

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 202/07
AONGWITH M.A....08 (DIARY 112/08)
JODHPUR THIS IS THE FEBRUARY 27, 2009**

CORAM:

**HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER (A)**

Vijay P. Tiwari S/o Kapil Dev Tiwari, aged about 42 years, resident of CCBF Campus, Suratgarh, at present employed on the post of TS Worker in CCBF Suratgarh, Distt. Sriganganagar.

.... Applicant.

For Applicant : Mr. J.K. Mishra, Advocate.

VERSUS

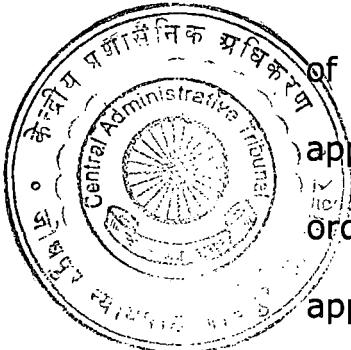
1. Union of India through the Secretary to Government of India, Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. The Director, Central Cattle Breeding Farm Suratgarh, District – Sriganganagar.
3. Dr R.P. Shrivastava, The Director, Central Cattle Breeding Farm Suratgarh, District/ Sriganganagar.

.... Respondents.

For Respondent : Mr. M. Godara, proxy counsel for Mr. Vinit Mathur, Advocate.

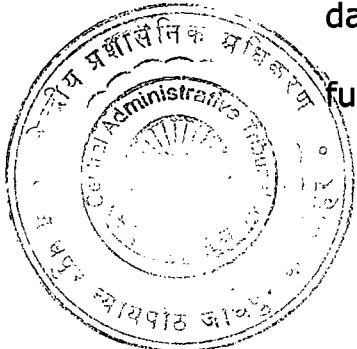
**ORDER
[PER SHANKAR PRASAD, MEMBER (A)]**

Aggrieved by the order dated 06.07.2006 directing recovery of Rs. 500/- per month from the employees mentioned therein the applicant has preferred the present O.A. He seeks quashing of the order including ^{refund in} default of amount deducted from the salary of applicant at market rate.



(2)

2. The facts lie in a narrow compass. The applicant is a casual labour with Temporary Status in the Central Cattle Breeding Farm (CCBF) Suratgarh. **Annexure R/1** to the reply is a letter addressed to 20 persons including the applicant (Serial No-16) directing them to remove their Cattle from the Farm Area within seven days failing which disciplinary action will be taken against them. **Annexure R/2** is a letter dated 09.01.2006 that the 26 persons mentioned therein are yet to remove their cattle from the campus in spite of the warnings given to them from time to time. The persons mentioned therein including the applicant (Serial-17) have been directed to remove their cattle failing which Rs. 500/- per month shall be recovered towards the damage caused to the crops. **Annexure R/3** is similar letter dated 23.01.2006 giving a last warning failing which recovery shall commence from the month of January, 2006, wherein the name of the applicant appears at Serial-15. **Annexure R/5** is the order dated 14.02.2006 indicating therein that the five persons mentioned therein including the applicant has furnished wrong ^{information} ~~impression~~ that they have removed their cattle. It is thereafter that this order dated 06.07.2006 has been issued that an amount of Rs. 500/- per month ^{recovered} ~~may be required~~ ^{in the event} towards damage to the crops. The deduction would remain in force till further orders. The name of applicant appears at Serial-5.



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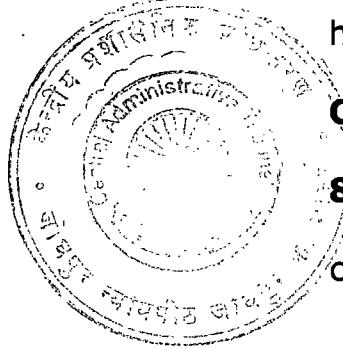
(3)

3. The case of the applicant in brief is that the then Director CCBF had permitted the casual labours to construct Jhuggies in the CCBF campus on their own expense. They have not been paid any ^{in living in the} HRA for ~~making~~ their Jhuggies. His son is residing in Canal Area and has constructed a separate Jhuggi. The applicant has no control over his son. The Security Supervisor, with whom the applicant has strained relationship, wants to harass the applicant. A sum of Rs. 500/- per month had been recovered from the monthly salary of the applicant from the month of July, 2006 to November, 2006. Thereafter the said recovery was stopped and ~~an~~ ^{an} enhanced amount of Rs. 700/- had been deducted from his salary from the month of July, 2007 alleged to be on account of licence fees. He has also been told that this amount will be continued to be recovered till further orders.

4. The further case of the applicant is that no licence fee could be recovered from him. The decision to recover the said amount has been taken without giving him any show cause notice.

5. In the rejoinder, it is stated that a perusal of **Annexure A/2** shows deduction towards licence fee. An order is to be read as it is and nothing can be added or reduced from the same as has been held by a Constitution Bench of the Apex Court in **M.S. Gill Vs. Chief Election Commissioner [AIR 1978 Supreme Court 851]**.

When a statutory functionary makes an order based on certain grounds, its validity must be dealt by the reasons so



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(4)

mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It is contended that the documents annexed with **Annexure R/1** to the reply is a fabricated document which has been produced before the Tribunal to defeat his case. A separate application has been moved in this regard.

6. The respondents in their reply have stated that the temporary status casual labours have not been permitted to construct Jhuggies in the CCBF campus. They have encroached on Government land. ^{In} The internal audit has objected to it. Few workers of the Farm are rearing their own cattle in the Farm Campus. It has been submitted that as per report of the Agriculture (Security) Section of the farm, few workers of the farm ^{in their} have reared their own cattle in the farm campus and kept in their un-authorized constructed jhuggies on government land and are damaging crops by force-grazing. The rearing of animals by the employees of the respondent's farm is completely banned to avoid spreading of disease in the farm's animals. As the respondent farm itself is maintaining the pure ^{bred} ~~bred~~ of Tharparkar cows, they provide the facilities to all the staff for supply of milk from the farm regularly at a reasonable price.

7. The reply thereafter refers to the various orders issued in this regard which ^{has been} also been referred to Para 2 above. It is submitted that the recovery of 500/- per month was continued ^{in only till such time as} as the applicant himself submitted an application that he had removed his



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(5)

cattle and the Committee constituted in this regard had verified the same. He again let loose his domestic animals and, therefore, this amount was recovered from the applicant. By mistake it was shown under the head licence fees. The error took place as computerization has been introduced only recently and the staff are not familiarizing themselves with its operations.

8. The respondent filed a detailed ~~re~~ reply and referred to the provisions ~~contained~~ ^{contained} in Section 5 A (3) of the Public Premises (Eviction of Unauthorized Occupants, Act 1971). ~~He has also referred to the other provisions. It is contended that the Director~~ ^{It is} is competent to take action under the said Act. The Annexures referred to sur-rejoinder were not on record but was subsequently brought on record pursuant to our order dated 05.01.2009.

9. We have heard the learned counsels.

10. The Public Premises (Eviction of Unauthorized Occupants), Act, 1971 is an Act to provide for the Eviction of Unauthorized Occupants from Public Premises and for certain incidental matter. The word 'Premises and Unauthorized Occupation' has been defined under Section 2 (E&G) of the said Act. The said Sections read ^{1(2)(g)} as ~~read~~ ^{rules} as under:-

"premises" means any land or any building or part of a building and includes- A



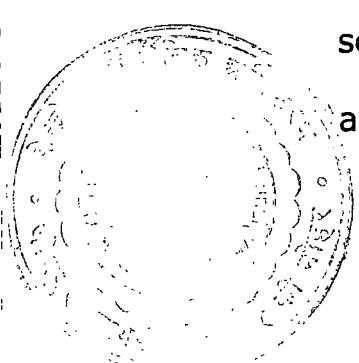
(6)

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building, and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

11. Section 3 of the Act provides that a Gazetted Officer of the Government may be appointed as Estate Officer by notification in the Official Gazette. No such notification has however been brought on record. Section 5 provides for Eviction of Unauthorized Occupant. Section 5 (A) empowers to remove unauthorized construction. Sub-section (1) thereof is in negative terms and amongst others restrained any person from bringing or keeping any cattle or other animal even in any public premises, he is allowed to occupy. Section 5 (B) provide for demolition of unauthorized construction. Section 5 (C) provides for powers to seal unauthorized construction. Section 7 (2) provides for assessment of damages on account of use and occupation of such

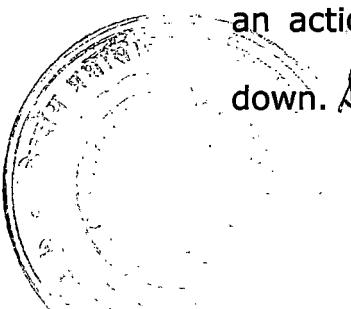


(7)

premises. No notification empowering the Director to ~~Act~~ as an Estate Officer under the said Act has been produced before us. Therefore, we cannot examine these notices from the point of view that a wrong mention or non-mention of Rule vitiated the order. As a matter of fact this Tribunal will have no jurisdiction to adjudicate the issue involved in the instant case as has been held by the **Hon'ble Apex Court in Union of India V/s Rasila Ram & Others, [Supreme today 2001(4), page No. 505]**.

12. One of the enumerated penalties under CCS (CCA) Rules 1965 is the recovery of losses caused to the Government from the salary of the employee, it provide for other punishments also. It is evident that though the various orders produced by the respondents show that disciplinary action will be taken, no enquiry as envisaged under CCS (CCA) Rules 1965, has been taken.

13. The respondents have also not brought on record any other order to show that there is an order of the Department that this amount can be recovered by way of fine by Administrative Authorities from these employees. We are aware that some administrative orders do provide for imposition of fine on Group 'D' for maintaining decorum of Office like for being punctual or wearing the uniform given to them by Office. It is well settled that an action can be taken only in the manner, which has been laid down.



14. Under these circumstances the present order of recovery cannot be sustained. We make it clear that ~~it has to be~~ set aside in respect of the applicant and that this order shall not stand in the way of respondents taking steps under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or CCS (CCA) Rules 1965 or ~~executive~~ ^{executive} order if any of the Ministry authorizing such recovery. The amount recovered from the applicant shall be refunded within two months of the receipt of the order. ^{MA also} ~~Shankar Prasad disposed off.~~

Shankar Prasad
[Shankar Prasad]
Member (Admn.)

N.D. Raghavan
[N.D. Raghavan]
Vice Chairman

Rss

R.C
Kremser
3/3/09

Part II and III destroyed
in my presence on 07/07/2015
Under the supervision of
police officer () as per
order dated 07/07/2015

Police officer (Record)

Goswami
SJB