

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 417/1996

Date of Decision: 1.8.96

Shri S.A. Gauda

Petitioner/s

Shri S.N. Pillai

Advocate for the
Petitioner/s

V/s.

Union of India & Others

Respondent/s

Shri V.S. Masurkar


Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

- (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)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, 'GULESTAN BUILDING' NO.6
PRESCOT ROAD, FORT, MUMBAI-400001.

O.A. NO. 417/96

Dated this 18 day of August 1996.

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

Shri S.A. Gauda
residing at
Room No. 15
Matadin Chawl No. 9
Kol Dongri
Sahar Road,
Andheri (East)
Mumbai-400 069

(By Advocate Shri S.N.
Pillai)

... Applicant

v/s

1. Union of India
through the General Manager
India Government Mint
S.B.S. Road, Fort
Mumbai-400 023.
2. The Estate Manager
Old CGO Building Annexe
3rd Floor, 101, M.K. Road
Mumbai 400 020.
3. The Estate Officer
3rd Floor, Old CGO Building
101, M.K. Road
Mumbai 400 020.
4. Director of Estates
Ministry of Urban Development
Nirman Bhavan
New Delhi - 110 001.

(By advocate Shri V.S.
Masurkar, Central Govt.
Standing Counsel)

... Respondents

O R D E R

[Per : B.S. Hegde, Member (J)]

Heard Shri S.N. Pillai for the applicant and
Shri V.S. Masurkar for the Respondents and perused the

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pleadings of the parties. The submission made by the applicant is that the Tribunal has given ex-parte ad-interim order on 2-5-1996 in regard to recovery of the outstanding licence fee payable by the applicant to the Respondents in terms of the Respondents' letter dated 29-11-1995 for a sum of Rs. 99,566.00. Accordingly, he has prayed in the O.A. that the Respondents be directed not to recover penal/damage/market rent from the applicant for occupation of Quarter No. 2082, Type II, Kane Nagar, Bombay 400 037.

2. The brief facts of the case are that the applicant was working as a Die-Setter in the India Government Mint, Bombay ^{and} had been allotted Type II quarters on 29-10-1984 at Kane Nagar, Bombay. A surprise inspection was made on 6-1-1992 and the said quarter was found locked. On enquiry with the neighbours who have stated that some people come at odd times and that they do not stay there. The neighbours, however, refused to sign the statement made by them. Accordingly, the Inspection Squad made out a case for subletting the house and issued a show cause notice on 24-1-1992 under Certificate of Posting with a copy to the Administrative Officer, India Government Mint where the applicant is working. The applicant did not appear for the hearing. He was given another date of hearing on 8-4-1992. Again, he did not appear for the hearing. Since he did not appear for the hearing pursuant to the notice, the Estate Manager presumed that the applicant does not have any evidence to prove his stay and he is not interested to defend his case and accordingly cancelled the allotment by way of Memorandum dated 27-5-1992 which is ^{also} served under certificate of posting. Since the applicant did not

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vacate the premises, the Respondents issued a show cause notice under section 4 of the P.P. Act. Again, the applicant did not appear for the hearing. He was given another date on 24-11-1992. However, the applicant submitted a letter on 28-10-1992 to the Directorate of Estate, New Delhi saying that he was hospitalised at St. George Hospital on 26-1-1992 and discharged on 4-2-1992 which is mentioned in the requisition form of the Hospital. The applicant took a plea that he was not found at the time of inspection because he was confined to bed in the hospital during the said period but the fact remains that at the time of inspection he was not hospitalised. Despite notice, he did not care to appear before the Estate Officer.

3. Notice for eviction under section 4 of the P.P. Act was issued in 1992 and Order of Eviction under section 5 of the P.P. Act was issued on 13-10-1995. Pursuant to the order passed by the Estate Officer under the P.P. Act on 13-10-1995, the applicant vacated the quarter on 30-10-1995. Against the order of the Estate Officer, the applicant made a representation to the Director of Estates, New Delhi on 28-10-1992 stating that during the time of inspection he was hospitalised but the statement has been rescinded later. He also made a representation to the Estate Officer on 22-11-1992 stating that he has a strong case in his favour and it is a fit case on merit that the proceedings before the Estate Officer be adjourned till disposal of the said representation etc. etc.



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4. The main contention of the applicant is that it is not open to the Respondents to decide the calculation or quantity while issuing the notice under section 4 which reads as follows -

"WHEREAS Shri SA Gauda who is working in the capacity of Asstt. Class-II in the office of the IG Mint, Fort, Bombay has sublet the Government premises to unauthorised persons. The allotment therefore was terminated in his favour with effect from 16-7-1992 vide this office Memorandum No. 50/(Sub)/20/92-EMB dated 27-5-1992 in accordance with the supplementary Rule, 317-B-21 of the Allotment Rules, 1963 as amended from time to time etc."

The applicant was given 60 days notice to vacate the Government premises in question on payment of 4 times standard licence fee under FR 45-A.

said

5. Though the notice was given as back as 1992, the eviction order was passed by the Respondents on 13-10-1995. The reason for the belated order under section 5 of the P.P. Act has not been made out. The only submission made by the Respondents is that though sufficient opportunity was given to the applicant, he did not avail of the opportunity and no evidence was forthcoming from the applicant, thereby the applicant was liable to pay licence fee as per rules for his such overstayal after the cancellation.

6. It is true that the applicant did not file any written statement in response to the show cause notice justifying the retention of the public premises after the date of termination of the licence; nevertheless, the Respondent is not justified in passing the eviction order after lapse of three years since the reason for such belated order being passed by the

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Respondents is not made out; on the contrary, they issued letter to the Accounts Officer, India Govt. Mint vide dated 29-11-1995 seeking for recovery of licence fee from the applicant to the tune of Rs. 99,566.00. The time gap between the show cause notice and the final order passed by the Respondents and the stand taken by the Respondents is not convincing, especially having cancelled the allotment order as back as 1992 as also why the final order has not been passed by the Respondents within a reasonable time. Though we are not questioning the cancellation of the allotment order on the ground of subletting the same to some unauthorised persons, the recovery of the licence fee sought for vide the letter dated 29-11-1995 by the Respondents in view of the time gap between the show cause notice and the final order seems to be not justified.

6. In the facts and circumstances of the case, I am of the view, that the Respondent ^{be} would be justified in recovery of the licence fee as aforesaid under section 4 of the P.P. Act i.e. the 4 times standard licence fee under FR 45-A. The Respondents are, therefore, liable to rescind the letter dated 29-11-1995 and issue a fresh demand for recovery of the same on the above lines. Accordingly, the demand made by the Respondents vide letter dated 29-11-1995 is hereby quashed and set aside and the Respondents are directed to issue a fresh demand on the basis of the above observation. With the above direction, the O.A. is disposed of. On making a fresh demand, the Applicant is directed to make the payment either in lumpsum or suitable instalments as he is still in service.

B.S. Hegde
(B.S. Hegde)
Member (J)

ssp.