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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Bombay Bench.

O.A.No. 643/93
T.A.No. ---

199

DATE OF DECISION 29-4-1994

S.D.Naralkar

Applicant(s)

Versus.

Union of India & ors.

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

ACV
29/4

(MEMBER (A))

M.R. Kulkarni
(CHAIRMAN/VICE CHAIRMAN/
Member (A))

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(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 643/93

S.D. Naralkar

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

Coram: Hon'ble Shri M.R. Kolhatkar,
Member(A)

Appearances:

Mr. D.V. Gangal
Counsel for the
applicant.

Mr. R.K. Shetty
Counsel for the
Respondents.

JUDGMENT:
Per M.R. Kolhatkar, Member(A)

Date: 29-4-94.

Applicant is a Store Keeper in the Machine Tool Prototype Factory at Ambernath and he is the occupant of quarter No.H-42/1 allotted to him in 1986 on retirement of his father, who was also an employee of the said factory, on out of turn basis. There was a surprise check of his house when one D.R. Sawant along with his family was found in occupation of the quarter on 5-7-90. On 12-7-90 his explanation was called by the Works Manager, vide page 40 to the application, to which a reply was given by him on 16-8-90 vide page 42. The contention of the applicant was that for ^{the} last 15 days he had gone to stay at Shivaji Nagar, a locality in Ambernath, with his family to attend a religious ceremony at his uncle's house and in order to guard against thefts, he has requested his friend to stay at his quarters for 15 days, that he had ^{since} returned back, that he should be excused

and his case should be settled sympathetically. By order dt. 6-8-90 he was served with an order to vacate the quarters for subletting. The applicant approached the CAT vide O.A. No.667/90 and the Tribunal by its order dt. 19-10-90 disposed of the application as having been premature. The Tribunal ^{had} given liberty to the Estate Officer to take proceedings against the applicant for eviction under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. These proceedings were taken and an eviction order was passed on 24-6-93. In this O.A., the applicant has challenged the previous order dt. 6-8-90 as well as the present eviction order issued after following due procedure dated 24-6-93. He has also challenged the constitutionality of FR/SRs containing the definition of "sub-letting" and also challenged ^{the} definition of sub-letting in SR 317(B) as illegal and void.

2. The main contentions of the applicant as gathered from his original application ^{dated 7-2-93} / rejoinder dated 7-1-94 and an ^{vide} application for amendment MP 84/94 filed on 19-1-94 are as below:

(i) That the order passed by the Estate Officer is not in accordance with the orders of the Tribunal which ^{were} ~~was~~ to the effect that the Estate Officer should take a decision on the merits after taking into account the evidence adduced by both the parties ^{as to} / whether the premises have been occupied by D.R. Sawant as alleged by the respondents or the same were kept for temporary period of 15 days during the absence of the applicant for the purpose of

security of the premises;

(ii) That the action has been deliberately delayed with a view to keep the Democles' Sword of eviction hanging over the head of the applicant;

(iii) That the action is discriminatory inasmuch as several employees viz. Acharya, Bhosekar and Nagesh named in the O.A., L.Laxmaiya, ^{and} Rajan Gujjar named in the rejoinder have been permitted to stay in the quarters and in any case no steps to evict them from the quarter ^{have} been taken;

(iv) That the FRs and SRss are not issued by the competent authority in conformity with the Statute and hence these rules have no statutory force and hence they are void and not binding on the applicant;

(v) Irrespective of above, the definition of subletting in FR 317(B) is illegal inasmuch as it encompasses mere occupation of the accommodation to mean subletting which as per judicial pronouncements comprises the three ingredients of letting of the premises by authorised occupant to unauthorised occupants, accepting reward, compensation or rent from unauthorised occupant by the authorised occupant and such letting out is without the authority of law and which ingredients are absent in the instant case.

3. The respondents have resisted

the reliefs claimed by the applicant.

According to them, there is a inconsistency in the version of the applicant regarding the period of absence in the earlier O.A.

to which a reference has been made. He had there

(11)

taken ^{the} stand that he was away from 20-6-90 to 5-7-90 whereas in his reply to the showcause notice as annexed in present application vide Annexure A-10 he has stated that he has been away from 1-7-90 to 15-7-90.

It is contended that there have been repeated circulars issued by the respondents warning the employees against subletting and in this connection a circular was issued on 11.8.89 and a meeting was held on 6-9-89.

It is denied that any employees ~~has~~ as mentioned by the applicant have been allowed to stay inspite of their being guilty of subletting.

It has specifically been pointed out that Shri R.V.Acharya surrendered the quarter on 8-10-90, V.L.Bhosekar on 6-11-90 and D.K.

Nagesh ~~XXXXXX~~ on 30-9-92. It was only in the case of Laxmayya that some concession was given on account of medical certificate

but ~~not~~ in all cases cited by the applicant surrender of the quarter/eviction have been enforced. So far as the delay in eviction

proceedings from 1990 to 1993 is concerned the same is stated ^{to be} due to proceedings taken by the applicant against the respondents

before the CAT either by way of O.A. or review or contempt. The pre-occupation of the respondents in defending those

proceedings as well as transfer of concerned Inquiry Officer delayed the action against the applicant. It is denied that the order

of the Inquiry Officer ^{is} ~~has~~ not in accordance with the direction of the CAT. It is stated

that the order refers to the enquiry conducted by the Inquiry Officer on 19-6-93 ^{on the basis of} perusal

of the records placed by the applicant before the Estate Officer and ^{after} giving a personal hearing to the applicant along with authorised representative ^{Shri} S.M. Das. So far as the contentions of the applicant regarding FRs and SRs lacking any statutory force is concerned it is contended that FRs and SRs have been issued under Govt. of India Act, 1915 and they have been continued in force as existing laws under Article 372 of the Constitution. Regarding definition of sub-letting, the respondents contended that the judicial definition of subletting in the context of Rent Control Act has no application in the case of allotment of Govt. quarters which are allotted on leave and licence basis to the Govt. servant.

4. We have considered the matter carefully. FR 317(B) defines subletting as below:

"317-B(1)

"Subletting" includes sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person.
Explanation - Any sharing of accommodation by an allottee with close relations shall not be deemed to be subletting."

5. The above is the definition as given in FR/SR but it has been accepted that in the particular case it is the wording of SRO 308 issued on 17-10-78 which is relevant. The same is reproduced below :

-: 6 :-

"(1)" Subletting" includes sharing of accommodation by an allottee with another person with or without payment of rent by such other person; Provided that sharing of accommodation by relatives or friends upto a period of 30 days shall not be deemed as subletting;

Explanation: Any sharing of accommodation by an allottee with close relations or Central Government employees shall not be deemed to be subletting in case prior intimation to this effect is given by the officer to the allotting authority;"

6. The applicant has contended with reference to this definition that even accepting the validity of the same the, applicant could share the accommodation with Shri Sawant upto a period of 30 days and that this does not require grant of permission. Therefore, the applicant may not be held to be in violation of this SRO. It is clear, however, that the allegation against the applicant is not that he was sharing accommodation with Shri Sawant but he had sublet the accommodation to Shri Sawant. It is clear ^{that} this proviso refers to guests who share the accommodation with the Govt. employee; such is not the present case. Therefore, it is not the proviso but the explanation which applies to this case. According to the explanation a prior intimation is required to be give by the officer to the allotting authority and it is not disputed that the applicant had not given any such prior intimation. The defence of the applicant in this regard is that there were instances of theft in the Ambernath Estate and he was duty bound to protect the Govt. premises and

that even if he had applied and permission was ^{not} granted he was bound to take some action to protect the premises and accordingly he was required to put Shri Sawant in occupation of his quarter. The fact remains however that the applicant had not sought permission to appoint Shri Sawant as caretaker in his absence in connection with the religious function as stated by him. In this connection it is also notable that the applicant has not been ~~xxxxxx~~ able to clarify the discrepancy of the dates of the religious function in connection with which he was away viz. 20-6-90 to 5-7-90 on the one hand from 1.7.90 ^{on the other} to 15-7-90. It is also not the case of the applicant that he was attending the religious function on annual basis. The doubt cast by the respondents on the version of the applicant therefore appears to have some basis and the dates given by the applicant appear to be selected with reference to the notice received by him and the need to clarify his conduct at any given point of time.

7. The applicant has referred to the Supreme Court judgment in Jagannath vs. Chandan Bhan, 1988(3)SCC 57 and Gopal Saran vs. Satya Narain 1989(3) SCC 56. However, the Supreme Court judgment was in the context of Rent Act whereas in this particular case there is no doubt that we are concerned with allotment of Govt. accommodation which

undoubtedly are given on a leave and licence basis. Licence is liable to termination if there is a breach of condition of licence. The definition of subletting is not a comprehensive one. The reference to sharing is made only by way of illustration. It is the condition of the allotment that the accommodation should not be sublet and the consequence of subletting would not be attracted in case prior intimation about permitting a close relation or a central government employee to stay in the accommodation is given. Undoubtedly the applicant had not given such a prior intimation nor was the person in occupation a close relation or Central Government employee; therefore, he was clearly in violation of the conditions of licence and exposed himself to action under the relevant SRO. There is no substance in the contention of the applicant that FRs and SRs have no statutory force. FRs were framed in 1922 and they are undoubtedly laws in force in terms of Article 372 of the constitution of India.

8. As observed by us there has been no discrimination in the eviction of the applicant vis-a-vi other employees. In any case it may be remembered that Government accommodation is not a natural benefit available to every government employee, It is a special facility, which is short in supply and it is available only to a limited number of employees. Therefore, any conditions attaching to the allotment are required to be construed strictly. There is no vested right for an employee to stay in Government

accommodation even though he is guilty of breach of conditions. In any case the fact that action has not been taken against any other employees does not constitute a ground to challenge eviction order passed against him if it is otherwise legitimately issued. About the eviction order not being a speaking nature, it has been indicated in the order itself that evidence adduced by the applicant was taken into account.

In the text of the order, reference to the evidence viz. ration card etc. (has not been made but it has been indicated that the order was dictated in the open court in the presence of the applicant after giving him a personal hearing and after consideration of all the documents. There is, therefore, a broad ^{directions} compliance (with the /) of the Tribunal given in O.A.667/90.

9. Considering all the facts, we do not find any substance in the application which is accordingly disposed of by passing the following order:

ORDER

Application is dismissed.

Interim relief is vacated.

• No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)