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CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

Date of order : 30.09.1996

O.A.NO. 68 of 1996

GHEESA LAL KALUSIA APPLICANT

VS.

UNION OF INDIA & ORS. RESPONDENTS

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THE HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

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Present:

Mr.J.K.Kaushik Counsel for the
Applicant

None present for the
Respondents.

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BY THE COURT:

The applicant has filed this Application challenging the order dated 6th November, 1995, passed by Respondent No. 2 that for the period from 5th July, 1993 to 26th January, 1994, Damage Rent for unauthorised occupation of Quarter No. F3/qua/Udaipur at the rate of Rs. 1514.80 per month, amounting to Rs. 10,164/- is required to be recovered in 33 instalments of Rs. 300/- each and 34th instalment of Rs. 264/- from the pay of the applicant.

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2. The notice of the Application was given to the Respondents who have filed their detailed reply challenging the rights and denying the contentions of the applicant and further alleging that recovery in respect of Damage Rent is being made as per rules and procedure.

3. I have heard the learned counsel for the applicant. Nobody is present on behalf of respondents to address the Tribunal despite the fact that it was listed for final disposal today.

4. The applicant has challenged the impugned order on three grounds viz. firstly, no procedure as has been laid down in Sub Section (3) of Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as 'the Act'), has been followed, secondly, the so called order has not been passed by the Estate Officer as is envisaged by the provisions of Law and thirdly, the order recovering the amount from the pay of the applicant could not have been passed in view of the specific provisions for recovery of such amount as per Section 14 of the Act.

5. I have gone through the record and the various provisions of law and also the rulings cited by the learned counsel for the applicant.

6. From the record, it is not borne out that any procedure as envisaged by Sub Section (3) of Section 7

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of the Act, has been followed in as much as no notice calling upon the applicant to show cause as to why an order requiring him to pay the said amount of Damage Rent for unauthorised occupation of the Government accommodation ~~has not recovered~~, was issued. Estate Officer is required to issue such notice in form 'D' of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter called 'the Rules'), framed under the Act. No notice, what to say a notice in form 'D' was at all given to the applicant by the Estate Officer. The applicant has thus been deprived of an opportunity to put forward his defence and circumstances showing as to how he came to occupy the premises in question. Thus, the impugned order can not be sustained.

7. Further, the impugned order dated 6.11.1995 has laid down the recovery schedule of the Damage Rent from the pay of the applicant, whereas, for recovery of Damage Rent a Certificate under Section 14 ^{of the Act} ought to have been issued to the District Collector by the Estate Officer in Form ~~10~~ I of the Rules, requesting the recovery of the Damage Rent as arrears of land revenue. The concerned authority has followed no such procedure. Thus the order can not be sustained.

8. The impugned order dated 6.11.1995 (Annex.A-1), has been passed by the Superintendent of Railway Mail Service, Ajmer Division, Sector 'J', Ajmer. It does not appear from the record that for the purposes of

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enforcing the provisions of the Act, Superintendent, Railway Mail Service, ^{Former Div.} was declared an Estate Officer as per the provisions of the Act by the Government. Even if, the Superintendent, Railway Mail Service, is taken to be a notified Estate Officer, under the Act, the order dated 6.11.1995 (Annex.A-1) does not show~~ing~~ him to be an Estate Officer, as the orders under the Act are required to be passed only by an Estate Officer. Thus the order cannot be sustained.

9. Therefore, the order dated 6.11.1995 (Annex.A-1), deserves to be quashed.

10. Consequently, the Original Application is accepted and the order dated 6.11.1995 at Annex.A-1, passed by the Respondent No. 2, is hereby quashed. It is further ordered that the concerned Estate Officer under the Act, would be free to initiate fresh proceedings against the applicant as per the provisions of the Act and this order would not come in the way of such fresh proceedings.

11. The parties are left to bear their own costs.

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30/11/96
(A.K.MISRA)
Judicial Member

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