

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 159/99

Date of Decision: 7.11.2001

Shri S.K. Pradhan

Applicant

Shri S. Natarajan.

Advocate for Applicant

Versus

Union of India & 4 others

... Respondents

Shri M.I. Sethna.

Advocate for Respondents1 to 4

CORAM: HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

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(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 159/99

THIS THE 7 TH DAY OF NOVEMBER, 2001

CORAM: SMT. SHANTA SHAstry . MEMBER (A)

S.K. Pradhan,
Residing at A/5, Narmada Sidhivinayak
Nagari Behind Appu Ghar Nigdi,
Pune-411 044. Applicant

By Advocate Shri S. Natarajan.

Versus

1. Union of India through
The Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.
2. Chief Commissioner of Central Excise,
West Zone, New Central Excise Bldg,
115, M.K. Road, Mumbai-400 020.
3. The Commissionoer
General Excise Mumbai-I
New Central Excise Bldg.
115, M.K. Road, Mumbai-400 020.
4. The Commissioner Central Excise
Mumbai III, Navprabhat Chambers
Ranade Road, Dadar West,
Mumbai-400 028.
5. The Estate manager
Directorate of Estates,
117, New CGO Complex,
New marine Lines, Mumbai-400 020. Respondents

By Advocate Shri M.I. Sethna for R1 to R4.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicant joined at Bombay on transfer from Calcutta as Assistant Commissioner. He was entitled to "D" or "E" type quarters from the pool of the Estate Manager or the departmental pool. Accordingly he applied for "D" or "E" type from the departmental pool on 16.6.1994 i.e. the day he joined at Bombay. He also applied for type IV quarters from the pool of Director of Estates on 13.7.1994. On finding that it was not easy to get regular accommodation, the applicant wrote a letter on 20.6.94 expressing his willingness to occupy a lower type of quarters. The applicant was allotted type III quarter from the Departmental pool on 15.7.1994 and occupied the same on 23.7.1994. All of a sudden, according to the applicant, he received a notice on 20.1.1995 stating that he was allotted transit accommodation and therefore he was directed to vacate the quarters within 15 days. The applicant pleaded that the quarter had been allotted to him after obtaining his consent for lower type of quarter. The applicant vide his letter dated 03.02.1995 pointed out that in the allotment order it was not mentioned that it was transit accommodation. Thereafter, he received an order of eviction under Public Premises (Eviction of Unauthorised Occupants) Act 1971 vide order dated 20.7.1995 from the office of the Collector of Central Excise, Mumbai-1. It was stated therein that the applicant was in unauthorised occupation of the public premises and he

should be evicted from the said public premises. The applicant sent a reply on 16.8.1995. Thereafter a letter dated 06.12.1996 was addressed to the Commissioner of Customs, Mumbai-2, Mumbai-3 by the office of the Commissioner of Central Excise, Bombay-1 stating that some officers, who joined at Mumbai Commissionarate were allotted accommodation purely on humanitarian ground and it was purely on temporary basis. However, since these officers were reluctant to vacate the quarters even after a period of six months, notice had been issued to such officers including show cause notice informing to vacate the quarters. Therefore, it was requested to initiate necessary action for vacation of the quarters and recovery of licence fee at damage rate/market rate from such officers. The applicant was one of such officers mentioned in the list showing recovery of Rs.1,30,611/(Rupees one lakh thirty thousand six hundred and eleven only) by way of damage rent against the applicant. Thereafter, the applicant retired from service and vacated the quarters on 21.02.1997. The applicant made a representation to the Joint Secretary (Admin), Ministry of Finance, Department of Revenue. Thereafter, the office of the Chief Commissioner of Central Excise West Zone, Mumbai wrote on 08.8.1997 to the Commissioner of Central Excise, Mumbai-1 stating that the Chief Commissioner had agreed that the action to recover licence fee at damage rate in the case of the applicant was not warranted and therefore, normal rent only needs to be recovered from

the applicant. However, again to the surprise of the applicant, he received another intimation on 19.12.1997 stating that the Central Board had not agreed to the waiving of the penal rent and therefore, the recovery of ^{fees} licence at damage rate which had already been made from the applicant's gratuity was correct. Aggrieved by the aforesaid action of the respondents, the applicant has approached this Tribunal and has sought the relief of not to recover damage/market rate of licence fee from the applicant for the period from 15.1.95 to 20.02.1997 and to release the gratuity withheld by the respondents with interest at 15% per annum on the amount withheld for the period from 01.01.1997 till the date of payment and realisation and costs.

2. The matter was heard on 05.10.2001 when the learned counsel for the applicant as well as for the respondents were present. Before the arguments could proceed further, it was noticed that action had been initiated against the applicant under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and therefore, this Tribunal has no jurisdiction in the matter. The learned counsel for the respondents also pressed that this Tribunal has no jurisdiction in view of the latest judgment of the Supreme Court in the case of Rasila Ram. The learned counsel for the applicant, however, contended that the applicant had not been issued any notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 and even

the damage rate of licence fee was not ordered under Section 7 of the Public Premises Act and therefore, it cannot be said that action was taken against the applicant under the PP Act 1971. Hence, this Tribunal does have the jurisdiction and the applicant has a strong case. It was agreed that the issue of jurisdiction should be decided first. Accordingly I am proceeding to examine whether this Tribunal has jurisdiction in this matter.

3. It is seen from the enclosures attached with the OA that a notice was issued to the applicant on 06th December, 1996 asking him to vacate the quarters allotted to him and to recover licence fee at damage rate/market rate. This is a general notice. Prior to this, a notice was issued to the applicant in person in form "B" (Annexure A6) page 23 of the OA, the subject reads as follows:- "Order of eviction under sub rule 1 (one) of section ... of PP Act, 1971 No.40/1971." This was followed up by a letter dated 04th December, 1996 with the heading 'eviction proceedings before the Estate Officer.' This was issued by the Commissioner, Central Excise, Mumbai-1 stating that in exercise of the powers conferred upon him under sub-section 2 of section 5 of the PP Act, 1971 he being the competent authority, hereby authorises Shri Ghadge, Inspector of Central Excise, Mumbai-1 to evict Shri S.K. Pradhan and family etc., in occupation of the said quarters from the said premises on 12th December, with the help of police if

necessary. This was again followed up by another letter dated 18.12.1996 when the Commissioner Central Excise, Mumbai-I considering the hardship stated by the applicant, granted time upto 15th January, 1997 to vacate the premises on or before 15th January, 1997 failing which eviction proceedings would be conducted without any further reference to the applicant (Annexure-H). Thereafter, again, a letter was issued on 07.02.1997 by the Commissioner, Central Excise, Mumbai-I authorising the concerned Inspector of Central Excise, Mumbai-I to evict the applicant from the said quarter on 26.02.1997. Thus it is very clear that eviction proceedings were initiated against the applicant and had been finalised as on 07.02.1997. The applicant finally vacated the quarters on 21.02.1997. The arguments advanced by the applicant are that no formal notice was issued to him under the PP Act under section 4 or section 7 ordering him to pay licence fee at damage rate and therefore, it cannot be said that eviction proceedings had been initiated under the PP Act. It is therefore necessary to peruse the various orders issued for the eviction of the applicant from the quarters occupied by him. I find that the first notice was served on the applicant under the PP Act 1971 as at Annexure 6 page 23 of the OA. The title of this order reads as Form 'B', Order of eviction under Sub section(1) of Section — of the Public Premises (Eviction of unauthorised occupants) Act 1971 No.40 of 1971. The order mentions further that the undersigned is appointed as Estate Officer under section 3 of the PP Act. Thus, it is clear that the notice was issued under PP Act. There is however no mention of section 4, it is missing. This appears

to be due to inadvertence. Otherwise the text of the order does give reasons and does specify the date by which to show cause. Mere omission of section-4 cannot vitiate the order. Therefore the contention of the applicant that it was not issued under section 4 of PP Act is not acceptable. This order was followed up by order under section 5(2) of the PP Act. It is true that no order under section 7 of the PP Act has been produced to show that damaged rate of rent was ordered. However, it is seen from the order dated 2/8/95 issued in Form 'B' under section 4 of the PP Act (Annexure 6 page 23 of OA) that a copy of the order was forwarded to C.A.O, Central Excise, Bombay III with a request to charge the market rate of licence fee at the rate of Rs.3093.60/- per month w.e.f. 15/2/95 till date of vacation of quarter. This is by Estate Officer. Damage rate of rent recovery is a consequence of the action taken under Section 5 of the PP Act. In the facts and circumstances of the case and the reasons recorded above, in my considered view, definitely action for eviction from Government quarters was initiated under the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Hence this Tribunal has no jurisdiction to entertain the present application.

Accordingly for want of jurisdiction, the OA stands dismissed. No costs.

Shanta F-
(SMT. SHANTA SHAstry)
MEMBER(A)