

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.163/2001.

Thursday, this the 2nd day of August, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri M.P.Singh, Member (A).

Rajesh Kumar Singh,
Quarter No. 151/L, Western
Railway Colony, S.V. Road,
Bandra (W),
Mumbai - 400 050.
(By Advocate Shri G.S.Walia)

... Applicant.

v.

Union of India, through

1. General Manager,
Western Railway Hqrs. Office,
Churchgate,
Mumbai.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway, Mumbai Central,
Mumbai.

(By Advocate Shri Suresh Kumar)

... Respondents.

: O R D E R (ORAL) :

Justice Birendra Dikshit

Applicant is a Wireless Telecom Maintainer working under Divisional Railway Manager, Mumbai Division, Western Railway, Mumbai. He is staying in Railway Quarter No.151/L, S.V.Road, Bandra (West), It was allotted to him by Railways on 7.1.1991. Allotment of said quarter was cancelled by DRM (E), Mumbai Central. The notice of cancellation dated 7.8.2000 stated that after a preventive check was conducted, it was found that applicant had unauthorisedly sublet the quarter violating the conditions stipulated in memorandum of allotment of railway quarters, as well as, Rules governing allotment of quarters. This notice was served on 9.6.2001 according to applicant. By the said notice recovery of damages/rent @ Rs.2,579/- p.m. has also been ordered from

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the salary of applicant from January, 2001 onwards on the ground of unauthorisedly subletting of said quarter. Beside above-mentioned cancellation notice, the Estate Officer and Divisional Engineer (Estate), Western Railway, Mumbai Central has also issued notice under sub-section 2 of Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short 'PPE Act') giving rise to Suit No.PPE/23 of 2001 calling upon the applicant to show cause why an order of eviction should not be made against him. It is not in dispute that the applicant still stays in the quarter and eviction proceedings are still pending. Applicant has challenged the order of cancellation dated 7.8.2001 of allotment and recovery of damages/rent by this application before this Tribunal. He has also sought direction to respondents to refund Rs.2,579/- with interest @ 18% p.a. which, according to him, has been illegally recovered by deducting the same from his salary for the month of January, 2001. He has further prayed for interim relief to the effect that respondents be ordered and directed not to charge any damages/market/penal rent and/or recover the same from his pay. An interim relief was granted in this case on 7.3.2001 restraining respondents from making further recovery for a limited period which has been extended and is still operative.

2. Learned Counsel for respondents has raised a preliminary objection to the effect that this Tribunal has no jurisdiction to entertain this application, in view of initiation of proceedings under section 4 of PPE Act, 1971. According to him, once the proceedings under section 4 of

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PPE Act are initiated by Estate Officer, this Tribunal ceases to have jurisdiction to entertain application under Administrative Tribunals Act. He relies upon the Judgment of this Bench in the case of P.K.Roy Vs. Union of India in O.A. No.140/99 decided on 13.6.2000 and the Full Bench judgment of Allahabad Bench of Central Administrative Tribunal in OA No.936/93 (Ram Poojan Vs. Union of India) decided on 22.2.1996. Learned counsel, to meet the preliminary objection argued that no notice under PPE Act, 1971 has been issued to applicant against cancellation of allotment of quarter and, therefore, this Tribunal has jurisdiction to adjudicate the application, which is a service matter. He also conceded that insofar as recovery of damages/rent is concerned, no notice has been served on the applicant by Estate Officer and therefore the case initiated by Estate Officer does not come in way of this Court to determine grant of relief in respect of that part of the case. On merit, he has contended that respondents have raised the demand without providing any opportunity of hearing to the applicant. In reply to the arguments of learned counsel for applicant, learned counsel for respondents argued that applicants has set up his defence before the Estate Officer under Section 4 of PPE Act and therefore applicant can dispute the cancellation of his allotment before him and as recovery of damages/rent is co-related to cancellation of allotment, therefore, it is not necessary to serve a separate notice on applicant for recovery of damages/rent.

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3. We have considered this aspect. Allotment of premises to applicant has been cancelled and proceedings under PPE Act, 1971 have been initiated. It stands conceded on behalf of respondents that applicant can challenge the cancellation order while showing cause before the Estate Officer. In view of this statement, the propriety or validity of cancellation order can be looked into by Estate Officer where in our opinion it will not remain open for respondents to object on the ground that Estate Officer will not have jurisdiction to examine propriety and legality of cancellation of allotment. Otherwise also, the question to us appears to be so much inter-linked with applicant's being in unauthorised possession or not that Estate Officer may have to go into that question, if raised, and therefore there appears force in respect of preliminary objection against the application for relief in respect of cancellation of allotment of quarter.

4. The next question that remains to be determined is in respect of recovery of damages/market/penal rent in view of cancellation of allotment. Admittedly, no notice has been issued under Section 7 of PPE Act, 1971. The question that arise for consideration is as to what remedy is available to applicant against recovery of damages or penal rent. This Bench in a similar situation in OA No.505/2000 : T.Satyadas Vs. Union of India and Another, decided on 12.7.2001 has observed that till the proceedings begin

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under Section 4 of PPE Act, 1971 is not finalised, the action of the respondents to recover damages/market/penal rent from the salary of the applicant cannot be upheld.


“We have considered the circumstances in this case. The proceedings under section 4 of PPE Act are pending, but no notice of proceedings under Section 7 of PPE Act have been initiated. The respondents have started recovery of damages/penal^{to}rent without determination of status of applicant under PPE Act which will be a relevant factor for fixing liability on applicant. The respondents could have waited till disposal of notice under Section 4 of PPE Act. As they have not waited for determination of status of applicant, in view of decision of this Tribunal in case of T.Satyadas (supra), to which we agree, the recovery of damages/market/penal rent is liable to be stayed during the pendency of proceedings under Section 4 of PPE Act, 1971.

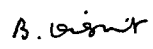
5. For aforesaid reasons, we dispose of the OA as under:

This claim of applicant against cancellation of allotment is rejected without prejudice to his right to agitate his objection against cancellation of allotment in proceedings under Section 4 of PPE Act before Estate Officer. In respect of recovery of damages/market/penal rent, we direct that the recovery of damages/market/penal rent from the salary of applicant shall not be made any further during pendency of proceeding under section 4 of PPE Act and whatever amount has been deducted by

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respondents in excess of rent which ~~has been~~^{was} collected by them ~~well~~^{before} cancellation of allotment, shall be refunded to the applicant with 10% interest p.a. thereon. This shall be done within a period of two months from the date of production of certified copy of this order before respondent No.2. It is kept open for ~~applicant~~^{respondents} that after disposal of proceedings under section 4 of PPE Act, if applicant is liable to pay any damages or penal rent, then the respondents can proceed in accordance with law to recover the same. The OA is disposed of accordingly. No costs.


(M.P.SINGH)
MEMBER (A)


(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.