

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 725/93
T.A. No. ---

198

DATE OF DECISION 20th Jan 1994

Bhargavi Amma

Petitioner

Mr.R.K.Kakkara

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Mr.V.S.Masurkar

Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The Hon'ble Mr. --

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

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.725/93

Bhargavi Amma
42-B, Pipewalla Building
(Peer Mohammad Manzil)
Saheed Bhagatsingh Road,
Colaba, Bombay - 400005. .. Applicant

-versus-

1. The Sub Area Commander
Station Head Quarters,
Colaba, Bombay -400005.
2. The Controller of Defence
Accounts
Southern Command,
Pune - 411 001.
3. Union of India
through
The Senior Quality Assurance
Officer,
Senior Quality Assurance
Establishment(Armaments)
D.G.Q.A Complex,
LBS Marg, Vikhroli,
Bombay - 400 083. .. Respondents

Coram: Hon'ble Smt. Lakshmi Swaminathan,
Member(J)

Appearances:

1. Mr.R.K.Kakkara
Advocate for the
Applicant.
2. Mr.V.S.Masurkar
Counsel for the
Respondents.

JUDGMENT:

(Per Smt.Lakshmi Swaminathan, M(J))

Date: 20 - 1 - 1994.

The present application has been
filed by the applicant, Smt. Bhargavi Amma, for
a declaration that the action of levying/deducting
market/damage rent from her salary by the ~~the~~

respondents in respect of Flat No. 42-B, 3rd Floor, Peer Mohammad Manzil, Colaba, Bombay allotted to her is bad in law, illegal, malafide, and arbitrary and for an order of injunction restraining the respondents from further levying the market rent from her.

2. The applicant is a civilian employee with respondent No.3. By an allotment order dt. 28-4-1971 the applicant was allotted the flat in question. Prior to this date it appears that her husband had been allotted the same flat from 1965. According to ^{the} respondents this flat is meant for JCOs & OR and not for civilian employees, ~~They were required~~ But at that time in 1971, a decision had been taken to allot any vacant quarter in this category to civilian employees. The normal rent for the flat is Rs.86/- but from 8-5-91 the respondents have levied market rent on the flat at Rs.836/-. By order dt. 28-3-89 the unit concerned were informed that certain hired houses meant for JCOs & OR had been allotted to civilians which they were now required to vacate. ~~They were required~~ to vacate by 15-4-89 after which it was stated that the occupants will be declared as unauthorised occupants and placed on damage rent and eviction proceedings will be initiated against them. The subsequent eviction orders passed by the Estate Officer dt. 3-3-90 and 30-5-91 were successfully challenged in appeal before the City Civil Court, Bombay. By the judgment and order dt. 18-1-92 the Court held, inter alia, that the letter of 28-3-89 did not validly terminate the appellant/applicant's right to occupy the flat in dispute and the said

letter did not render the occupation of the appellant unauthorised. However, the court left it open to the concerned authority to take action after following the proper procedure.

3. There is no evidence on record to show that any proceedings in respect of levying damage rent was taken by the respondents according to law before they imposed ^{the} damage rent on the applicant from 8-5-91. This action of the respondents is, therefore, contrary to law and unsustainable. The learned counsel for the respondents vehemently argued that since the respondents had made an allotment of residential accommodation to the applicant vide their letter dt. 18-12-92 and renewed vide their letter dt. 29-1-93, the applicant was liable ~~to be charged~~ ³ market rent from the date she has refused to vacate the flat in Colaba.

4. The allotment of residential accommodation in December, 1992 to the applicant is based on her entitlement and seniority as a civilian employee. One of the conditions mentioned in this allotment letter is that she should not ~~have been allotted any~~ ³ government accommodation in Bombay at that time. It is the applicant's case that since her allotment of quarter in Colaba in 1971 has not been cancelled, and in fact the judgment of the City Civil Court had declared her to be in authorised occupation of the flat, there was no reason for her to vacate the flat she was occupying, on the allotment made to her in 1992. There is much to be said on this plea because neither the respondents have cancelled her earlier allotment made in 1971 nor have they taken

any action for levying damage rent on that flat. By ~~making~~ merely making another allotment of flat to her, ~~does not entitle the respondents to levy~~ damage rent on the earlier allotment without recourse to the procedure laid down by the law. Since the showcause letter dt. 28-3-89 in which there was ^a mention of levying of damage rent has itself been set aside by the competent court, any action taken as a consequence of this letter ^{to} ^{and} has also ^{is} be set aside as being illegal ^{arbitrary}. Apart from this, there ^{is} also no evidence to show as to how the damage rent came to be levied from 8-5-91. Another ground urged by the learned counsel for the applicant was that ~~three~~ two other persons namely S/Shri P.M. Savant and ^{use} Thankachan who ^{was} similarly placed have been allotted accommodation from the Army Pool by the respondents and are still in occupation of the quarters ^{at} normal rent. These facts have not been properly denied by the respondents. Therefore, on this ground also the applicant deserves to succeed as the action to levy damage rent on the applicant alone ~~is~~ appears to be arbitrary ~~and~~ ~~discriminatory~~ discriminatory and against Article 14 of the Constitution.

5. Therefore, for the reasons given above this application is allowed. The respondents are restrained from levying any damage rent on the flat allotted to the applicant in 42-B, Peer Mohammad Manzil, Saheed Bhagatsingh Road, Colaba, Bombay-400005. The applicant is also entitled to refund of the damage rent levied by the respondents within

three months from the date of communication of this order. In the circumstance of the case there is no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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