

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 327/97

Date of Decision: 22nd AUGUST, 97

R.P. Singh

Applicant.

Mr. M S Ramamurthi

Advocate for
Applicant.

Versus

UOI & Ors.

Respondent(s)

Mr. R K Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Shri B.S. Hegde, Member(J)

Hon'ble Shri. Shri P.P. Srivastava, Member(A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓


M(J)

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

O.A.NO. 327/97

DATED : THIS 22nd DAY OF AUGUST, 1997

CORAM : Hon'ble Shri B S Hegde, Member(J)
Hon'ble Shri P P Srivastava, Member(A)

R.P. Singh,
Defence Estate Officer,
Ministry of Defence,
Mumbai Circle,
Colaba, Mumbai 400005.
(By Adv. M S Ramamurthi) ...Applicant

V/s.

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi 110011

2. Director General of
Defence Estates,
Govt. of India,
Ministry of Defence,
West Block IV,
R K Puram,
New Delhi 110066.

3. The Director
Defence Estates
Southern Command
Pune

(By Mr. R K Shetty,
Central Government
Standing Counsel) ...Respondents

ORDER

[Per: B S Hegde, Member(J)]

1. Heard Mr. M.S.Ramamurthi, counsel for the applicant
and Mr. R K Shetty, counsel for the Respondents.

2. In this O.A. the applicant is challenging the
suspension order passed by the Respondents vide order
dated 14.02.1997 under sub-rule (1) of Rule 10 of the



Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is true that normally Courts/Tribunals do not interfere with the suspension order which squarely falls within the discretion power of the disciplinary authority. However, in the instant case the applicant has challenged the suspension order on the ground of arbitrariness, malafide, premature and ultra virus of Rule 10 of CCS(CCA) Rules. The applicant therefore prays for quashing and setting aside the impugned order of suspension.

3. The Applicant belongs to Defence Estate Service which is a Group 'A' service in the Ministry of Defence. It is submitted that at the relevant time the applicant was working as Defence Estate Officer, Bombay Circle, and the Defence Estate Officer has to attend the Court cases on behalf of the Respondent Department in the High Court/Supreme Court. This the applicant was doing in consultation with the concerned officer of the Ministry of Law, Branch Secretariat at Mumbai. It is alleged that in one of the cases at the High Court of Judicature at Bombay the applicant had filed an affidavit in support of Notice of Motion in Writ Petition No.1733 of 1994 in consultation with Mr. A.S.Khan, Additional Legal Advisor, Ministry of Law, Bombay. It is further alleged, that the said Affidavit was drafted by Senior Counsel Shri R.V. Desai and thereafter the draft was seen and slightly corrected and vetted by Shri A.S.Khan,

AK

Additional Legal Adviser, Ministry of Law, Mumbai, before it was affirmed and filed by the applicant and this has resulted in the order dated 14.2.97 purported to have been issued by the President of India stating that disciplinary proceeding against the applicant is contemplated and hence placing the applicant under suspension. Thereafter the applicant has handed over his charge to one Dr. A.K. Kapoor on 20.2.1997. One Mr. Guru Swamy who is also in the rank of DEO has been posted in place of Dr. Kapoor vide order dated 19.3.97 by the Director General, Defence Estates, New Delhi. Guru Swamy was earlier also posted in place of the applicant but the said posting was stayed by the Tribunal and the applicant's transfer out of Bombay was also stayed. It is contended that the respondents had taken vengeance on the applicant inasmuch as the applicant has got a stay order by approaching the Tribunal and getting the interim order against the posting of Guru Swamy. It is submitted that when the applicant requested the higher authorities for the reason of his suspension he was told that it was because of certain affidavit filed by him in Notice of Motion in Writ Petition No. 1733/94. The learned Counsel for the applicant submitted that since the suspension order has been passed by the President of India there is no appeal provided under the Rules and therefore the applicant has no other alternative other than filing this O.A. The relevant facts are stated below.



4. The Ministry of Defence is holding a plot bearing Plot No.53A, Scheme No.52, Worli Estate in Greater Bombay admeasuring 848.67 sq.meters on monthly tenancy basis on rent of Rs. 157.6 p. The said plot is occupied by the Navy since World War II which belongs to the Bombay Municipal Corporation and was given on 999 years lease to one Dr. K G Cursetji. In the year 1982, Dr. Cursetji Jerbanoo Cursetji claiming to be the successor in title of the said Dr. K. G Cursetji filed a Writ Petition in the High Court of Judicature at Bombay contending that she wanted to develop the said plot of land and that either the Government of India should require this land or dehire and release it from their possession. A Naval Officer was instructing the Government Advocate in the said matter and on the basis of the instructions from the said Naval Officer the Government Advocate gave an assurance to the Court that the Government would acquire the said plot of land and on the basis of the statement the widow of Dr. Cursetji has withdrawn the Writ Petition No.919/82. The High Court of Judicature at Bombay passed order dated 30.4.1982 in Writ Petition no.919/82 which reads as under:

Coram: Sawant J.
Dated: 30-4-1982

Shri S. N. Kapadia for the Petitioners.
Shri L. K. Chatterjee with Shri K.R.
Bulchandani for the respondent Nos. 1
and 2.

Shri P.N. Shah for Respondent No.3.



P.C.: Shri Chatterjee for Respondent No.1 makes statement that the Union of India will acquire Plot No.53-A at Worli which is the plot in dispute in the petition. On this statement being made, Shri Kapadia for the Petitioner prays for withdrawal of the Petition. It is understood that the Government of India will take steps to acquire the plot within reasonable time. Shri Chatterjee to place a copy of the letter dated 13-4-1982 received from the Flag Staff Officer, Commanding-in-Chief, Navy on record by 3-5-1982. Leave to amend the petition. "

5. Since no steps were taken for a period of 12 years Dr.(Mrs.) Cursetji filed Writ Petition No.1733/94 for enforcing the statement and direction was given by the High Court to complete the acquisition within three months and an Award came to be passed on 30.5.1995. The High Court vide its order dated 16th August, 1994 in writ Petition No. 1733 of 1994 on the basis of the submissions made by the learned Counsel for the Respondents that a proposal has already been made and is pending before the concerned official at Delhi, the decision to acquire the land will be taken through Collector of land acquisition. In view of this statement made by the learned Counsel for the respondents the Court directed the Respondents Nos. 1 and 2 to complete acquisition as expeditiously as possible in any case within four months from to day and the Collector on receipt of the proposal for acquisition to acquire the plot within three months from communication of the proposal from the Respondent No.1 and 2. After the Award for Rs. 9,20,51,175/= came to be passed the Petitioner before the High Court of Judicature at Bombay took out a

Chatterjee

Notice of Motion being No.156/96 for a direction to the Respondents Nos. 1 and 2 for making payment in terms of the Award. Respondents challenged the order of the High Court in the Supreme Court of India by way of a Special Leave Petition which came to be dismissed. Thereafter, the Respondents Nos.1 and 2 have time and again obtained extension of time to deposit the amount of compensation and on 26.11.1996 the Respondents Nos. 1 and 2 filed an application before the Special Land Acquisition Officer under Section 48 of the Act for withdrawing the acquisition, which is pending. This is after a period of 13 years after the acquisition proceedings were initiated.

6. The Respondent department sent letters directing the applicant to withdraw from acquisition in consultation with the Law Department, Bombay. Thereafter a notice of motion was moved by the Union of India and the affidavit in support was corrected and finalised by Mr. A S Khan, Additional Legal Advisor, Ministry of Law, Bombay, which came to be filed on 10.12.1996. Mr. Khan gave his advice on 19.12.1996 which reads as under:-

"The referring Department seeks our advice regarding the request made by M/s. Mulla & Mulla for inspection of the original lease agreement.

The averment that the Department is in possession of the land in question by virtue of lease agreement was added only after taking instructions from the Defence Estate Officer, Shri R. P. Singh.



at the time of vetting affidavit. Moreover, the said averment is absolutely necessary to attract the provisions of section 48 of the L.A. Act as withdrawal is not permissible if the Government has taken possession pursuant to land acquisition proceedings. However, the Department now states that no lease agreement is available in their record but only correspondence between the land lady and the Department and the receipts for payment of rent are available in their records. It is settled law that lease agreement need not necessarily be in writing and the same can be by oral agreement also which can be established by the correspondence between the land lady and the Department and by the rent receipts. Hence, M/s. Mulla & Mulla may be given inspection of the said correspondence and the rent receipts to prove the lease agreement in the present case. Sd/- (A.S. Khan) Additional Legal Adviser 19.12.1996."

7. The High Court vide its order dated 24.8.1996 had observed that the Special Land Acquisition Officer, Bombay has passed an Award dated 30th May, 1995. The possession was also taken by the Respondents. Till to day the amount is not deposited. Hence the Respondents are directed to deposit in this Court an amount awarded in favor of the Petitioner - Mrs. Jerbanoo Khurshed Jahangir on or before 30th July, 1996. It is noticed that in the oral judgment dated 30th August, 1996 in Writ Petition No.1733 of 1994 filed by the Union of India the High Court observed that the possession of the land was handed over to the Petitioners on 15th June, 1941. Since then the Petitioner continued to hold the said land as a lessee and the Navy is using it. The rent is being paid by the Respondent No.1 and was paid

AKN

upto 30th June, 1994. In pursuance to the directions Land Acquisition proceedings were completed and the Land Acquisition Officer has awarded Rs.9,20,51,175/=. It is contended by the Petitioners (U.O.I.) that the Award passed by the Respondent No.4, Land Acquisition Officer is illegal and contrary to the provisions of Section 23 of Land Acquisition Act. The High Court while disposing of Notice of Motion No.279/96 in Writ Petition No.1733/94, relied upon the findings of the Hon'ble Supreme Court decision in SANTOSH KUMAR AND OTHERS Vs. CENTRAL WAREHOUSING CORPORATION AND ANOTHER, AIR 1986 SC 1164, wherein the Supreme Court specifically held that apart from fraud, corruption or collusion, the amount of compensation awarded by the Collector under Section 11 of the Act may not be questioned in any proceeding either by the Government or by the Company or local authority at whose instance the acquisition is made. Article 226 is not meant to avoid or circumvent the process of the law and the provisions of the statute. When Section 50(2) expressly bars the company or local authority at whose instance the acquisition is made from demanding a reference under Section 18 of the Act, it is not permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 to challenge the amount of compensation awarded by the Collector to have it reduced. In the present case, in the petition there are no allegations that the Award is fraudulently or collusively passed. Hence, it is clear

Ba

that this petition challenging the award for reduction of the compensation amount awarded by the Land Acquisition officer is not maintainable. ... Notice of Motion No.156 of 1996 and Notice of Motion No. 279 of 1996 in Writ Petition No.1733 of 1994 stand disposed of accordingly. Time to deposit the amount is extended upto 1st October, 1996.

8. In the light of above the learned counsel for the applicant Mr. Ramamurthi vehemently urged that the suspension order passed against the applicant is arbitrary, malafide, passed on no evidence and the suspension order cannot fall within Rule 10 of the CCS(CCA) Rules. The Respondents cannot resort to disciplinary action for the affidavit filed by the applicant based on the advice of the Law Ministry and therefore the suspension order passed by the Respondents is vitiated and the same is required to be quashed.

9. Under Sections 105 of Transfer of Property Act a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferrer by the transferee, who accepts the transfer on such terms.



Section 106 of The Transfer of Property Act defines certain leases in the absence of written contract or local usage. Lease of immoveable property for agricultural or manufacturing process shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice expiring with the end of a month of the tenancy. It is an admitted fact, that in the present case the land has been in the possession of the Respondent department, whether it is on lease agreement or on hire basis it does not make any difference in so far as the acquisition of land is concerned. It has been decided by the respondent department to acquire the land on the notice given by the original lessee and having given an explicit approval for acquisition of the land, it is not open for the respondents to resile their very statement after the Award is published merely because the award is exorbitant. That being the pivotal point, the suggestion given by the applicant to the Law Ministry that the plot in question is leased ~~to~~^{by} the Navy from Dr. Cursetji would not alter the position. It is surprising to note that the Respondent Department have cited Legal Adviser as witness. Normally, the opinion rendered by the Legal Adviser of the Legal Department is

Ba

binding on the Government of India and in case the Department intends to differ from the opinion rendered, the matter shall have to be taken up to the Secretary, Ministry of Law, for further consideration whose opinion is binding on the Department/Government of India as per Allocation of Business Rules. In this case the department has not resorted to such procedure. It is noticed that the Legal Adviser himself has made copious corrections in the draft submitted by the Department and thereafter the Applicant has filed the affidavit incorporating the corrections made by the Law Ministry. Therefore, the department cannot find any fault with the applicant in this connection stating that he has intentionally used the terminology of 'lease agreement' which does not change the character and scope of the Award. It is noticed that draft corrected by the Legal Adviser clearly observed that "the Department is in possession of the land in question by virtue of the lease agreement and hence the Petitioner (U.O.I.) confirmed to be in possession even after initiation of land acquisition proceedings." Needless to mention that the department has been in possession of the said plot from 1941 till date, whether it is under lease agreement or otherwise does not make any difference. If it is not covered by the lease agreement they have to pay rent from month to month under the Transfer of Property Act and the relationship of tenant and land lord subsists.

10. As stated earlier, normally, we are reluctant to interfere with the order of suspension. In the instant

[Signature]

case, in our opinion the suspension order passed by the respondents is arbitrary and non-application of mind and the reply filed by the respondents is nothing but stereo type reply. The Respondent department after publication of the Award obviously found that the Award amount is on higher side and now they intend to rescind from acquisition. The Writ Petition No.1733/94 filed by the respondents has been rejected by the High Court.

11. In our opinion, for the foregoing reasons, the suspension order passed by the Respondents is prima-facie illegal and arbitrary and non-application of mind. In the result, we hereby quash and set aside the suspension order dated 14.2.1997 passed by the respondents as the same is devoid of any material facts. In the circumstances, we saddle the respondents with costs of this application which we quantify at Rs.500/-. The cost of Rs.500/- be deposited within a period of one month from the date of receipt of a copy of this order with the Registrar, Central Administrative Tribunal, Bombay, who in turn will deposit the same with the C.A.T. Bar Association Library. The O.A. is disposed of with these directions.



(P.P. Srivastava)

Member(A)



(B.S. Hegde)

Member(J)