 597, the Hon'ble Supreme Court held that every arbitrary action of the executive authority is open to judicial scrutiny. It is now well-settled that ~~if the Court/Tribunal~~ is satisfied that the order is passed (a) malafide, (b) it is based on no evidence, or (c) that it is arbitrary, ^{such} no reasonable person would form ^{requisite} opinion on the available materials. After considering the facts and circumstances and records produced before me I am satisfied that entire actions of the respondents were based on no evidence and were violative of principle of natural justice. In view of the aforesaid discussion, I am of the view that the order of cancellation passed by the authorities is not sustainable and liable to be quashed. Besides, the order of the respondent No.2 (Annexure A-10) does not disclose any reason. On a perusal of the said order it is seen that the said order (Annexure A-10) is a cryptic one and devoid of reason. In view of the circumstances, said order (Annexure A-10) is not sustainable and is liable to be quashed.

8. Under the circumstances stated above the application is allowed. The all impugned orders (Annexure A-4, Annexure 10) are set aside; but the liberty is given to the respondents to make a fresh enquiry if the respondents think fit and proper in accordance with Law/Rules and to pass appropriate order, after giving the applicant full opportunity of being heard before taking action in this regard. Accordingly, application is disposed of awarding no cost.