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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 151/87

198

~~Taxation~~

DATE OF DECISION 20-3-1990

Madanlal Kohli Petitioner

Mr.V.D.Surve Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

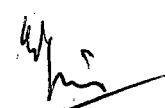
Mr.R.C.Kotiankar for Mr.M.I.Sethi Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Kamleshwar Nath, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No


 (M.Y. PRIOLKAR)
 Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.151/87

Madanlal Kohli,
8/20, Navy Nagar,
Colaba,
Bombay - 400 005.

.. Applicant

vs.

1. The Union of India
through
The Commandent,
Embarkation Head Quarters,
Post Box No.331,
Bombay - 400 001.
2. The Area Commandent
The Station Head Quarters,
Colaba,
Bombay - 400 005.
3. The Garrison Engineer(North),
Santacruz,
Kalina,
Bombay - 400 029.

.. Respondents

Coram: Hon'ble Shri Justice Kamleshwar Nath, Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.V.D.Surve
Advocate
for the applicant.
2. Mr.R.C.Kotiankar
for Mr.M.I.Sethna
Advocate for the
Respondents.

JUDGMENT:

(Per M.Y.Priolkar, Member(A)

Date: 20-3-1990

The applicant in this case is a Defence civilian employee, working as a tally clerk in Embarkation Headquarters, Bombay. He was allotted residential quarter No.106/24, M.E.S.Colony, Kalina, Santa Cruz, Bombay on 21-7-1978 but this allotment was cancelled on 15-10-1984 for sub-letting to unauthorised persons. The applicant alleges that he was forcibly evicted from this quarter on 15-10-1985 and that damages amounting to Rs.11,113.40 for alleged defects/deficiencies at the time of eviction are being recovered from his paybills, without following

the procedure prescribed in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (P.P. Act 1971, for short). The prayer of the applicant is for a declaration that the assessment of damages of Rs. 11,113.40 is illegal and improper and the impugned order dated 2-1-1987 for recovery of damages should be quashed and set aside. This amount has since been fully recovered from the applicant's pay bills.

2. The applicant alleges that Respondent No. 3, namely Garrison Engineer (North) sent a voucher dated 1-9-1986, i.e. one and a half year after taking possession of the quarter, stating the defects/ deficiencies noted on 1-4-1985 (i.e. alleged date of eviction) and also fabricated the signature of the applicant, but that he was evicted on 15-4-1985. He also states that he was not present at the time of eviction and the deficiencies were noted in his absence. The applicant claims that the assessment of damages amounting to Rs. 11,113.40 is not binding on him as the quarter was in good condition when the respondents took its possession and also for the reason that both for his eviction as also for the assessment of damages, the mandatory provisions of the P.P. Act, 1971 have not been observed.

3. In their affidavit-in-reply, the respondents have stated that under the P.P. Act, 1971, eviction proceedings were initiated against the applicant on 15-10-1984 after receipt of a Police report regarding a quarrel between the two families who were staying in the quarter as unauthorised sub-tenants of the applicant. After considering his representation dated 2-11-1984, a notice under sub-section (1) of Section 4 of the P.P. Act, 1971 was issued by the Estate Officer to the applicant on

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20-11-1984, to show cause why an eviction order should not be passed against him. The notice which was sent by registered post acknowledgment due was however refused by the applicant as per the endorsement of the postal authorities. A copy of the said notice was, therefore, affixed on the door of the applicant's quarter in the presence of two witnesses, as stated in the letter dated 17-12-1984 from 128 Air Defence Regiment. However, before final eviction orders could be issued by the Estate Officer, the applicant himself approached the authorities and volunteered to surrender the quarter and, in fact, reported to the office of the Garrison Engineer(North) for handing over the quarter, and the applicant himself had signed the handing/taking over document as well as the damage voucher.

4. The only relief prayed for by the applicant is that the damages as assessed should not be recovered from him. Therefore, the question that arises for our determination in this case is whether the assessment of damages totalling Rs.11,113.40 as contained in the voucher dated 1-9-1986 has been properly made and is binding on the applicant. The learned counsel for the applicant contended that the applicant was forcibly evicted from his quarter and, therefore the assessment of damages, if any, should have been made after following the procedure prescribed in Rule 8 of the Public Premises(Eviction of Unauthorised Occupants)Rules,1971, by the Estate Officer himself, namely, the Brigadier Commanding Bombay Sub Area and not by an official of the office of the Garrison Engineer, as has been done in the present case. He also contended that the defects and deficiencies

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have been noted on 1-4-1985, the applicant was evicted on 15-4-1985, the ^{damages 4} voucher was prepared on 1-9-1986 and countersigned by the Garrison Engineer on 21-11-1986, the applicant's signature has been fabricated on the voucher and, therefore, the assessment is illegal and not binding on the applicant. We may proceed to examine each of these contentions.

5. The applicant's charge that his signatures have been forged on the handing/taking over of the quarter and on the damages voucher (exhibits O and P to the reply) is quite serious and may be considered first. We have seen the applicant's signatures made on various occasions in the past in his service record and other documents contained in his personal file which were produced by the respondents for our perusal, and we are satisfied that the trend and style of those signatures tally with those on the handing/taking over document and the damages voucher, though the signature of the applicant in the present application, and those on some of the communications from him after filing this application are in a different style. We do not also see any reason why after issuing show cause notice under the P.P. Act, 1971 and even after affixing a copy of this notice in the presence of two witnesses after the applicant's refusal to receive the notice, the proceedings initiated under the P.P. Act, 1971, should be abruptly dropped without issuing the eviction order, unless the applicant had volunteered to surrender the quarter. Further, from the two letters of the Station Headquarters, Colaba, Bombay dated 28-3-1985 and 31-3-1985 (exhibits L and M to the reply), copies of which were endorsed to

the applicant, it is clear that the applicant had indicated to the authorities his willingness to surrender the quarter. The applicant has also not alleged any malafides against any official and it seems inconceivable that anyone, for no apparent reason, will take the risk of fabricating the applicant's signature on official documents. For all these reasons, we reject the applicant's contention that his signatures have been forged on the handing/taking over document and the damages voucher.

6. Regarding the requirement of assessment of damages being made by the Estate Officer himself, after following the procedure under the P.P. Act, 1971, the learned counsel for the respondents stated that since the applicant had voluntarily approached the authorities for surrendering the quarter and, in fact, reported to the Garrison Engineer (North) and signed the handing/taking over document as well as the damages voucher, there was no necessity of affording an opportunity to the applicant of being heard nor was it necessary to issue a formal eviction order, or make an inventory on eviction or assess the damages as required under the P.P. Act, 1971. Being a voluntary surrender, the relevant departmental instructions contained in Regulations for the Military Engineering Services, 1968 (Reprint 1982) were followed for assessment of damages. According to para 43 of this compilation, a Garrison Engineer in charge of a division is responsible for assessment of barrack damages, which are defined in para 633 as damages to buildings, fittings, fixtures and furniture, caused wilfully, or by negligence. Para 634 of the compilation lays down that barrack damage vouchers will be prepared at replacement cost and the amount recovered from the

individuals responsible. Para 635 provides that vouchers in respect of individuals in government employment will be sent to their units for recovery in cash or with their agreement through their paybills. We have already held that the damages statement has been signed by the applicant himself. The voucher contains a statement signed by the applicant that he accepts the damages and the amount can be recovered from his pay and allowances. We are, therefore, satisfied that this is not a case of forcible eviction but one of voluntary surrender and the respondents have correctly followed the departmental instructions in recovering the barrack damages from the applicant.

7. Regarding the delay in taking over the quarter on 15-4-1985, though the deficiencies were noted on 1-4-1985, and the ~~the~~ further delay in preparing the damages voucher on 1-9-1986, the respondents have explained that though the deficiencies were noted on 1-4-1985, the applicant physically handed over the quarter only on 15-4-1985, when the deficiencies still existed. Thereafter, the damages statement was sent for pricing to the respective departments and for checking by audit authorities, and finally, to the paying authority to effect the recovery. We do not think that this delay can be considered as unreasonable, or that it vitiates the assessment made of damages or that it can, ^{in any case, come} ~~cause~~ in the way of enforcing the recovery of damages.

8. On the basis of the foregoing discussion, we see no merit in this application which is accordingly dismissed with no order as to costs.

M. Y. Priolkar
20-3-90
(M.Y. PRIOLKAR)
Member(A)

Kamleshwar Nath
(KAMLESHWAR NATH)
Vice-Chairman