

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 939/99

DATE OF DECISION: 12/10/2000

Shri B.M.Jadhav

Applicant.

Shri Suresh Kumar

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri V.S.Masurkar for R-1 & 2.

Shri R.K.Shetty for R-3.

Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? NO
2. Whether it needs to be circulated to other Benches of the Tribunal? NO
3. Library. NO.

Shanta
(SHANTA SHASTRY)
MEMBER(A)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:939/99
DATED THE 12th DAY OF OCT. 2000**

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

B.M. Jadhav,
Lift Operator,
Office of the A.G.E.E/M-1,
Navy Nagar Colaba,
Mumbai - 400 025.

... Applicant

By Advocate Shri Suresh Kumar.

V/s.

1. Union of India, through
Directorate of Estates,
Nirman Bhavan, New Delhi.
2. The Estate Manager,
O/O. the Estate Manager,
Old C.G.O. Building Annexe,
3rd Floor, 101, M.K. Road,
Bombay - 400 020.
3. The Garrison Engineer,
(Naval Works), Colaba, Mumbai
Mumbai - 400 025.

... Respondents

By Advocate Shri V.S. Masurkar for
Respondent Nos. 1 and 2 and
Shri R.K. Shetty for Respondent No. 3

(ORDER)

Per Smt. Shanta Shastri, Member(A).

An order of recovery of an amount of Rs. 36,580/- has been issued on 21/1/1999 by the Office of Estate Manager, Mumbai in respect of Quarter No. 3961/103, type-B at S.M. Plot, Mumbai allotted to Shri Baban Mahadeo Jadhav i.e. applicant in this case. Aggrieved by the said order, the applicant has approached this Tribunal to quash and set aside the impugned order and alternatively to hold and declare that the respondents are not

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entitled to recovery any penal rent in excess to what is provided by the judgement of Hon'ble Supreme Court. The applicant has further sought a refund of the licence fee already recovered from him in pursuance of the impugned order. The applicant also sought interim relief, the same was allowed. The Interim Relief is continued.

2. The applicant is a lift operator with respondent No.3 and was allotted quarter No.103/3961, type-II, Sector-VIII, S.M.Plot, Antop Hill, Mumbai. He took possession on 31/7/1993. A surprise inspection was carried out by a team of Officers from the Directorate of Estates, New Delhi on 5/4/95 of the aforesaid flat. The flat was reported to be in occupation of unauthorised persons.

3. The applicant received a memo dated 23/4/97 on 2/6/97 wherein it was stated that as a result of an enquiry it had been proved that the applicant was not residing in the quarters allotted to him. The applicant was given an opportunity to file an appeal within a period of 60 days from the date of receipt of memorandum. The applicant had represented on 30/6/97 filing an appeal to respondent No.1 through proper channel. The applicant had also requested respondent No.1 to grant a stay against the order of 23/4/97 till the disposal of the appeal. The applicant surrendered the quarter on 30/4/98 to avoid payment of penal rent and further complications. Thereafter the impugned order of 21/9/99 was issued by Respondent No.2 levying ^{Damage by} rent @ Rs.3613/- from July,97 to April,98. It is the contention of the applicant that the said order of 21/9/99 has been passed without hearing the applicant. The appeal was still pending and no decision had

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been taken on that appeal. It is because of the delay on the part of Respondent No.1 in not deciding the appeal, that the applicant is made to suffer by the levy of penal rent which is equal to his monthly salary. According to the applicant as per the provisions of SR-317(b) 21, the licence fee for over stay in the quarter cannot be charged at more than two times of the standard licence fee. Normal standard licence fee is 10% of the basic salary of the Government servant. Even according to this he could have at the most been charged 40% of his basic pay. The respondents have recovered more than that, at market rate. The applicant also further argues that respondent No.2 has no power to charge the penal rent without issuing a show cause notice to the applicant under the PP (Eviction of unauthorised occupants) Act 1971. The order is passed in utter disregard to the principles of natural justice. The applicant has also not been paid any HRA during the said period. The applicant has also taken the ground that no proceedings under Section-7 of the Public Premises Act 1971 was initiated against the applicant. The Learned Counsel for the applicant is relying on the judgement of the Hon'ble Supreme Court in the case of Shiv Sagar Tiwari V/s. Union of India, where it has been held that twice the licence fee becomes payable. ^{in cases of overstaying} The judgement of the Hon'ble Supreme Court is binding and therefore the respondents have no power to charge licence fee in excess of what has been allowed by the Hon'ble Supreme Court.

4. It is the case of the respondents that after the surprise inspection by the team of officers from Directorate of Estates, New Delhi on 5/4/95, when it was found that the Flat allotted to applicant was in unauthorised occupation, the applicant was given

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a show cause notice on 26/8/96 giving him opportunity of being heard. The applicant appeared before the Assistant Estate Manager on 12/9/96 in response to the said show cause notice. After giving due hearing to the applicant, the allotment of the quarter was cancelled vide memorandum dated 23/4/97. Feeling aggrieved by the cancellation order, the applicant preferred an appeal to the Appellate Authority i.e. Director of Estates. The Appellate Authority after going through the contentions and evidence on record, rejected the appeal on 24/12/97. In spite of this the Applicant did not vacate the quarter and therefore eviction proceedings under Public Premises Act were initiated against the applicant. The show cause notice was issued to the applicant on 10/12/97. The applicant did not respond, finally the order of eviction was passed on 20/1/98 and thereafter physical eviction was carried out on 30/4/98. The Respondent No.2 then informed the department about recovery of dues amounting to Rs.36,580/- towards unauthorised occupation of the Government accommodation by the Applicant. The Learned Counsel for the respondents submits that as per rules on the subject, i.e. SR-312-b-22, the applicant is liable to pay damages for the period of unauthorised occupation of the Government Accommodation. The period of stay beyond cancellation of allotment is treated as unauthorised occupation of the Government Accommodation. The Respondents state that the damage rent is decided by the Government from time to time and it varies from State to State and City to City. Damages can be recovered by the administration according to service rules and this is known to the applicant as he had signed the form for

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accommodation and had given family details and an undertaking that he would abide by rules and regulations and also administrative orders issued from time to time. Therefore no action under Section-7 of the Public Premises Act. Respondents are further placing reliance on the judgement of the Full Bench Ram Pujan V/s. Union of India and OA 1217/93 in the case of S.P.Tiwari V/s. Western Railway decided on 25/8/98. It has been held therein that it is not necessary to take action under the Public Premises (Eviction of unauthorised occupants) Act 1971 (PP Act). The Respondents have therefore followed the requisite procedure and their action is justified.

5. The Learned Counsel for the applicant submits he should have been charged only four times the licence fee till the eviction order was not passed and after the eviction order was passed, he should have been charged two times the licence fee at flat rate. The applicant insists that he was not given any notice on the recovery of damage rent.

6. Heard the Learned counsel for both sides. ~~Through~~ the applicant has stated that he was not given any notice before recovery of damage rent as per the Impugned order dated 21/9/99, I find that the respondents had issued to him a show cause notice on 26/8/96. After giving him opportunity of being heard, the allotment of the quarter was cancelled on 23/4/97. The applicant made an appeal against the order which was rejected on 24/12/97. In spite of this when the applicant did not vacate the quarters, he was issued a show cause notice on 10/12/97 and it is only after giving him sufficient notice that order of eviction was passed on 20/1/98. Thereafter, the Respondent No.2 intimated the

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same to the department of the applicant for recovery of dues. It cannot therefore be said that Principles of Natural Justice were not observed or that the applicant was not given adequate opportunity to represent in the matter as far as cancellation of allotment or eviction are concerned. The applicant was aware of the consequences of not vacating the quarters after cancellation of the allotment.

7. Coming to the recovery of the damage rent, the Government have laid down guidelines in regard to recovery of damage rent or penal rent in Cases of subletting and over stayal after the cancellation of the allotment order. The FR-45A(12) provides for revised rates of damages to be recovered from unauthorised occupants. Accordingly Rs.55/- per sq. metre per month in respect of Types I to IV is to be recovered in Delhi and similar rates are to be worked out by the CPWD for other stations.

SR-317-B-20 to 21 deal with subletting and imposition of penalty. S.R.317-B-22 relates to overstayal after cancellation of allotment.

Sr-317-B-21 and 22 reads as under:-

Rule SR-317-B 21 reads as under:-

If an officer sublets a residence allotted to him or any portion therefore any of the out house, garages or sublets appurtenant thereto, in contravention of these rules, he may, with out prejudice to any other action that may be taken against him be charged enhanced licence fees not exceeding four times the standard licence fees under FR-45-A. The quantum of licence fees to be charged in each case will be decided by the Director of Estate on merit. In addition the officer may be debarred from sharing the residence for a specified period in future as may be decided by the Director of Estates.

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Rule SR-317-B 22 reads as under:-

Where after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services furniture and garden charge as may be determined by Government from time to time, of twice the licence fees he was paying, which ever is higher.

8. Thus, wherever there is subletting, the person to whom the accommodation is allotted is to be charged enhanced licence fee not exceeding four times the standard licence fees prescribed under FR-45-A. Also wherever the allotment of the residential accommodation is cancelled and the allottee occupies the same, such a person becomes liable to pay damages for the use of unauthorised occupation of the residence and in such cases the unauthorised occupant is to be charged twice the licence fees that he was paying whichever is higher. The Learned counsel for the respondents has submitted that there is no application of section-7 of the PPA in this case since damages can be recovered by administration according to service rules. The relevant service rules being SR-317-B-21 and B-22 and FR-45-A. The respondents should have levied four times the licence fee for subletting of the quarter and two times the licence fee for over stayal beyond the cancellation of the allotment. It is seen from the statement showing the balance amount in respect of the applicant enclosed alongwith the impugned order dated 21/9/99 that the applicant has been charged four times licence fee w.e.f. 23/4/97 to 21/6/97 i.e. after the allotment was cancelled from 22/6/97 till 30/4/1998 when the applicant surrendered the quarter, the market rate of Rs.3613/-p.m. has been levied. Also

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some arrears have been recovered from the applicant bringing the total to Rs.36,580/-. The SR or FR do not speak of any market rate. The charging of market rate does not appear to be called for in this case. The charges should have been restricted to four times the licence fee for subletting and twice the licence fee for occupying the quarter beyond the date of cancellation. Though the applicant was served the notice for cancellation of allotment and for vacation of the flat no notice appears to have been given about the exact extent of damage rent to be recovered from the applicant. Natural justice demands that the applicant should have been given an opportunity of being heard before ordering the recovery as per the impugned order. The respondents are therefore directed to issue a proper notice to the applicant within 15days from the receipt of copy of this order and the applicant shall give his representation within a fortnight thereof and the same shall be disposed off by the respondents within a period of two months.

9. The OA is disposed off accordingly. No costs.


(SHANTA SHASTRY)
MEMBER(A)

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