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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 433/94.

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DATE OF DECISION AUGUST 24, 1994.

Shri P. K. Kutty, Petitioner

Shri G. S. Walia, Advocate for the Petitioners

Versus

Union Of India & Others, Respondent

Shri A. L. Kasture, Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

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


(M.S. DESHPANDE)

VICE-CHAIRMAN.

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 433/94.

Shri P. K. Kutty ...

Applicant

Versus

Union Of India & Others ...

Respondents.

CORAM :

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

APPEARANCE :

1. Shri G. S. Walia,
Counsel for the applicant.
2. Shri A. L. Kasture,
Counsel for the respondents.

ORAL JUDGEMENT:

DATED : AUGUST 24, 1994.

¶ Per. Shri M. S. Deshpande, Vice-Chairman ¶.

1. By this application, the applicant seeks a direction for quashing the letter dated 10.11.1993 by which it was stated that the applicant was in an unauthorised possession from 01.05.1992 to 14.09.1993 of the Government quarters and was liable to pay damage rent and for a declaration that the applicant's occupation of the quarter in that period was authorised and the respondents can charge only the normal rent from the applicant.

2. The applicant who was working as Assistant Personnel Officer (Group B) was transferred on 27.02.1992

to Bhavnagar and came to be retransferred on 13.09.1993 to Churchgate. The applicant was in possession of the Government quarters during this entire period. By the order dated 10.11.1993, the applicant's occupation of the quarter was regularised but it was stated that his occupation from 01.05.1992 to 14.05.1993 was unauthorised and he was therefore liable to pay damage rent. It is this letter which is being questioned by the applicant on the premise that action as required under Section 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, which has been ^{taken} followed. It is also mentioned that the applicant's son was working for the Western Railway and has been granted permission to share the quarter alongwith the applicant and no HRA was being paid to him. The respondents contention is that, it was open to the respondents to recover the rent and damage rent for unauthorised occupation under the instructions of Railway Board's letter dated 15.01.1990 and it was not necessary to seek any remedy under the provision of the Public Premises (Eviction of Unauthorised Occupants) Act.

3. It is not disputed that no action was initiated by the respondents either under Section 4 or 7 of the Act. Under Section 4 if the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. The notice shall specify the grounds on which the order of eviction is proposed to be made and

shall ask the person concerned to show cause, if any, against the proposed order on or before such date as is specified in the notice and to appear before the estate officer on the date specified in the notice alongwith the evidence which they intend to produce in support of the cause shown. Under Section 7 (1) where any person is in arrears of the rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order. Sub-Section 2 enables the estate officer to assess the damages on account of the use and occupation of such premises and may, by order require that person to pay the damages within such time and in such instalments as may be specified in the order. Under sub-section 3 no order under sub-section(1) or sub-section (2) shall be made against any person until after the issue for a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections if any, and any evidence he may produce in support of the same, have been considered by the estate officer. The Act provides for an appointment of the estate officer and roads him of the power to initiate action and hold an enquiry with a view to determine the liability and the extent of the liability of the occupants to pay the damage rent.

4. The submissions on behalf of the respondents was that, under the administrative instructions issued by the respondents, the respondents had the power to

recover rent or damage rent for unauthorised occupation. Section 15 of the Act however bars the jurisdiction of any court to entertain any suit or proceeding in respect of inter-alia of eviction and recover all arrears of rent or damage rent. Even the instructions contained in para 1731 of the Indian Railway Establishment Manual says that in the case of the unauthorised occupation of an employee to enforce eviction and recovery of rent in the provision of the Public Premises (Eviction of Unauthorised Occupants) Act 1958 should be evoked. I am to reiterate that the estate officer is empowered to evict the unauthorised occupants and necessary action should be taken in this respect under section 7 of the Act.

5. On behalf of the respondents, reliance is placed on the decision of the Supreme Court in New Delhi Municipal Committee V/s. Kalu Ram AIR 1976 S.C. 1637 While holding that under section 7, the estate officer may ask any person who is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified. It is observed that the word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. 'Payable' generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is

barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. It is observed that Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debit otherwise time-barred.

6. The Learned Counsel for the respondents urge that the procedure under Section 7 of the Act was only an alternative remedy which was left to the respondents but not the only remedy, as no new right is created and the recovery can be made pursuant to the administrative instructions issued. It is now well settled in view of the observations in Nazir Ahmad V/s. King Emperor, AIR 1936 PC 253 where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This was in line with the observations in Taylor V/s. Taylor 1875 1 ch D426 where it was pointed out that where a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted. It therefore follows that the administrative instructions which has been issued prior to the enactment of the Public Premises (Eviction of Unauthorised Occupants) Act, cannot be enforced for realising the amount due either as rent or damage rent and the only method as laid down in the provisions of



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Public Premises Act shall have to be pursued.

7. I, therefore see no merit on the contentions raised on behalf of the respondents that there is a remedy apart from pursuing the remedy provided in the Public Premises Act, available to the respondents. Since no action had been initiated under section 4 or section 7 of the Act, the respondents would not be entitled to recover damage rent for the period from 01.05.1992 to 14.09.1993 except in the manner provided by the Act. The impugned letter dated 10.11.1993 is quashed ⁱⁿ so far as he seeks to recover damage rent. The respondents would however be at liberty to seek the remedy under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act.

8. The O.A. is disposed of with no order as to costs.


(M. S. DESHPANDE)
VICE-CHAIRMAN.

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