

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 74 of 2001

Wednesday, this the 4th day of July, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. K.L. Victoria,
Safaiwala,
Naval Ship Repair Yard, Kochi.Applicant

[By Advocate Mr. Vinod Chandran. K]

Versus

1. Union of India represented by Secretary,
Ministry of Defence, New Delhi-11
2. Senior Administrative Officer,
Headquarters Southern Naval Command, Kochi-4
3. Flag Officer Commanding-in-Chief,
Headquarters Southern Naval Command, Kochi-4
4. A. Ramakrishnan Nair,
The Estate Manager, Dawson Vihar,
Thykooodam, Kochi-19
5. Naik Murad Baigh,
Grade II, Military Engineering Service,
Kattari Bagh, Kochi-4Respondents

[By Advocate Mr. C. Rajendran, SCGSC (R1 to R3)]

The application having been heard on 4-7-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:-

- "(i) call for the records leading to Annexure A-4
and set aside the same.
- (ii) direct the respondents 1 to 3 not to evict the
applicant from her residential quarters in
Dawson Vihar, Thykooodam.
- (iii) to grant such other reliefs as this Hon'ble
Tribunal deems fit and

(iv) to grant exemplary costs to the applicant."

2. The applicant is a Safaiwala attached to the Naval Ship Repair Yard of the Southern Naval Command. She was allotted a residential quarter in the year 1990. A4, the impugned order, has been issued stating that the quarter which the applicant is occupying is to be vacated within ten days from the service of A4, the order of cancellation. She is not an unauthorised occupant. She cannot be evicted under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Earlier, the administration issued A2 order to the applicant. That was challenged by the applicant by filing OA No. 1147/2000. That order was set aside in the said OA. The impugned order A4 has been now passed without any further notice. A4 is a non-speaking order without any application of mind. It is done in violation of the findings of this Bench of the Tribunal in OA No. 1147/2000.

3. Respondents 1 to 3 resist the OA contending that the dispute pertaining to eviction from a Government accommodation cannot be agitated before this Tribunal. The same legal issue has already been agitated in OA No. 2063/93 and the Tribunal has dismissed that OA. Against the impugned order the applicant has got a remedy under the Public Premises Act. The applicant can take up the matter before the Appellate Authority in terms of Section '9' of the Public Premises (Eviction of Unauthorised Occupants) Act.

4. The official respondents are relying on the order of this Bench of the Tribunal in OA No. 2063/93, which is produced as R1(B). No law is laid down there. That OA was

dismissed without expressing any opinion on merits for the obvious reason that the applicant therein has preferred an appeal before the competent forum. So, R1(B) is of no avail to the official respondents.

5. The official respondents now say that the impugned order is one issued under the provision of the Public Premises (Eviction of Unauthorised Occupants) Act. From a reading of A4, one is at a total loss to understand under what provision of law the same is issued. When an order is issued, especially when it is detrimental to the interests of the party concerned, it should contain on what legal basis it is issued. One is entitled to know under what authority an order against him is issued. That right cannot be taken away. The authority is expected only to act in accordance with law and that being the position, the provision of law which is invoked should necessarily find a place in A4.

6. In this context, it is relevant to note that while disposing of OA No. 1147/2000 filed by the very same applicant before this Bench of the Tribunal, this Tribunal has observed that:

"The eviction under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act would arise only in the case of a person in unauthorised occupation. A person would be in unauthorised occupation of the public premises if he enters into a public premises unauthorisedly or remains in possession of the premises after the allotment is lawfully cancelled. In this case before issue of Annexure A2 show cause notice no order cancelling the allotment of the quarter in favour of the applicant had ever been issued. The applicant has also not been called upon as to why the allotment should not be cancelled. Therefore, the impugned order passed cancelling the allotment of the quarter in favour of the applicant and

calling upon the applicant to vacate the quarter is null and void as it is violative of the principles of natural justice."

7. Liberty was granted to the official respondents as per order in OA No. 1147/2000 for valid reason like violation of the conditions of allotment etc. to cancel the allotment of the quarter in favour of the applicant. So, it can only be in accordance with law. What is the law applied while issuing A4 is not known from A4. As already stated, though now the official respondents say it is under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, that stand cannot be accepted in the light of the order in OA No. 1147/2000. In the light of the order in OA No. 1147/2000, the official respondents should have proceeded for valid reasons like violation of the conditions of allotment etc. Even in the reply statement, they do not have a case that the applicant has violated any of the conditions of allotment.

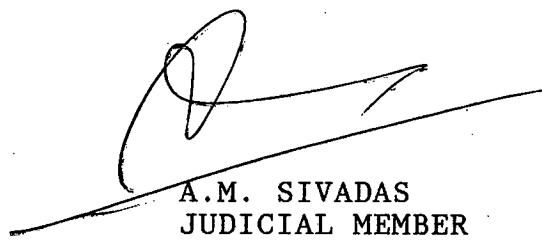
8. Grounds stated in A4 are that the applicant's son is in the habit of picking up brawl/fight with other residents and is considered as a threat to the peace and security of other residents. That aspect has also been dealt with by this Bench of the Tribunal while dealing with OA No. 1147/2000. There it has been stated that:

"If the applicant's son manhandled a uniformed official, prevented him from discharging his duties and committed nuisance the aggrieved person has to set the law in motion against him. That does not enable the respondents to take disciplinary action against the applicant or to evict her from a quarter legally allotted to her, under the provision of P.P.Act."

Inspite of this specific observation in the order in OA No. 1147/2000, it is the very same defence that is raised again. The ground raised herein having been found not valid in the earlier proceeding, it cannot be held good in this proceeding.

9. Accordingly, the Original Application is allowed, quashing A4 and directing respondents 1 to 3 not to evict the applicant from the residential quarter allotted to her in Dawson Vihar, Thykoodam (Quarter - Type I/A-II). No costs.

Wednesday, this the 4th day of July, 2001



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A2 True copy of Order No. CS 1030/Complaint dated 10.10.2000 issued by the 3rd respondent.
2. A4 True copy of Order No. CS 1030/Complaint KLV dated 9-1-2001 issued by 3rd respondent.
3. R1(B) Photocopy of the Order dated 21-4-1994 in OA 2063/93 of this Tribunal.