

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 583/1998

Date of Decision: 23/7/98

Shri S.S.Roy.

Petitioner/s

Shri M.S.Ramamurthy

Advocate for the
Petitioner/s

V/s.

Union of India & 5 Ors.

Respondent/s


Shri V.S.Masurkar


Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

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 ? 

abp.

(R. G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, FRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO.583/98.

DATED THE 23RD DAY OF JULY, 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

S.S.Roy,
Formerly working as
Chief Commissioner of Income Tax,
Ahmedabad,
residing at B/405,
Adarsha Spring Mill Compound,
Dadar (East),
MUMBAI - 400 014.
Advocate
By/Shri M.S.Ramamurthy.

... Applicant

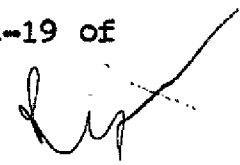
V/s.

1. Union of India,
through the Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi-110 011.
 2. Director of Estate,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi-110 011.
 3. The Estate Officer/
Assistant Estate Manager,
3rd Floor, Old C.G.O.Bldg,
101, M.K.Road,
Churchgate,
MUMBAI - 400 020.
 4. The Chief Engineer,
Central Public Works Department(West Zone),
Office of the Chief Engineer, (W.Z.),
C.G.O.Annexe,
M.K.Road, Churchgate,
MUMBAI - 400 020.
 5. The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 011.
 6. The Chief Commissioner of Income Tax,
Gujarat,
Ahmedabad.
- ... Respondents.
- By Advocate Shri V.S.Masurkar.

I O R D E R I

[Per Shri R.G.Vaidyanatha,Vice Chairman]

1. This is an application filed under section-19 of



the Administrative Tribunals Act, challenging the order dated 1/4/98 passed by the Estate Officer, Bombay.


The Learned Counsel for respondent No.3, Shri V.S.Masurkar to whom emergency notice was ordered was before this Tribunal for Respondent No.3, has taken objection that this Tribunal has no jurisdiction to entertain this application.

I have heard the learned counsel appearing on both sides.

2. In this application, the applicant is challenging the order of the Estate Officer, determining damages to be paid by the applicant for unauthorisedly continuing in possession of the Government Quarters vide order dated 1/4/98. He has fixed the damages at Rs.4,82,386/-. Being aggrieved by this order, the applicant has approached this Tribunal.

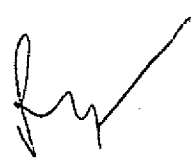
The applicant's case is that Estate Officer has not followed the provisions of Public Premises Act and has not conducted an enquiry for determining the damage rent., and has straightaway issued final order under sub-section(2) and (2-A) of section 7 of the P.P.Act, 1971. Therefore, he has approached this Tribunal challenging the correctness and legality of the same and wants the order to be stayed.

3. The learned counsel for 3rd respondent has contended that since the order is passed by Estate Officer under the P.P.Act, the application is not maintainable in this Tribunal, and the remedy of the applicant is to go before a District Judge., under Section-9 of the P.P.Act. On the other hand, the learned counsel for applicant contended that the Impugned order is not passed under P.P.Act but dehors that Act and therefore this Tribunal has jurisdiction to entertain the original application.



There are many documents which are on record show that Estate Officer issued notice demanding damage rent under section 7 of the P.P.Act. It may be in the Impugned order, the Estate Officer has not mentioned the provisions or Section of P.P.Act but both after and before the Impugned order was issued there is sufficient material on record that Estate Officer was exercising the powers given to him under section-7 of Public Premises Act (Eviction of Unauthorised Occupants), Act, 1971. The applicant himself has produced one notice dated 19/6/98 at page-64 of the paperbook, it is a notice issued by Estate Officer under Section-7 of P.P.Act. On page-76 of the paperbook, the applicant has produced an earlier notice issued by Estate Officer on 3/7/96 and it is also issued under section-7 of the P.P.Act. It is specifically mentioned that by virtue of powers conferred by Sub-section(2-A) of sec 7 of the P.P.Act, he is issuing notice demanding interest on account of unauthorised occupation.

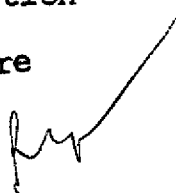
4. The applicant had earlier approached this Tribunal in OA-842/96. That OA was disposed of by a single Member of this Tribunal by order dated 10/4/97, a perusal of that order also shows that the Estate Officer had to hold an enquiry under section-7 of the P.P.Act. Therefore, even that order shows both the parties knew that action was taken under P.P.Act and the Estate Officer should follow the P.P.Act to determine the damage rent. There is one more notice dated 1/7/97 at page-119 of the paperbook using the words demanding damage rent under section-7 of P.P.Act. What is more, the previous order of this Tribunal called upon the Estate Officer to hold a formal enquiry under section 7 of P.P.Act. Therefore, it was never in doubt between the parties that the action was being taken under the provisions of P.P.Act.



The Learned Counsel for respondents at the time of arguments placed before me a recent order dated 3/7/98 passed by Estate Officer demanding interest and it is also issued under Section-7 of the P.P.Act. Infact, we have the applicant's legal notice at page-148 of paperbook dated 8/5/98, that he has received notice under Section-7 of the P.P.Act and the Estate Officer has not held proper enquiry under Section-7 of P.P.Act.

5. It was never in doubt between the parties that the action taken by Estate Officer has always been under Section-7 of P.P.Act. It may be that the applicant is required to appeal to District Judge under the P.P.Act. As can be seen from the Impugned order, the damage rent ^{the} is determined as per/scale fixed by CPWD.

We are not for a moment concerned whether the order is justified or legal or sustainable. For once, it is seen that the Impugned Order is issued under provisions of Section-7 of P.P.Act, then the remedy for applicant is to file an appeal under Section-9/~~of~~ ^{before} the District Judge of area and in Bombay it must be Principal Judge, City Civil Court. Further, there is a bar of Jurisdiction under Section-15, there also it is provided that no Court shall have jurisdiction in entertaining suit or proceedings in respect of order passed by Estate Officer either regarding eviction or recovery of damage rent. Therefore, even under Section-15, this Court of Tribunal cannot entertain the present original application. The applicant should approach the appropriate forum under Section-9 of the Act., for challenging the impugned order. Even, granting for a moment that the Estate Officer has passed the order without holding an enquiry, it is well settled that it can be challenged only before the appropriate appellate forum under the Act and not outside the Act. Therefore, in my view, the present application is not maintainable before this Tribunal and therefore

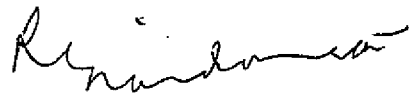


granting of Interim Relief does not arise. The other points regarding merits and other ancillary matters are left open.

6. In the result, application is rejected for want of jurisdiction at the admission stage. This order is passed without prejudice to the right of the applicant who may challenge the Impugned order before the Appellate forum. No costs.

All the papers annexed to the OA may be returned to applicant or his counsel for being presented before the appropriate appellate forum.

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN