

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

CALCUTTA

No. O.A.882/97

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

SUSHIL CH. PAUL

VS

1. UNION OF INDIA, SERVICE THROUGH THE SECRETARY, MINISTRY OF LABOUR, GOVT. OF INDIA, NEW DELHI.
2. REGIONAL LABOUR COMMISSIONER (CENTRAL), 2ND M. S. BUILDING, 5TH FLOOR, NIZAM PALACE, 234/4 A.J.C. BOSE ROAD, CALCUTTA-20.
3. ESTATE MANAGER, GOVT. OF INDIA, 5, ESPLANADE R EAST, CALCUTTA-69.

For the applicant : Mr. B.C. Sinha, counsel
Mr. A. Chakraborty, counsel

For the respondents : Ms. K. Banerjee, counsel

Heard on : 3.2.99

Order on : 3.2.99

ORDER

The question for decision in this case is whether the respondents are right in charging damage rent for occupation of two quarters simultaneously by the applicant one at Salt Lake and another at Tallygunge on the basis of the allotment made by the authorities. According to the applicant initially he was allotted a Type-I quarter in Block KC, Salt Lake in the year 1984 and he occupied the same with effect from 2.8.84. Thereafter the applicant applied for ^{the} change of allotment at Tallygunge by filing ^{he} representation and was allotted a quarter there bearing

Flat No. 28 Block II (at Tollygunge), Calcutta. He occupied the said quarter on 10.12.86. Thereafter he again applied for another quarter and he was allotted a quarter again in Salt Lake in lieu of Tollygunge ~~to~~ Flat which was a Type II quarter. But the applicant did not accept the said allotment and that was duly intimated to the authorities. It is alleged by the applicant that to his surprise the respondents' Estate Manager requested the Regional Labour Commissioner, (Central), Nizam Palace, Calcutta to recover the amount of Rs. 1,82,704.00 up to 12/96 which is due against the applicant for his double occupation of both the Flats upto 24.12.96 and failing which interest at the rate of 12% p.a. should be charged against the applicant (annexure A-4 to the app.). It is also alleged by the applicant the Estate Manager did not initiate any proceeding for unauthorised occupation of the quarters under Public Premises (Eviction of unauthorised Occupants') Act, 1971 before the claim or recovery as stated above. It is also stated by the applicant that the Estate Manager by a letter dated 24.4.97 again requested the Regional Labour Commissioner (Central) to start recovery of Rs. 1,83,610.00 only for double occupation of the Govt. quarters immediately, though the applicant vacated the Type I quarter in Block KC, at Salt Lake on 10.12.86 with due intimation to the Estate Manager on 11.12.86. According to the applicant since he vacated ~~the~~ the quarter at Salt Lake before taking possession of the quarter at Tollygunge, ~~as~~ the respondents are not authorised to charge damage rent

or any for occupation of the quarters at Salt Lake after 10.12.86 on the basis of the order of allotment dated 2.12.86. =

Hence the ~~entire~~ ^{all} actions of the respondents are liable to be quashed.

2. Respondents filed written statement denying the claim of the applicant stating inter alia that he (the applicant) was allotted three quarters as stated by the applicant. But after getting allotment order of the said quarter at Tollygunge on the basis of his own prayer, the applicant did not vacate the quarter No. 836, Ty-I, Block-KC, Salt Lake and without vacating the said quarter he occupied the newly allotted quarter at Tollygunge. He was evicted from the Salt Lake Flat No. 836, TyI, Block-KC, on 16.1.97 and he vacated the quarters at Tollygunge on 24.12.96. According to the ^{both} respondents, allotment order of the flats were cancelled w.e.f. 10.12.86 for breach of provision of the Allotment Rules, 1963 and therefore the applicant is liable to pay damage rent for unauthorised occupation of the two quarters at a time till he was evicted from Salt Lake quarter.

3. Mr. Sinha strenuously argued before me that he surrendered the quarter of Salt Lake before taking possession of the Tollygunge quarter. Respondents did not deny this fact as stated in the application. The respondents have no authority to charge damage rent on the ground of unauthorised occupation of double quarters since the applicant surrendered the first quarter i.e. at Salt Lake on 10.12.86 before taking possession of the second quarter at Tollygunge. Referring to the letter dated 20.2.97 (annexure A-8 to the app.) he submits

that the ~~respondents~~ are not correct to charge damage rents on the alleged ground. There is laches on the part of the respondents and that laches on the part of the Estate Manager's office have been reflected in the said letter. Thereby the applicant should not be charged with damage rent. He further submits that no cancellation order in respect of the said two quarters has been served to the applicant till ^{1st Advocacy of the} date. It is also submitted by the applicant that the respdts in the letter dated 24.4.97(annexure A-5)mentioned that in their inspection it was found that the applicant was occupying both the Flats w.e.f. 10.12.86. But respondents could not produce any report of inspection as stated in clause(iii) of the said letter. So, the actions of the respondents were arbitrary illegal and violative of principle of natural justice.

4. Ms. Banerjee ld. counsel appearing on behalf of the respondents had produced records and submits that the applicant did not surrender the first quarter at Salt Lake before taking possession of another quarter at Tollygunge and the applicant could not produce any surrender certificate to show that he surrendered the quarter at Salt Lake as per terms of allotment order. The respondents are authorised to charge damage rent for double occupation of quarters w.e.f. 10.12.86. Ms. Banerjee also submits that in the order of allotment it was clearly mentioned that in case of change of quarter, previous residence should be vacated within two days otherwise damage rent would be charged at market rate. Thereby the applicant was rightly charged with damage rent since he did not vacate the previous quarter at Salt Lake.

So, the application is devoid of merit and is liable to be dismissed.

5. I have considered the submissions of ld. counsel of both the parties and perused the records produced by the respondents at the time of hearing. The matter of allotment as well as the order of cancellation are no doubt an executive function of the respondents. But the respdts must act fairly in accordance with the rules for the purpose of taking action for realisation of damage rent from the allottee for alleged unauthorised occupation of the Govt. quarter. From the note dated 13.9.96 of office File No. 1/3380/96-Allet, it is found that respondents took action regarding order of cancellation of the quarters on the ground that the applicant Sri Paul occupied both the quarters simultaneously ~~in the year~~ 1996. Before that respondents did not take any action against the applicant. But from para 2 of the said note it is found that the said quarters was allotted in favour of Smt. Mira Devi Hela in the year 1991. It is also found from the note that at the time of compiling the allotment register of the office with the records of CPWD as per direction of the Estate Manager, it had been ascertained that Qtr.No.836,KC,Salt Lake was not under the occupation of Smt. Mira Devi Hela. As per record Sri Paul was still holding the quarter. On that note, the Estate Manager made the following notes :-

"(i) Why this was not checked earlier?
(ii) Who is held responsible for this lapse?
(iii) Cancel both the allotments & w.e.f.10.12.86 & send this case to the eviction cell."

From this remark, as stated above it is found that the Estate Manager unilaterally acted in respect of cancellation of both the quarters w.e.f. 10.12.86 without affording any opportunity to the applicant. He took a decision without ascertaining the facts as to whether the last allottee Ms. Mira Devi Hela really occupied the Salt Lake quarter or not in the year 1991. On perusal of files and records I have been compelled to express my displeasure in respect of maintenance of office files and records in the office of the Estate Manager. The manner of maintenance of records as found from the file does not speak well. *It may be stated that* view of the reason that this Govt. servant cannot be put under the mercy of the Estate Manager in respect of allotment of quarters and cancellation thereof. The office of the Estate Manager having a responsibility must maintain the records properly in order to earn confidence of the higher authorities and the court or Tribunals. Moreover, I do not find any inspection report in respect of possession of quarters at Salt Lake by the applicant as stated in the letter (annexure '2'). It is also not understood how the said quarter was allotted in favour of Smt. Mira Devi Hela in the year 1991 without ascertaining the occupation of the quarter by Mr. Paul. Though I find that the applicant also could not produce any record to show that he surrendered the quarters at Salt Lake. In this connection, I like to refer a decision of the Hon'ble Supreme Court reported in AIR 1967 page 1427, *Jay Singhani Vs Union of India & Ors.* where it is held,

"The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based."

7. In view of the aforesaid circumstances, I am of the view that for the sake of justice, ~~and~~ proper enquiry on the part of the authority should have been done to find out the real position of the case regarding alleged occupation of

the quarter at Salt Lake by the applicant before charging damage rent ~~was~~ against him. I also find that the Regional Labour Commissioner(Central), Calcutta already pointed out the laches of the respondents(Estate Manager) in respect of charging damage rent against the applicant and that letter cannot be overlooked for the purpose of ~~is~~ adjudication of this case. In view of the above, I set aside ~~all~~ the impugned order passed by the Estate Manager in respect of realisation of damage rent from the applicant for the alleged double occupation of qtrs. simultaneously. I remit this case to the Estate Manager to make a fresh enquiry and to decide ~~with~~ ^{making} in accordance with the law after ~~finishing~~ proper enquiry and after giving proper opportunity to the applicant as per rules. Accordingly the application is allowed partly with the aforesaid observation and the applicant is entitled to get a cost of Rs.1000] to be paid by the respdts.

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(D. PURKAYASTHA)
MEMBER (J)

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