

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Miscellaneous Petition No.911/96 in  
Original Application No: 654/96.

Date of Decision: 2.9.97

Chacko Jacob,

Applicant.

Shri S.Natarajan.

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri J.P.Deodar.

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. M.R.Kolhatkar, Member(A).

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

  
(B.S. HEGDE)  
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

MISCELLANEOUS PETITION NO. 911/1996  
IN  
ORIGINAL APPLICATION NO. 654 / 1996.

Tuesday, this the 2nd day of Sept 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Chacko Jacob,  
C-11, Takshasila,  
Anushaktinagar,  
Mumbai - 400 094.

... Applicant.

(By Advocate Shri S.Natarajan)

V/s.

1. Union of India through :  
Secretary,  
Department of Atomic Energy,  
Anushaktibhavan, CSM, Marg,  
Mumbai - 400 039.

2. The Chairman,  
Atomic Energy Regulatory Board,  
Vikram Sarabhai Bhavan,  
Anushaktinagar, Mumbai - 400 094.

3. Controller, BARC,  
Central Complex, Trombay,  
Mumbai - 400 085.

4. Head Personnel Division,  
BARC, Central Complex, Trombay,  
Mumbai - 400 085.

... Respondents.

(By Advocate Shri J.P.Deodar).

O R D E R

(Per Shri B.S.Hegde, Member(J))

Heard Shri S.Natarajan, counsel for the  
applicant and Shri J.P.Deodhar, counsel for the  
respondents.

2. The applicant has filed M.P.911/96 seeking  
a direction to the respondents to permit the applicant  
to retain the quarter occupied by him on payment of

normal licence fee pending hearing and final disposal of the case. The O.A. was admitted on 8.7.1996. In the first instance, as he had challenged the dismissal order of the respondents dt. 25.8.1995 he has prayed for interim relief viz. allowing the applicant to retain the quarter in occupation by payment of normal licence fee pending hearing and disposal of the case.

3. The applicant had filed two other O.As. before this, one against the show cause notice O.A. No.1319/95, which has been disposed of by the Tribunal on 10.11.1995. The Tribunal after hearing that the parties held/the entire procedure involved in the P.P. Act, is a Quasi judicial, Estate Officer will have to adjudicate the matter as per the submissions and averments made by the allottee in regard to the show cause notice. No order relating to eviction has been passed yet and the proposed action of the Estate Officer cannot be anticipated at this stage. It appears that the interference of this Tribunal at this stage will be highly premature in the absence of any conclusive decision at this moment. Application was therefore, dismissed as premature. Thereafter, he filed another O.A. viz. O.A. 1480/95 challenging the eviction order passed by the Estate Manager vide order dt. 29.11.1995, as a consequence to the dismissal order passed earlier. The Tribunal vide its order dt. 4.12.1996 passed the following order :

"As far as the applicability of D.N.Singh's case is concerned we are not required to consider the issue in this O.A. since the applicant has already filed a separate OA

challenging the order in appeal confirming the order of dismissal and the applicant may seek an interim relief as part of that case. We, therefore, dismiss this O.A. with no order as to costs. We, however, direct that the applicant may not be evicted from the quarters for one month from the date of communication of the order during which time it is open to the applicant to approach the Tribunal in the separate O.A. filed by him for interim relief if he is so advised. There will be no order as to costs."

4. Against the eviction order dt. 29.11.1995 the applicant straight away filed O.A. 1480/95 on 18.12.1995 seeking relief to retain the quarter on payment of normal rent at the rate paid by him before his dismissal during the period of appeal and to quash the order of eviction. By way of interim relief the Tribunal granted the status quo as on 19.12.1995, the same was made absolute on 15.2.1996. However, pursuant to the ratio laid down in D.N.Singh's case, the Tribunal directed the respondents not to evict the applicant despite the eviction order ~~was~~ passed by the Competent Authority.

5. The respondents have filed a reply to the M.P. and have opposed the interim order being passed at this stage by the Tribunal. Further it is submitted that in the case of D.N.Singh the action was dismissal without following the required procedure, whereas in the present case the applicant was dismissed after following the required all/procedure and as such the M.P. filed by the applicant is not maintainable and he cannot be allowed to continue in the quarter as due process of law has been completed. The final order of eviction was passed after giving him a full opportunity by giving a personal

hearing on 14.11.1995. In the present case the required procedures has been adhered to by the respondents and the same has been completed and thereafter the eviction order was passed. If the applicant is aggrieved by the order of the respondents it was open to him to challenge the same under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that the appeal shall lie on the order of the Estate Officer to the District Judge of the District in which the Public Premises is situated, that it is considered as part of the proceedings and unless that provision is exhausted, the applicant cannot approach this Tribunal for any relief against the decision of the Estate Officer. It is true that in terms of Full Bench Judgment in Rasik Ram, he could approach the Tribunal also but the Tribunal has the discretion not to entertain him till the statutory remedy is exhausted.

6. In the light of the above, the question to be seen here is whether it was incumbent upon the Tribunal to entertain the M.P. filed by the applicant especially when the O.A. was admitted long time back, merely on the ground that he should be allowed to stay in the quarter till the disposal of the O.A. or can resort an alternative remedy under section 9 of the P.P. Act and to exhaust the same before approaching the Tribunal. It is true that the applicant has not mentioned anything about the order passed by the

Estate Officer under the P.P. Act. The only prayer that has been made is that he should be allowed to continue in the quarter in terms of the D.N.Singh's case. Once the Estate Officer has passed the order under section 5 of the Act, in our opinion, it is open to the applicant to challenge the same, if he is ~~aggrieved~~ aggrieved, in terms of the P.P. Act and not by approaching the Tribunal. The Tribunal can consider such an application provided it is pending before the Estate Officer. Once the Estate Officer is seized of the matter and has passed a final order, the said order shall have to be challenged before the Competent Authority in terms of the P.P. Act and not by approaching the Tribunal merely on the ground of D.N.Singh's case. The learned counsel for the applicant has also drawn our attention to the decision of this Bench in O.A. No.768/96 S.Choudhari v/s. Union of India & Ors. In our view, it stands on the different footing, because in that case there was no order of Estate Officer, whereas, in the present case there is an order of Estate Officer which fact the applicant has suppressed. As stated earlier, the Estate Officer having passed the final order under section 5 the applicant should challenge the same in terms of P.P. Act. Accordingly, interim order passed on 6.1.1997 stands vacated. We record the undertaking given by the counsel for the respondents

that if applicant succeeds in the O.A. they shall provide him out of turn allotment. M.P. filed by the applicant is dismissed. No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)  
MEMBER (A)

B.S.Hegde

(B.S.HEGDE)  
MEMBER (J).

B.

~~order/ Judgement despatched  
to Applicant/ Respondent (s)  
on 18/9/97~~

~~23/9/97~~