

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 378/91  
T.A. NO: \_\_\_\_\_

199

DATE OF DECISION 7-4-1992

Dominic James

Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners

Versus

Station Commander and 4 ors.

Respondent

Mr. V. S. Masurkar

Advocate for the Respondent(s)

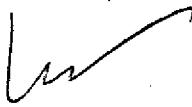
CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

mbm\* MD

  
(U.C. SRIVASTAVA)

7  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.378/91

Dominic James,  
Flat No.9, Hussainali Manzil,  
Sai Hill Nagar,  
Chandansar Road,  
Virar(E),  
Bombay - 401 303.

.. Applicant

vs.

1. Station Commander,  
Station Head-quarters (Military),  
Sub-Area Colaba,  
Bombay - 400 005.

2. Chief Engineer,  
Bombay Zone  
(Military Engineering Services),  
Colaba,  
Bombay - 400 005.

3. Garrison Engineer,  
(Military Engineering Services),  
Colaba(W),  
Bombay - 400 005.

4. Controller of Defence Accounts,  
Southern Command,  
Pune.

5. Controller of Defence Accounts  
(Pension),  
Allahabad.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,  
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.M.A.Mahalle  
Advocate for the  
Applicant.

2. Mr.V.S.Masurkar  
Counsel for the  
Respondents.

ORAL JUDGMENT: Date: 7-4-1992  
(Per U.C.Srivastava, Vice-Chairman)

The applicant who was civilian employee in the Army was allotted a government hired accommodation on 30th May, 1977 with instructions that, allotment of accommodation is on temporary basis and the applicant will have to vacate the accommodation at a short notice without claiming any alternative accommodation.

The applicant was further asked to apply to Estate Officer for allotment of accommodation through CE Bombay Zone and also shift therein. Applicant was

due to retire on 30th April, 1989 and he was allotted a govt. married accommodation at Kalina vide allotment order dtd. 24th June, 1988 but the applicant did not shift in the same and continued to occupy the quarter in question. The applicant was again requested to vacate the same but he did shift to the alternate accommodation which was allotted to him. As such an order for his eviction and placing him at damaged rate of rent w.e.f. 1st July, 1988 was passed by the authorities vide letter dtd. 16th April, 1989.

After retirement the allotment order in respect of the government accommodation at Kalina was also cancelled and the applicant was issued with eviction order under section 5(1) of the Public Premises (Eviction of unauthorised Occupants) Act, 1971. The applicant filed an appeal before the City Civil Court at Bombay against the eviction order. In the appeal the applicant also questioned the imposition of damaged rent without taking any ~~xx~~ proceedings under section 7(3) of the said Act without giving any opportunity of hearing. The appeal of the applicant was dismissed and the applicant was allowed to remain in quarter upto 30th June, 1990 in view of the undertaking given before the Court. The applicant vacated the quarter within the time limit prescribed but as the damaged rent was imposed upon him and he has been required to pay an ~~xx~~ amount of Rs.38,000/- the applicant has challenged the same by filing this application.

2. The respondents have opposed the application and contended that after retirement the applicant had no right whatsoever to remain in occupation of the Govt. accommodation and merely because an undertaking was given before the Court

and the Court allowed the applicant to stay in the premises the applicant cannot claim any exemption from paying the damaged rent.

3. So far as the damaged rent is concerned the procedure is prescribed and the damaged rent should have been determined. But the damaged rent was not determined. It could have been determined only after hearing the applicant. The applicant was allowed to stay in the premises upto 30th June, 1990 by the Court and in view of the fact that the applicant stayed ~~in~~ under the orders of the Court till that date the question of charging damaged rent in the circumstance does not arise and accordingly no damaged rent could have <sup>been</sup> charged from the applicant in the manner it has been charged. As such this application deserves to be allowed and the order of recovery and of the damage and market rent amounting to Rs.18,764/- is quashed, and the amount which has been recovered may be refunded to him unless it is not permitted by any other law. However, we make no observation as to any fresh proceedings to be taken in this behalf. The application is disposed of accordingly.



(M.Y.PRIOLKAR)  
Member (A)



(U.C.SRIVASTAVA)  
Vice-Chairman

MD