

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 700/98.

Date of Decision : 29.10.1998.

Malhari Tayappa Shinde, Petitioner.

Shri R. P. Saxena, Advocate for the  
Petitioner.

VERSUS

Union Of India & Another, Respondents.

Shri R. K. Shetty, Advocate for the  
Respondents.

CORAM :

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

- (i) To be referred to the reporter or not ? *vv*  
(ii) Whether it needs to be circulated to  
other Benches of the Tribunal ? *vv*

*R. G. Vaidyanatha*  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

os\*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 700/98.

Dated this Thursday, the 29th day of October, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.

Malhari Tayappa Shinde,  
C/o. Shri Malik,  
Shiv Nagar Chawl,  
Opp: Air India Main Gate,  
Kalina, Santacruz (East),  
Mumbai - 400 029.

... Applicant

(By Advocate Shri R.P. Saxena)

VERSUS

1. Union Of India through  
The Estate Officer,  
Station Headquarters,  
Colaba, Mumbai - 400 005.

2. The Officer Commanding,  
217, Petroleum Contract Unit  
ASC, Wadala,  
Mumbai - 400 037.

... Respondents.

(By Advocate Shri R. K. Shetty).

: OPEN COURT ORDER :

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

This is an application filed by the applicant challenging the order for recovery of penal rent dated 04.08.1998. Respondents have filed reply opposing the application. I have heard the Learned Counsels appearing on both sides.

2. The applicant is challenging the order for recovery of penal rent only on the ground that there is violation of principles of natural justice and the

 ...2

respondents have not taken action under Section 7 of the Public Premises Act, 1971. There is serious dispute between the parties regarding the question - whether the applicant had sublet the premises or not. This cannot be <sup>unilaterally</sup> immediately decided by the respondents. Some enquiries are required to be done to decide whether there was subletting or not.

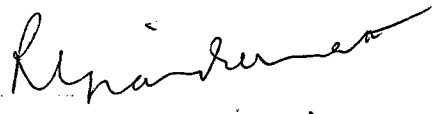
The Learned Counsel for the respondents fairly submitted that respondents shall take proper action under Section 7 of the Public Premises Act to recover the damage rent from the applicant. In view of this statement, the present O.A. does not survive, since the only ground for objection is that the respondents cannot recover damage rent without having recourse to Section 7 of the Public Premises Act.

The Learned Counsel for the applicant prays that an amount of Rs. 2,000/- which has already been recovered from the applicant, should be refunded and it is open to the respondents to proceed against the applicant for taking action under Section 7 of the Public Premises Act.

3. After hearing both sides, I find that there is no necessity for directing the respondents to refund the amount at this stage, Since the amount is recovered prior to the interim order passed in this case. If, in case, after the enquiry under Section 7 of the Public Premises Act the applicant is found to have not sublet the premises and is not liable to pay damage rent, then the respondents are bound to refund the said amount

of Rs. 2,000/- with interest <sup>at 12-1/2%</sup>. If, in case the applicant fails in that case and is bound to pay damage rent, then the said amount of Rs. 2000/- should be adjusted towards damage rent. In view of these observations I feel that no order is necessary for directing the respondents to refund the amount with ~~12% interest~~.  
*R.G.V.*

4. In the result, the O.A. is disposed of at the admission stage by directing the respondents not to make any recovery of penal rent in pursuance of the order dated 04.08.1998 without having recourse to Section 7 of the Public Premises Act according to law. In the circumstances of the case, there will be no order as to costs.

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

os\*