

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 817/97

3.6.99

Date of Decision:

K.S.Dhumal

Applicant.

Shri Suresh Kumar

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri.

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

*D.S. Baweja*  
(D.S. BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

OA.NO. 817/97

Dated this the 3<sup>rd</sup> day of June 1999

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Krishna Sitaram Dhumal,  
Permanent Packer,  
R/o Qtr. No. 5165/141,  
3rd Floor, S.M.Plot,  
Mumbai.

By Advocate Shri Suresh Kumar ... Applicant

V/S.

1. Union of India  
through the Director of  
Estate, Nirman Bhavan,  
New Delhi.
2. The Estate Manager,  
Government of India,  
Old C.G.O. Building  
Annexe, 101, M.K.Road,  
Mumbai.
3. The Accounts Officer,  
Deputy Asstt. Dir, General,  
Govt. Medical Store Depot,  
Mumbai Central,  
Mumbai.

By Advocate Shri V.S.Masurkar ... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A))

The applicant is working as a Packer in the Office of Medical Store Depot, Mumbai Central. He was allotted a Quarter No. 5165/141, I.S.M. Plot, Mumbai-37 as per order dated 28.8.1989. The applicant was staying in this quarter since allotment. However, the applicant was called upon by the Estate Manager to attend the office and to show cause and to prove that he is staying in the said quarter. The applicant had attended the office

of the Estate Manager and produced all the relevant documents to prove that he is residing in the said quarter. However, as per order dated 23.4.1997, he was advised that the allotment of the quarter stands cancelled and the applicant shall be ineligible for Government accommodation for a period of 5 years. He was also advised that four times standard licence fee will be charged under F.R.45-A with effect from the date of issue of order to the vacation of the quarter, if the same falls within the period of 60 days. The applicant was also directed as per this order to make an appeal, if any, to the Director of Estates, New Delhi, i.e. Respondent No. 1. The applicant, however, submits that he could not make an appeal against this order as he was sick and was on medical leave. Subsequent to this order, as per order dated 4.9.1997, he has been advised that the allotment of the quarter has been cancelled from 22.6.1997 and an amount of Rs.8742/- is recoverable from the applicant as a licence fee on account of sub-letting of the allotted quarter. It is also advised that for any overstay beyond 22.6.1997, a damage rent of Rs.3526/-p.m. will be recovered. The applicant has filed the present OA, challenging this order on 24.9.1997. The main contention of the applicant is that action against the applicant treating him as unauthorised occupant <sup>taken only</sup> can be under Section 4 of Public Premises (Eviction of Unauthorised occupants) Act, 1971. Under Section 4 of this Act, it is within the competence of the Estate Officer to declare whether the occupation of the quarter is authorised

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or unauthorised. It is further argued that whether penal rent is <sup>to be</sup> charged <sup>governed by</sup> is Section 7 of this Act. It is for the Estate Officer to determine the damage rent to be paid as per the provisions of the Act. It is, therefore, contended that since the respondents have not taken any action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the recovery of the penal rent as indicated as per letter dated 4.9.1997 cannot be made from the applicant. Alternatively, the applicant has also contended that the demand of the penal rent is not in conformity with S.R. <sup>-317-</sup> 22 according to which the Estate Manager cannot recover more than twice the normal rent for unauthorised occupation on cancellation of the allotment.

2. In the background of the above facts, the applicant has sought the following reliefs :-  
(a) to set aside the order dated 4.9.1997. (b) provisions of the fundamental rules which are inconsistent with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are not applicable to the applicant and the same may be declared ultravires to the act and Constitution of India. (c) direct the respondents to take action, if any, against the applicant after following the provisions of the P.P. Act, 1971.

3. The respondents have filed the written statement opposing the claim of the applicant. The respondents submit that on a surprise check, it was found that the applicant was sub-letting the allotted quarter. The Estate Manager after

investigation came to the conclusion that the applicant has sub-letted the quarter and therefore the allotment was cancelled on 23.4.1997 after giving due opportunity to the applicant to prefer an appeal within 60 days to the Appellate Authority, i.e. Director of Estates. The applicant, however, did not avail this opportunity and no appeal was filed. The respondents further submit that for any over stay after cancellation of allotment order, the recovery of rent at damage rate is permissible as per the extant rules. In view of these facts, the respondents plead that the action taken against the applicant for cancellation of quarter and recovery of damage rent is as per the extant rules.

4. The applicant has not filed any rejoinder reply for the written statement.

5. Heard the arguments of Shri Suresh Kumar, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents. The material brought on<sup>the</sup> record has also been perused.

6. The applicant has challenged the impugned order dated 4.9.1997 mainly on the ground that the same is in violation of provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant submits that as per this Act, it is the Estate Officer who has to declare the occupation as unauthorised or otherwise. Further, as per the applicant, the damage rent can be recovered only

under the provisions of Section 7 of the Act and it is for the Estate Officer to decide about the payment of the damage rent after giving show cause notice to the concerned party. Keeping in view the grounds for challenge of the impugned order, it was pointed out to the learned counsel for the applicant that the issue with regard to the recovery of the penal rent etc. had been already gone into by the Full Bench in the case of Ram Poojan vs. Union of India, 1996 (34) ATC 434. The Full Bench has held that penal or damage rent can be recovered from salary without resorting to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Full Bench has also held that resort to proceedings under the said Act is only an alternative procedure which does not debar recovery as per the extant rules. The learned counsel for the applicant at this stage ~~contended~~ <sup>though</sup> that the extant rules do provided for the recovery of the damage rent but in his opinion the extant rules are in violation of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It was pointed out to the learned counsel for the applicant that since the issue has already been decided by the Full Bench, the matter cannot be gone into ~~to~~ consider <sup>this</sup> ~~aspect~~ <sup>afresh</sup> and take a different view. The learned counsel for the applicant <sup>then</sup> ~~fairly~~ conceded this point and submitted that even as per the extant rules, the recovery of the damage rent which has been ordered as per the impugned letter dated 4.9.1997 is also not ~~admissible.~~ He submits

that he has taken an alternative plea in the OA. that the payment of penal rent is not in-conformity with the SR 317-B 22. It is his contention that as per the provisions of this rule, the Estate Manager cannot recover <sup>more than</sup> double the normal rent paid by the applicant for unauthorised occupation. The applicant further argued that the case of the applicant <sup>is to</sup> be treated as over-stay after cancellation of allotment and not as unauthorised occupation for which damage rent is charged. On referring to S.R. 317-B 22, it is noted that in case of over-stay after cancellation of the allotment, the occupant is liable to pay damages as have been determined by the Government from time to time or twice the licence fee he was paying and which-ever is higher of the two. Keeping the provisions of the rule, the contention of the applicant that the penal rent is to be limited to twice the normal rent is not tenable. The rent as determined by the Government from time to time or twice the licence fee whichever is higher is liable to be paid by the occupant as per the S.R. 317-B-22. Further, on going through the rules, it is noted that S.R. 317-B-21 covers the case of the applicant. This rule covers the case of sub-letting of the allotted residence and the penalties which can be imposed for sub-letting of the house. As per sub-clause 2, the enhanced licence fee not exceeding four times the normal rent under F.R. <sup>45-A</sup> can be charged. Further, the allotment of the house can be cancelled and in the event of cancellation of the allotment,

(D)

the occupant is allowed 60 days from the date of cancellation for making alternative arrangement and in case the quarter is not vacated within 60 days, then it be treated as unauthorised occupation of the house. From the documents brought on record, it is noted that the applicant was issued a show cause notice for cancellation of allotment order as per letter dated 23.4.1997 as per the provisions of rules under S.R.317-B-21, <sup>and</sup> the applicant was allowed to file an appeal against this order before the Director of Estates. However, as stated by the applicant, he did not avail of this opportunity as he was sick. Keeping this fact in view and the provisions of S.R.317-B-21 and S.R.317-B-22, I am of the considered view that the ends of justice would be met if the applicant is allowed to make an appeal as per the provisions of the rules to the Director of Estates raising his contentions made in the OA. with regard to the recovery of the rent for sub-letting of the quarter and unauthorised occupation of the same after cancellation of the allotment.

7. The applicant during the hearing cited two judgements in support of his contentions with regard to recovery of the rent. The first judgement relied upon is in the case of Shiv Sagar Tiwari vs. Union of India & Ors. (1997) 1 SCC 444. On carefully going through this judgement, it is noted that issue involved in this judgement is entirely different from what has been agitated through the present OA.

Hon'ble

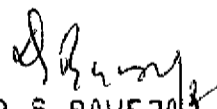
In this case, the Supreme Court was seized of the issue with regard to large scale out-of-turn allotments on special compassionate ground in Delhi. The Hon'ble Supreme Court has given direction with regard to recovery of penal rent in respect of those occupants who become liable to eviction on account of their illegal occupation of the quarters in question keeping in view the peculiar facts and circumstances arising <sup>out of</sup> large scale out of turn allotment. In the OA. under reference, the issue <sup>is</sup> concerning the sub-letting of the house and the action has been taken in cancellation of the allotment under the provisions of the rules and thereafter <sup>the</sup> recovery of penal rent which has become due as per the extant rules. In view of this, the cited judgement does not come to the rescue of the applicant.

The second judgement cited is in the case of Shangrila Food Products Ltd. & Anr. vs. Life Insurance Corporation of India & Anr., JT 1996(6) S.C. 522. This judgement also covers altogether a different issue dealing with the eviction proceedings and the order of the City Civil Court. In the present case, the matter concerns the action taken against the applicant for sub-letting as per the extant rules.

Therefore the matter has to be gone into merits <sup>provisions of the relevant rules</sup> keeping in view the ~~action~~ for recovery of the <sup>under which the action</sup> rent has been taken against the applicant. This judgement therefore is not relevant to the case of the applicant.

8. In the result of the above, the OA. is partly allowed with a direction that applicant may file an appeal to the competent authority, i.e. Director of Estate as per the provisions of the rules within a period of one month from the date of receipt of this order. The applicant may take all the contentions with regard to recovery of the penal rent as admissible as per the rules. The competent authority on receipt of the appeal, will consider the appeal and will pass a speaking order within a period of two months thereafter.

The operation of the interim stay order dated 25.9.1997 as per which status quo was ordered with regard to the impugned order dated 4.9.1997 shall continue till the disposal of the appeal of the applicant as per the direction above. No order as to costs.

  
(D.S. SAWEJA)  
MEMBER (A)

mrj.