

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 605/91
T. A. No. 199

DATE OF DECISION 24.2.92

T.K.Gokuldas Applicant (s)

Mr. M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

U.I.I, rep. by Secretary, Respondent (s)
Min. of Defence & 2 others.

Mr. TPM Ibrahim Khan, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Member (Admve.)

The Hon'ble Mr. N.Dharmadan, Member (Jud1.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

N.V.Krishnan, AM

The applicant was sanctioned a house building advance (HBA) of Rs 57000 on 7.2.89 (Ann.I) for purchase of a ready built flat. Admittedly a large portion of this is still outstanding. As the applicant failed to mortgage the house in favour of the President of India till he repaid the amount with interest, he has been informed by the Ann.V and Ann.VI letters that the entire amount of advance with interest will be recovered from him, from the pay of March 1991. He was not given any pay and allowance on 1.4.91. Hence he has filed this application seeking the following reliefs:

"To declare that the action of the respondents in recovering/adjusting the entire salary of the applicant towards house building advance is illegal, and to direct the respondents to disburse the salary due to the applicant after recovering Rs 430/- per month.

2. An interim order has been passed restricting recovery to the monthly instalment of Rs. 430.

3. The applicant relies on Rule 6 of the House Building Advance Rules, ^(Extracts in para 9 of the affidavit) to contend that so long as the sureties have jointly and severally undertaken to repay the loan, the question of mortgage does not arise. The relevant Rule relied upon concerns advance raised for purchase/construction of a new flat, which is reproduced below:

"6. An advance required for purchase/construction of a new flat shall be paid as follows:-

(a) The Head of the Department may sanction the payment of the amount required by, and admissible to, the applicant, on the applicant's executing an agreement in the prescribed form (vide Form No.5) and comply with the provisions contained in Rule 5(b)(2) for the repayment of the loan. The amount may either be disbursed in one lump sum or in suitable instalments at the discretion of the Head of the Department. The amount so drawn or the instalment(s) so drawn by the applicant shall be utilised for the purpose for which it was drawn within one month of the drawal of the advance or the instalment(s), failing which the advance or part of the advance so disbursed together with interest thereon shall be refunded to Government forthwith, unless an extension of this time limit is specifically granted by the Head of the Department.

(b)(1) In addition to their executing the agreement/mortgage deed referred to in sub-para (a) above, the following three categories of applicants shall also be required to furnish the surety of an approved permanent Central Government servant in the prescribed form (vide Form No.6) before the sanctioned advance or any part thereof is actually disbursed to them:-

- (i) All applicants who are not permanent Central Government servants;
- (ii) all applicants who are due to retire from service within a period of 18 months following the date of application for the grant of an advance;
- (iii) all applicants who are permanent Central Government servants but not covered by sub-para (ii) above if they require the advance for the purchase of a ready-built house.

(b)(2) In addition to the compliance with the provisions contained in sub-para (a) and (b)(1) above, the applicant for constructing or purchase of ready-built flats should furnish adequate collateral security as laid down under Rule 274 of the Compilation of the General Financial Rules (Revised and Enlarged) 1963, to satisfaction of the Head of the Department, wherever the land on which the flats stand is not mortgaged by the owner of land in favour of the President of India as a security towards repayment of the advance.

NOTES: (i) The liability of the surety will continue till the house built/purchased is mortgaged to Government or till the advance together with the interest due thereon is repaid to Government, whichever happens earlier."

4. The most important plea of the respondents is that the Rule for HBA itself requires that mortgage is compulsory. They have stated as follows in para 6 of their reply:

"6. Regarding para 4(1) and (2) of the Original application it is submitted that as per the provisions in Central Government Employees House Building Advance Rules, a Government Servant may avail advance required for purchase of a ready built house. The House Building Advance Rules, for drawal of advance for the purchase of a ready built house stipulates that:-

"An advance required for purchasing a ready built house shall be paid as follows:-

"The Head of Department may sanction the payment of the entire amount required by and admissible to the Applicant in one lumpsum on the applicant's executing an agreement in the prescribed form 5 for the repayment of the loan. The acquisition of the house must be completed and the house mortgaged to the government within 3 months of drawal of the advance, failing which the advance, together with the interest thereon, shall be refunded to Government forthwith, unless an extension of time limit is granted by the Heads of Department concerned."

This is quite different from the rule relied upon by the applicant, extracted in para 3 above. The applicant has not denied the existence of this rule in his rejoinder.

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5. We have perused the records and heard the parties.
6. Respondents have produced Exbt. R-1(A) which is the sanction for the HBA. This is the same as Annexure-II. Clauses (a) and (b) read as follows:-

"(a) the grant of advance is subject to the fulfilment of the various conditions laid down in the 'rules to regulate the grant of advance to Central Government Servants for building etc. of houses'.

(b) The payment of advance will be made on his executing Personal Bond and Surety Bond as Annexures I and II respectively to the Ministry of Works & Housing OM dt. 30 Nov. 77 ibid."

Thus, clause (a) of the sanction at Exbt. R-1(A) makes the HBA subject to the Rules which require that the house must be acquired and mortgaged within three months of the drawal of the advance. Hence the applicant cannot escape from this responsibility.

7. However, the respondents do not get any support from the personal bond [Exbt. R-1(B)] executed by the applicant when they state that, according to clause (c) thereof, the applicant has bound himself as follows:

On transfer being executed in favour of the house or plot, he would mortgage it to the Government of India as security for the loan obtained from the Government of India."

They have not carefully read this peculiarly drafted bond. For, para 3 of the personal bond begins by stating "Now this bond is conditioned to be void if the Bounden" (i.e. the applicant) does certain things or does not do certain other things as mentioned in the subsequent clauses (a) (b) (c) and (d). It is in this context that clause (c) is to be read as a contingency when the Bond will be void. The contingency is if the applicant mortgages the property to the Government of India as security for the loan obtained. Therefore, if he mortgages the property, he would be released from the bond. Otherwise, the bond will continue to be in operation. This bond by itself does not compel him to execute a mortgage bond. A definite provision should have been made for that purpose. That is provided in the Rule

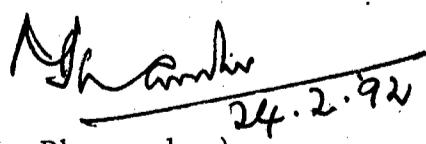
relied by the respondents.

8. The learned counsel for the applicant contends that in terms of the Rule quoted by him he is not required to execute a mortgage so long as the surety bonds are in force. This, he claims, is a conclusion which follows from the 'Note' below the rule extracted in para 3 supra.

9. We haave considered this argument. The 'Note' does not convey any such meaning. The rule, of which the Note is a part, cautions the sureties that their surety bonds will be in force until the loan is either repaid or the mortgage bond is executed. Hence, if they have to be released from the contingent liability of the bond, they have to see that the mortgage bond is executed.

10. In the circumstance, we find no merit in this application. We declare that in the circumstances the respondents are entitled to recover the entire outstanding amount of the advance, with interest, without delay from the applicant in accordance with the HBA Rules and agreement and bond executed. We, therefore, dismiss this application. However, when the applicant requested that he be given some time to execute the mortgage deed, this was not seriously opposed by the respondents. Therefore, the respondents may effect the recovery as declared above only after one month from the date of service of this judgement on the parties, within which period the applicant may execute the mortgage as provided in the Rules.

11. There will be no order as to costs.


24.2.92

(N. Dharmadan)
Member (Judicial)


24/2/92

(N.V. Krishnan)
Member (Administrative)