

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 815/91

Transfer Application No: ---

DATE OF DECISION 20-10-93

C.S.Bhandari

Petitioner

Mr, G.S.Walia

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

Mr.V.S.Masurkar

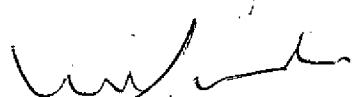
Advocate for the Respondent(s)

CORRIT:

The Hon'ble Shri Justice M.S.Deshpande, V.C.

The Hon'ble Shri ---

1. ~~whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? **NO**
3. ~~whether their Lordships ish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? **NO**


(M.S.DESHPANDE)
VC

M

NS/

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.815/91

C.S.Bhandari,
C/o.G.S.Walia,
Advocate,
Office No.16,
Maharashtra Bhavan,
Bora Masjid ~~Raxa~~ Street,
Behind Handloom House,
Fort, Bombay - 400 001. .. Applicant

-versus-

1. Union of India
through
Area Commander,
Maharashtra and Gujarat,
Colaba, Bombay - 400 005.
2. Commander Sub-Area and
Estate Officer, Colaba,
Bombay - 400 005.
3. Officer Commanding,
Station Health Organisation
(Large) Colaba, Bombay-400005. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman.

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.V.S.Masurkar
Counsel for the
respondents.

ORAL JUDGMENT: Date: 20-10-93
(Per M.S.Deshpande, V.C.)

The applicant challenges the order
dt. 15-12-89 cancelling the allotment order
dt. 10-12-80 and the amount charged as damages
rent together with interest.

2. The applicant was allotted a quarter
bearing No.29, Hari Nivas, Colaba by order dt.
10-11-80. He was requested to submit a certi-
ficate as per para 6 of SRO 308 by letter dt.
22-11-89. On 25-11-89 the applicant was asked
for details of para 6 in order to enable him
to comply with the requirement. But without
supplying these particulars the allotment

came to be cancelled on 6-12-89 on the plea that the applicant had not not accepted the allotment within the time provided i.e. 4-12-89.

3. It is not necessary to go into the details. The applicant came to be allotted another quarter bearing No.P-107/7 which he did not occupy and the allotment came to be cancelled. Proceedings were initiated under the Public Premises Eviction Act and the applicant appealed to the City Civil Court which by order dt. 11-1-90 held that the appeal to it was premature and in view of ^{admitted} aggrieved position directed ~~to~~ the applicant to make an application to E.O. for allotment of another quarter. The applicant's application dt. 14-2-90 came to be rejected on 1-6-90 and damage rent were deducted in respect of quarter No.29, Hari Nivas from 6-12-89 to 5-1-91. Another quarter came to be allotted to the applicant later which he occupied on 8-1-91.

4. The main contention of Mr.Walia, learned counsel for the applicant is that unless action was taken under Section 7 of the Public Premises Eviction Act 1971 it would not be open to the respondents to recover damages in-lieu of rent. Sub-section (3) of Section 7 is mandatory and requires that "No order under sub-section(1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to showcause within such time as may be specified in the notice and any evidence he may produce in support of the same, have been considered by the estate officer." It is apparent that no such notice has been given to

the applicant before recovery of damage rent in-lieu of rent u/s. 7 of the P.P. Act. It is therefore clear that the amount could not have been recovered as damages from the applicant unless action is taken in pursuance of section 7 of the P.P. Act.

5. On this ground ^{alone} without entering into the merits, the application is allowed and the order dt. 15-12-89 is set aside and the respondents are directed to refund the excess amount charged as damages between 6-12-89 to 5-1-91 within two months from the date of communication of this order. Liberty to the respondents to initiate action u/s.7 of the P.P. Act if it is otherwise permissible.

6. Application is disposed of on the above lines with no order as to costs.


(M.S.DESHPANDE)
VC

M