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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 890/92

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DATE OF DECISION 6.7.93

Shri K.G. Kakade Petitioner

Shri R.A. Rodrigues Advocate for the Petitioners

Versus

Union of India and others. Respondent

Shri R.K. Shetty. Advocate for the Respondent(s)

COURT:

The Hon'ble Shri V.D. Deshmukh, Member (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
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?

{ *W* }


(V.D. DESHMUKH)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 890/92

Shri K.G. Kakade

...Applicant.

V/s.

Station Commander
Station Head quarters
Colaba, Bombay.

The Director,
Research & Development
Establishment (Engineers)
Research and Development
Organisation, Government
of India, Ministry of
Defence, Dighi, Pune.

Union of India through
Ministry of Defence,
Defence and Research
and Development
Organisation, Secretary,
Kashmir House
Rajaji Marg,
New Delhi.

...Respondents.

CORAM: Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri R.A. Rodrigues, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 6.7.93

(Per Shri V.D. Deshmukh, Member (J))

The applicant was employed as Junior
Scientific Officer and he is at present Officer-in-
Charge R & D.E. (Engineers)Cell, in the Ministry of
Defence, Government of India, Defence Research and
Development Organisation, Colaba, Bombay. Initially
the applicant was allotted accommodation at A-16
Fatima Manzil, Colaba, Bombay and it appears that he
continued to occupy the said accommodation till
December 1985. Under the order dated 5.12.85, copy
of which is R1 to the written statement of the
respondents, the applicant was allotted accommodation
at 5/2, S.M. Quarters, Dandi, Colaba, Bombay -5. The
respondents by their letter dated 23.2.91 issued by

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the Station Headquarters, Colaba, Bombay-5, cancelled the allotment of the above said accommodation and called upon the applicant to vacate the accommodation by 31.3.91. The applicant does not specifically challenge this order in the present application, as the present application is concerned only with the recovery of the damage rent from the salary of the applicant. The applicant received the letter dated 12.5.92 which shows that the damage rent ~~for~~ ^{of} Rs. 790/- was to be recovered from the applicant pursuant to the cancellation of the allotment and the applicant challenges this letter in the present application. It is also contended that pursuant to this letter an amount of Rs. 6342/- has already been deducted from his pay for the month of May and June 1992.

The main contention of the applicant is that the damage rent could not be recovered from the applicant without following the process laid down by the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. There is absolutely nothing to show that the letter by which the damage rent was recovered was issued after following the provisions of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The provisions of section 7 of the said Act clearly show that the arrears of rent payable in respect of any public premises or even the assessment of damages for the alleged unauthorised occupation and recovery of the same could be done only by the Estate Officer and that too after the issue of Show Cause Notice under Section 7 of the Act, and after giving full opportunity to the allottee. It is an admitted position that no recourse

was taken to the provisions of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, before the respondents started recovering the damage rent from the salary of the applicant. The respondents in para 21 of their written statement contended that as the accommodation was allotted on temporary basis, the applicant was liable to vacate the premises on short notice and there was no need to comply with the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

However in the very next sentence they themselves contended that they are willing to comply with the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. There can be no doubt that before the recovery was made the respondents had to initiate the proceedings before the Estate Officer, alleging that the applicant was in unauthorised occupation and only after the Estate Officer had given the notice and opportunity of hearing to the applicant, the Estate Officer had to decide whether the applicant was in unauthorised occupation and whether any damage rent was recoverable from the applicant. The recovery is invalid both on the ground that it ~~should~~ ^{could} not be directed by any Officer other than the Estate Officer and it could not be made without following the provisions of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Learned counsel for the applicant relied upon certain decisions in this respect. However the provisions of section 7 are clear and it is not necessary to refer to those decisions. Admittedly the recovery was done without following

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the procedure laid down in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The respondents in their written statement referred to a circular dated 27.5.88. However the applicant in his rejoinder has rightly pointed out that even this circular is in reference to the action in pursuance of provisions of section 7 of Public Premises (Eviction of Unauthorised Occupants) Act 1971.

~~As~~ admittedly the respondents recovered the alleged damage rent from the applicant without following the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, recovery done is illegal and the applicant is also entitled to the refund of the amount recovered from his salary, although the respondents shall be at liberty to take necessary action in pursuance of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. In the result I pass the following order.

The application is allowed. The impugned order dated 12.5.92 is quashed and it is declared that the recovery made pursuant to this order of the alleged damage rent was illegal. The respondents are directed to refund the total amount of Rs. 6342/- deducted from the salary of the applicant for the month of 5/92 and 6/92 by way of recovery of alleged damage rent to the applicant within one month from the date of receipt of copy of this order. The respondents are restrained from recovering any damage rent from the applicant except in compliance with the provisions



of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is made clear that the respondents shall be at liberty to take appropriate proceedings under the above said Act and the applicant shall also be at liberty to approach this Tribunal or pursue any other remedy if his grievance survives after the proceedings under the above said Act.

There shall be no order as to costs.


(V.D. DESHMUKH)
MEMBER (J)

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