

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 595/97

Date of Decision: 03-03-98

Malhari Tayappa Shinde

Applicant.

Shri R.P. Saxena

Advocate for
Applicant.

Versus

Union of India & 2 Others.

Respondent(s)

Shri R. K. Shetty

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

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

abp.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6,PRESCOT RD, 4TH FLR,
MUMBAI BENCH, MUMBAI-400 001.

ORIGINAL APPLICATION NO.595/97.

DATED THIS 3rd DAY OF March 1998.

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

Malhari Tayappa Shinde,
Building No.106, Room No.8,
M.E.S. Quarters, Kalina,
Santacruz(East),
Mumbai - 400 098.

... Applicant.

By Advocate Shri R.P.Saxena.

V/s.

1. Union of India, through
The Station Commander,
Station Headquarters,
Colaba, Mumbai - 400 005.
2. The Officer Commanding,
217 Petroleum Contract Unit ASC,
Wadala, Mumbai - 400 007.
3. The Barrack Stores Officer(North),
M.E.S. Santacruz,
Mumbai - 400 098.

... Respondents.

By Advocate Shri R.K.Shetty.

I O R D E R I

I Per Shri M.R.Kolhatkar, Member(A) I

In this OA, the applicant has challenged the notice dated 20/5/97 from the respondents stating that the applicant has sublet his Government Married Accommodation, that the allotment has been cancelled and that he should vacate it on or before 15/6/97. He has also challenged the subsequent communication dated 24/6/97 stating that his representation is not accepted, and he should vacate the accommodation on due date and further communication dated 3/7/97 stating that he should pay damage rent with effect from 15/6/97.

2. The case of the applicant is that he is a Group 'C' defence civilian employee, to whom Government accommodation was allotted vide allotment letter dated 25/6/91, ^{and} That he had

received notice of cancellation of accommodation, eviction from the accommodation and damage rent on the ground of alleged subletting but that in fact there has been no subletting. Subletting would imply that the allottee was staying somewhere else and he had sublet the quarter to a third party. In his case, there is no subletting since he has evidence to show that he actually stayed in the accommodation. This evidence is in the nature of entry in the electoral list, CGHS Card, receiving letters of relative and certificate showing that children are studying in Kalina School. So far as the surprise check on 10/5/97, which is the basis of allegation of subletting is concerned, his contention is that he had taken leave from 28/4/97 to 9/5/97 for going to his native place at Indapur, Pune where he was operated upon for enlarged Nose Bone and he had arranged on request a caretaker viz his friend Shri Divan Mehta to look after his quarter during his absence on leave., as well to as water the plants. According to the applicant, the fact of subletting is not established. During the surprise check, the inspection party had not consulted the neighbours and it is well settled by the judgement of the CAT,

Principal Bench in Bhupender Singh v/s. Union of India reported at (1993)23 ATC-113

"that a one time casual enquiry cannot render the other pieces of evidence irrelevant."

He states that the judgement in Bhupender Singh has been followed by this Tribunal in Ram das v/s. Union of India vide OA-906/95 decided on 5/9/96.

3. Further the applicant contends that he did not have proper notice of the case against him, because full facts of the subletting were not made known to him and a copy of the Inspection Report was not made available to him. To the extent the department's contentions is that the alleged subtenant had not made any statement, the

applicant with his rejoinder has filed a copy of an Affidavit from Shri Dhiren Mehta dated 20/11/97. Further the applicant has contended that no opportunity was given to the applicant to put forth his case by producing evidence relating to his stay at his quarters in question, and therefore the Impugned Orders are illegal and are liable to be quashed and set aside.

4. Respondents have opposed the OA. Counsel for respondents has invited my attention to the order of allotment of quarter which clearly states in para-3 that "allotment is subject to cancellation in the event of misuse of the premises by subletting or unauthorised persons."

It is further stated in para-5 of the Allotment Order that

"Prior permission of the Station Cdr will be obtained before harbouring guests relatives in the Govt accn in terms of para 1016 of DSR, Regulations for the Army 1968 and Bombay Spl Stn Order No.48/8/82 dt. 30 Oct. 82."

5. It is contended therefore that the applicant was fully aware that allotment is subject to cancellation in case of subletting and assuming that the applicant was harbouring guests and relatives in terms of para-5, the applicant had not taken the permission of the Stn Cdr. Therefore, the action of the applicant in alleged subletting of quarter ~~xxxxxxxxxxxx~~ was clearly in violation of the terms and conditions of Allotment Order. The full particulars could not be furnished as the subtenant refused to give a statement. This is seen from Annexure to R-2^{to the written statement.} It is further contended that the applicant could not be considered to have suffered a prejudice because of lack of particulars, because the representation of the applicant dated 3/6/97 at Annexure-5 to the application clearly shows that the applicant had known what was the case against him and he had tried to ~~rebut~~ ^{rebut}

the same. In para-5, the applicant had stated that he had requested Shri Dhiren Mehta a friend of his to take care of his plants and quarters. In para-6 of the representation, there is an admission because he has requested that his case should be considered sympathetically and he should be excused for the lapse on his part. It is contended the stand of the applicant that a ^{friend} of his was asked to stay as a care taker is not acceptable because the ^{so called} friend is not a relative of the applicant and is stated to be either a Businessman in Bombay or a Salesman in Bombay.

5. I have considered the matter. So far as the evidence filed by the applicant relating to his stay in the Government quarter in question is concerned, the same cannot be said to be conclusive because the definition of subletting as given in SR-317(B)-20 is as below:-

"subletting includes sharing of accommodation by an allottee with another person, with or without payment of licence fee by such other person. However, any sharing of accommodation by an allottee with close relations shall not be deemed to be subletting."

7. Therefore, the applicant's ^{stay} in the particular quarter and simultaneously sharing the same is consistent with the ~~xxxxxx~~ allegation of subletting. So far as the applicability of Bhupender Singh's case is concerned, it is true that a one time casual enquiry cannot render the other pieces of evidence irrelevant and that consultation with neighbours does not appear to have taken place. However, the Tribunal has also observed in para-13 that in a case of this kind, what is relevant is preponderance of probabilities.

8. From this point of view, the case of the applicant that Shri Dhiren Mehta who stays in Malad (W) and who is employed in Santacruz (W), ^{who} is not related to the applicant ~~and~~ was not a former employee of the department

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in which the applicant was working (as was the case in Ram das v/s. Union of India in OA-906/95), ^{and} was staying especially to take care of the quarters does not appear to be probable.

9. The contention of the respondents that the subtenant refused to make a statement and that he threatened the checking team by dropping names of VIPs etc appears to be credible. If you are really a care taker it would have been natural for him to have explained the factual position to the inspecting team. I am therefore of the view that it is difficult to say that there is no factual foundation in the supposition ~~harboured~~ by respondents of subletting on the part of the applicant.

10. At the same time there is considerable force in the contention of the applicant that the Principles of Natural Justice have not been followed and no opportunity was given to the applicant to meet the case against him. It appears that the respondents, consequent on cancellation of the allotment by the letter dated 20/5/97 have ~~xxxxxxxxxx~~ straightway proceeded to pass an eviction order and subsequently passed an order regarding penal rent also. The respondents do not appear to have followed the procedure laid down in the Public Premises (Eviction of unauthorised occupants) Act 1971 and Rules thereunder. Section-4 of the Act envisages issue of notice to show cause against the order of eviction and a subsequent enquiry. Section-7 gives Power to require payment of rent or damages in respect of Public Premises. Action in terms of these sections does not appear to have been taken. The applicant is therefore entitled to the limited relief of not being evicted and not being saddled with penal rent till the proceedings under Public Premises Act ^{taken} ~~are~~ followed. The Interim Relief is therefore made absolute without prejudice to the right of the respondents to take appropriate action according to law for eviction and for imposition of penal rent.

on the applicant.

|| OA is disposed of in these terms, there
will be no orders as to costs. ²⁵ _R

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

abp.

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