

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:140/99

DATE OF DECISION: 13<sup>th</sup> June 2000

Shri P.K. Roy Applicant.

Shri G.S. Walia Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri Suresh Kumar. Advocate for  
Respondents

**CORAM**

Hon'ble Shri D.S.Naweja, Member(A)

Hon'ble Shri S.L. Jain Member(J)

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

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

(3) Library. *yes*

*S.L. Jain*  
(S.L.Jain)  
Member (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO: 140/99.  
DATED THE 13<sup>th</sup> DAY OF June, 2000.**

**CORAM: HON'BLE SHRI D.S. BAWEJA, MEMBER(A)  
HON'BLE SHRI S.L. JAIN, MEMBER(J)**

Shri P.K. Roy  
Section Engineer (Telecom),  
Message Centre,  
Western Railway,  
Churchgate,  
Mumbai - 400 020.

... Applicant.

By Advocate Shri G.S. Walia

V/s.

1. Union of India, through  
General Manager,  
Western Railway,  
Head Quarters Office,  
Churchgate,  
Mumbai - 400 020.

2. Divisional Railway Manager,  
Mumbai Division,  
Western Railway,  
Mumbai Central,  
Mumbai - 400 008.

3. Estate Officer and  
Senior Divisional Engineer  
(Estate),  
Western Railway,  
Mumbai Central,  
Mumbai - 400 008.

... Respondents

By Advocate Shri Suresh Kumar

(ORDER)

Per Shri S.L. Jain, Member(J)

This is an application under section-19  
of the Administrative Tribunals Act 1985 seeking  
the following reliefs:-

8(a) This Hon'ble Tribunal will be pleased to  
call for the records and proceedings  
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which led to the passing of the impugned order dated 17/2/1999 and after going through its validity, constitutionality, propriety, quash and set aside the same.

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- 8(b) The Hon'ble Tribunal be pleased to hold and declare the impugned cancellation of allotment of the Railway Quarter No.7/E/A at Railway Colony, Santacruz, Mumbai-400 055, is unconstitutional, bad in law and the Applicant is entitled to continue to stay in the said Railway Quarter.
- 8(c) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.
- 8(d) Cost of this Original Application be provided for.

2. At the commencement of the hearing, the Learned Counsel for the Applicant stated that he does not want to press the relief claimed in para-8(a) of the OA as stated above.

3. Applicant who is a Section Engineer(Telecom), Message Centre, Western Railway, Churchgate, Mumbai was allotted Quarter No.7/E/A on 28/8/92.

4. The applicant claims that he is in possession of the Ration Card which proves the fact that he is in possession of the said Railway Quarter. He has received a letter dated 17/2/1999 from Respondent No.3 under section-4 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 which states that the Railway Quarter allotted to him has been cancelled by the office of the Senior Divisional Personal Officer, Mumbai and therefore the applicant has no authority to occupy the said quarter w.e.f.

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23/9/98 onwards due to cancellation of the Railway Quarter in his name. The next date to show cause as to why an order of eviction should not be made was 5/3/99.

5. The Applicant claims that the cancellation order, the basis on which the said notice was issued has not been served on the applicant up till now. He has never been served with any letter or show cause notice before the cancellation of the allotment of the said Railway Quarter. Hence, he is not aware on what grounds and for what reason the Railway Quarter allotted to him has been cancelled. It is learnt that the said cancellation is on some false and fabricated reasons of subletting. The grounds on which the notice under Section-4 is issued and the order of cancellation can be challenged before this Tribunal. The action of the respondents is against the Principles of Natural Justice and there is no reason whatsoever to order the cancellation/to take exparte decision in this respect by the respondents. Thus the order is bad in law, being in violation of Principles of Natural Justice and is therefore liable to be quashed and set aside.

6. The respondents have resisted the claim on the allegations that the application does not

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disclose any cause of action and the same is mis-use of the due process of law and liable to be dismissed on this point alone. It is further alleged that applicant is guilty of suppressing of facts, he is not entitled to any relief. Quarter No.7/E/A Santacruz which was allotted to the applicant was inspected by the respondents on or about 5/8/98. During the surprise check it was noted that applicant was not residing in the quarter and the quarter was sub-letted to an outsider. In pursuance of the said inspection report, the applicant was issued a show cause notice dated 22/9/98 which was addressed to the office of the Applicant as he was working at the said time as Chief Vigilance Inspector, Churchgate and applicant failed to reply to the same rather and neglected the same. As per Master Circular dated 19/1/1993 No.49 Para-6 issued by the Railway Board on the subject, the applicant had sub letted the Railway Quarter, Eviction proceedings is started against him. Section-4 of Public Premises (Eviction of Unauthorised Occupants) Acts affords an opportunity to the applicant to defend his case, i.e. adduce all the evidence in support of his claim that the quarter was not sub letted by him, cross examine the Witnesses of the Respondents. The ration card is not

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conclusive proof that the quarter was ~~quarter~~ was not sub-letted by the applicant or the applicant is residing in the quarter. After issue of notice dated 22/9/98, the applicant had failed and neglected to reply the same, nor vacated the quarter. Hence, the proceedings under Section-4 of Public Premises (Eviction of Unauthorised Occupants) Act 1971 has been started. The applicant has committed breach of the conditions laid down in the allotment of the quarter as he has sub-letted the quarter to an outsider. The applicant has deliberately not replied to the show cause notice for the reasons best known to him. Hence, the applicant cannot claim that no opportunity was afforded to him.

7. In rejoinder affidavit, the applicant has denied every allegation levelled against him and alleged non receipt of notice dated 22/9/98.

8. On 3/1/2000, when the case came up for final hearing, it was ordered that "the respondents will produce the record specially relating to the notice issued to the applicant regarding cancellation of allotment. The point regarding proof of service will make to establish by this any other record may be produced by 6/1/2000." No such record has been produced by

P.S.M. / ...6.

the respondents. During the course of hearing, it is stated by the Learned Counsel for Respondents that notice was sent to the applicant's official address and further details regarding service of the same on the applicant is not available with them. In the circumstances, the only conclusion which can be drawn is that the respondent No.1 and 2 failed to establish that notice was served on the applicant.

9.....From the averments made by the applicant in the OA., it is noted that main thrust of the applicant in assailing the action of the respondents in cancellation of the allotment of the quarter in the name of the applicant is based on the contention that no show cause notice has been given to the applicant to explain his position for cancellation of the quarter and thereby there is a gross violation of the principles of natural justice. In view of this, the order cancelling the allotment of quarter is not legally tenable and the same deserves to be set aside. The applicant has cited several orders of the Tribunal to support his contention. However, before going into merits of this contention, we will first consider the issue of maintainability of OA. before the Tribunal raised by the respondents

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10.....The respondents in their reply have questioned the maintainability of the OA. before the Tribunal once an employee is declared unauthorised occupant of the quarter. The counsel for respondents vehemently argued on this issue stating that once the administration has declared an employee to be unauthorised occupant in the quarter then any remedy for him lies under the Public Premises (Eviction of unauthorised occupants) Act. The counsel for the applicant, however, on the other hand, strongly contested this proposition advanced by the ~~submissions~~<sup>m</sup> the counsel for the respondents. He argued that the OA. is maintainable before the Tribunal on account of the following considerations :- (a) The applicant is not challenging the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act. (b) He is only challenging the cancellation of allotment of quarter in his name, which is a service matter and Tribunal has exclusive jurisdiction over the same. The Estate Officer cannot go into the question of the cancellation of the allotment and the provisions of the extant rules governing subletting of the quarters. (c) There is no provision in the Public Premises (Eviction of Unauthorised Occupants) Act for the aggrieved

employee to approach the Estate Officer challenging the cancellation of the allotment of the quarter and declaring the employee as an unauthorised occupant by the Administration. (d) Referring to schedule -1 of the Administrative Tribunals Act, 1985, it is noted that against Item 4, the cases is relating to allotment and eviction from Government accommodation is covered within the jurisdiction of the Tribunal and is to be adjudicated by a Single Member Bench.

10.....After careful consideration of the rival contentions, we are of the view that the issue needs to be gone into considering following two situations :- (a) the employee is declared unauthorised occupant by the administration after the allotment of the quarter is cancelled or otherwise due to over stay in the event of transfer or retirement. Notices issued to the employee to vacate the quarter but no proceedings are initiated under Public Premises (Eviction of Unauthorised Occupants) Act. (b) Where the proceedings under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act have ~~not~~ been started.

The counsel for the respondents strongly advocated that the moment an employee is declared unauthorised occupant of the quarter, the matter

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comes within the purview of the Estate Officer and the jurisdiction of the Tribunal is outst<sup>ed</sup>. After careful consideration of the matter, we are unable to endorse the stand of the respondents. As long as proceedings under Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act have not been started, the employee is free to agitate the matter before the Tribunal challenging cancellation of allotment <sup>and being</sup> declared unauthorised occupant of the quarter. This is a service matter and well within the jurisdiction of the Tribunal.

11.....The second situation is when the employee approaches the Tribunal challenging the cancellation of allotment and being declared unauthorised occupant on other counts after the proceedings have been started by the Estate Officer under Public Premises (Eviction of Unauthorised Occupants) Act. In such a situation, we are of the considered opinion that the Tribunal cannot exercise jurisdiction of going into the merits of the cancellation of allotment since the employee has adequate opportunity<sup>ies</sup> before the Estate Officer to put forward his case and lead evidence for establishing that the cancellation of allotment

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of quarter was illegal. The views is supported by us for the reasons deliberated hereafter.

12. In view of the facts as stated by the applicant which are established that the applicant who is a Section Engineer(Telecom), Message Centre, Western Railway, Churchgate Mumbai was not served with a notice by the Departmental authorities, an order for cancellation of the residential Quarter allotted to him is passed, the authority under the P.P.E. Act <sup>has</sup> intimated, <sup>and</sup> a notice under section 4 of the P.P.E. Act <sup>is issued and</sup> served on the allottee. <sup>Hence we restrict our consideration to the question whether the Tribunal involved that</sup> has jurisdiction in the matter to consider whether cancellation by the Departmental authorities without following the principles of natural justice is justified/vitiated.

In the result order passed in OA 906/95 Ramdas V/s. Union of India (Single Bench) decided by this CAT, Ernakulam Bench-case relates to Petroleum Unit, the <sup>Quarter</sup> ~~residential~~ being a CBI Pool Quarter, OA No.127/98 dated 30/4/98 Prahalad Varbhuwan V/s. Union of India & Ors (Division Bench), 1996 (1) ATJ 178 Krishna Baburao Panwar V/s. The Chief Post Master and Ors the case relates to an employee of Postal Department, where the question does not relate to

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jurisdiction of the Tribunal after issue of the notice under section 4 of the P.P.E. Act and only principles of natural justice-whether to be followed or not, before cancellation was the subject matter in issue, has no bearing on the present cases.

13. Sections <sup>and 5</sup> 4 of the Public Premises (Eviction <sup>and</sup> of Unauthorised Occupants) Act 1971 as under:

**Sec.4: ISSUE OF NOTICE TO SHOW CAUSE  
AGAINST ORDER OF EVICTION**

- (1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.
- (2) The notice shall-
- (a) specify the grounds on which the order of eviction is proposed to be made; and
- (b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in, the public premises.
- (i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof, and,
- (ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown and also for personal hearing if such hearing is desired.
- (3) the estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.
- (4) Where the estate officer knows or has reasons to believe that any persons are in occupation of the public premises, than without prejudice to the provisions sub-section(3), he
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shall cause a copy of the notice to be served on every person by post or by delivering or tendering it to that person or in such manner as may be prescribed.

This section provides for a issue of show cause notice which gives person affected a right to appear before the Estate Officer. Further, it provides that if necessary a full dress enquiry is contemplated. Moreover, the right to appeal conferred by the Act is much more comprehensive and satisfactory."

**Sec.5: EVICTION OF UNAUTHORISED OCCUPANTS**

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and (any evidence produced by him in support of the same and after personal hearing if any given under clause (b) sub-section (2) of section 4) the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated on such date as may be specified in the order by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of premises.

(2) If any person refuses or fails to comply with the order of eviction (on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1) whichever is later, the estate officer or any other officer duly authorised by the estate officer in this behalf (may after the period aforesaid, whichever is later evict that person from, and take possession of, the public premises and may for that purpose, use such force as may be necessary.

14. From the above provisions, it is noted that the Estate Officer has to first adjudicate as to whether the employee is unauthorised occupant or not. Section-4 affords ample opportunity to the affected person to state his case before the Estate Officer and lead evidence. Further if it is necessary a full dress enquiry

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is contemplated. Further as per Section-8 of the Act, the Estate Officer is possessed with powers of Civil Court under the Code of Civil Procedure 1908 in respect of summoning and enforcing attendance of any person, examining him on oath, requiring the discovery and production of documents, and any other matter which may be prescribed. The Section-5 of the Act, makes it clear that after considering the cause if any shown by any person in pursuance of notice under Section-4, the Estate Officer has to decide the matter in accordance with law and then proceed to pass eviction order. It is not so that the Estate Officer has to pass the eviction order in every case. As he is a quasi judicial authority, he has to decide the case on the merits of the cause shown by the respondents.

15. The section-15 of the said Act, creates a Bar of Jurisdiction regarding any suit or proceedings in respect of eviction of any person who is in unauthorised occupation of any Public Premises. Thus, the exclusive jurisdiction rests on the authorities mentioned in the Act and the Act provides a complete code for the same.

16. The learned counsel for the respondents while relying on the judgements passed in Writ Petition No.74/2000. Union of India v/s. Jahid

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Ali Wajid Ali decided by the Hon'ble High Court of Mumbai argued that Section-14 read with section 28 and 29 of the Administrative Tribunal Act 1985 divest the jurisdiction of Courts and confer the same on the Tribunal created under the Act. The "Courts" would ordinarily mean "Civil Courts". Therefore jurisdiction conferred upon Tribunal created by Statute to deal with specific issues would not be excluded by virtue of Section-14 read with section 28 and 29 of the Act. He contended that the Public Premises (Eviction of unauthorised occupants) Act 1971 was in force before coming into force of Administrative Tribunal Act in 1985. Hence, the Estate Officer who exercises the powers under the said Act, the jurisdiction conferred on him by the said Act is not taken away by Administrative Tribunal Act 1985, as it is not covered in the term of Court. We agree to the said contention of the learned counsel for the respondents in view of the decision in Writ Petition - 74/2000 and Section-14 read with section 28 and 29 of the said Act.

17. The Counsel for the respondents advanced another argument that the Public Premises (Eviction of Unauthorised Occupants) Act 1971 was not corresponding law and hence the jurisdiction

exercised by the authorities under the said Act is not vested under Section-14 of the Administrative Tribunals Act, 1985 on Central Administrative Tribunal. For this he relied upon 1995(2)SCSLJ - 467, Krishna Prasad Gupta V/s. Controller, Printing and Stationary. On going through this, <sup>Judgements</sup> the Hon'ble Supreme Court while dealing with the jurisdiction of the Tribunal on the matters under Payment of Wages Act and Industrial Disputes Act, ~~There is no~~ has observed as under:-

"This decision, in our opinion, is erroneous and does not lay down the correct law. The Full Bench did not consider the impact of the words "Save as otherwise provided in the Act" used in Section 14 nor did it consider the significance of the words "Corresponding Law" occurring in Section 28 of the Act.

45. We wind up this discussion with the last words that though the tribunal has been constituted as a substitute for the High Court under Article 323 A, the Labour Courts and Industrial Tribunals etc. over which the High Court exercises supervisory jurisdiction continue to function with the incongruous result that though the High Court cannot quash their judgements, it must continue to supervise their functioning. Let us await the decision of the Constitution Bench."

In view of what is said by the Hon'ble Supreme Court in K.P.Gupta's case, we endorse the contention of the respondents.

18. The learned counsel for respondents relied upon some more judgements which are reviewed as under:-(a) (1998)9SCC 577 B.Sharma Rao

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H.Ganeshmal and Anr. V/s. Head Quarters Asst. and Ors. which lays down the proposition that unauthorised occupation is to be decided by Estate Officer, and Civil Court's Jurisdiction to decide such question is barred. It is true that the said authority is under Karnataka Public Premises (Eviction of Unauthorised Occupants) Act 1974 and not under Public Premises (Eviction of Unauthorised Occupants) Act 1971 but as the provision are para-materia the said authority holds good even in respect of Public Premises (Eviction of Unauthorised Occupants) Act 1971.

(b) AIR 1996 SC 982 B.G.Kumaravelu and Anr. v/s. K.R.Kanakarathnam Chetty and Ors. Thn

lays down the proposition that a suit by a landlord for eviction of tenants in Civil Court is not maintainable. On perusal of the said authority, we are of the considered opinion that the said authority doesn't deal with Public Premises but it deals with the other premises and the proposition of the law laid down is that if there exists a special legislation for dealing the matter the general law shall not prevail.

(c) AIR 1996 SC 523 Laxmi Chand & Ors. v/s. Gram Panchayat, Kararia and Ors. which lays down the proposition that in respect of Cases arising under Land Acquisition Act-Jurisdiction of the

Civil Court to take cognisance thereof - is barred. We agree to the said proposition of law, that whenever a jurisdiction is conferred on a designated authority under a particular Act, the ordinary jurisdiction of the Court is excluded.

(d) AIR 1996 SC 2664 State of Gujarat v/s. Rajesh Kumar Chimanlal Barot and Anr. where the proposition that Consumer Redressal Forums-exercises jurisdiction in respect of Consumer disputes, Civil Court not having Jurisdiction on a subject cannot usurp it on ground that party involved is Gram Panchayat and amount involved is small.

19. From the above deliberations we have no hesitation to conclude that once the proceedings under the Public Premises (Eviction of <sup>are initiated by</sup> Unauthorized Occupants) Act 1971, by issue of notice under Section 4, then the other Courts or Tribunals have no jurisdiction to go into the issue of unauthorised occupation and adjudicate upon the same.

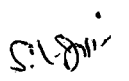
20. The learned counsel for the applicant relied on the II(1988)ATLT (HC) 172 Dharam Dev V/s. Union of India & Ors. decided by Hon'ble Delhi High Court, which lays down the proposition that allotment of quarter is a matter relating to service conditions and Administrative Tribunal have

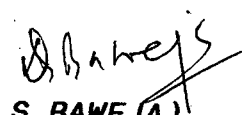
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the jurisdiction to try it by virtue of S 3(q) r/w 14(1)(b) of Administrative Tribunal Act, 1985. This has been dealt with earlier. Till the notice under section 4 is not issued, the matter of allotment and eviction can be agitated before the Tribunal.

view <sup>view</sup> 21. In our finding above, it is not considered necessary to go into the merits of the issue i.e. whether the cancellation of the allotment of the house without show cause notice is sustainable or not since in the present case the applicant has filed the OA after the issue of notice under Section 4 which in fact has been impugned. Reviewing of the orders cited by the applicant in support of his contention of violation of Principles of Natural Justice is also not therefore necessary.

22. In the result, we do not find any merit in the OA and it is liable to be dismissed and is dismissed accordingly with no orders as to costs.

  
(S.L.JAIN)  
MEMBER(J)

  
(D.S.BAWEJA)  
MEMBER(A)