

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . . : 18 of 1998.

Dated this Wednesday, the 26th day of April, 2000.

Mahdukar Shivram Kadam, Applicant.

Shri V. D. Surve, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

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

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

(i) To be referred to the Reporter or not ? *Yes*

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.

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

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

Shri Madhukar Shivram Kadam,
Foreman in Material Organisation,
Naval Store Depot, Ghatkopar,
Mumbai - 400 086.
Residing at - 11/A/33-35,
Adhudaya Nagar,
Kalachowki, Mumbai - 400 033.

... Applicant.

(By Advocate Shri V. D. Survey)

VERSUS

1. The Union of India through
The Asstt. Estate Manager,
Old C.G.O. Building Annexe,
3rd Floor, New Marine Lines,
Mumbai - 400 020.
2. The Material Superintendent,
Material Organisation,
Naval Store Depot,
Ghatkopar (West),
Mumbai - 400 086.
3. The Controller of Defence
Accounts (Navy), Wages Section,
Naval Store Depot,
Ghatkopar (W),
Mumbai - 400 086.

... Respondents.

(By Advocate Shri V. S. Masurkar)

OPEN COURT ORDER

PER : Shri R.G. Vaidyanatha, Vice-Chairman.

This is an application in which the applicant is challenging the legality of demand for penal rent. Respondents have filed reply opposing the application. We have heard Mr. V.D. Survey, the Learned Counsel for the applicant and Shri V.S. Masurkar, the Learned Counsel for the respondents.

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2. The applicant is working in the Naval Stores Depot. He was allotted a Government quarter No. 135, Type 'C' at Wadala, Mumbai, for his occupation. On the ground of alleged subletting of the premises by the applicant, proceedings were initiated against the applicant for eviction under Section 4 of the Public Premises Act. After contest, the Estate Officer ordered eviction on the ground that the applicant is in unauthorised possession of the premises. The applicant carried the matter in appeal before the City Civil Court and the appeal came to be dismissed. Then the applicant preferred a writ petition in W.P. No. 346/97. The High Court found that there was no reason for calling for interference and the order of the subordinate court was perfectly justified and hence rejected the writ petition summarily. Then on submission made on behalf of the applicant, he was granted time till 01.11.1997 for vacating the premises. We are told that applicant accordingly vacated the premises on 31.10.1997.

Then the Assistant Manager, who is in charge of the buildings, issued the impugned letter dated 02.12.1997 and addressed to the applicant's Drawing Officer that an amount of Rs. 2,75,148.00 is recoverable from the applicant for his unauthorised occupation of the quarters and asked the officer to recover that amount. Being aggrieved by this letter, the applicant has approached this Tribunal. He is challenging the legality and validity of the impugned letter dated 02.12.1997.

3. The respondents in their reply have mentioned all the facts and have asserted that the action taken is according to law and no interference is called for.

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4. The first submission of the Learned Counsel for the applicant is that the department cannot claim the damage rent without having recourse to Section 7 of the Public Premises Act. He argued that when once the department has approached the competent authority under the Public Premises Act for eviction, they cannot take independent action for recovery of damage rent without approaching the Estate Officer under the Public Premises Act. The argument has to be summarily rejected in view of the law laid down by the Full Bench of this Tribunal in the case of Ram Poojan V/s. Union of India & Another reported in 1996 (34) ATC 434 (FB) where it is held that damage rent or penal rent can be recovered from the salary without resort to proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Learned Counsel for the applicant tried to distinguish the decision only on the ground that in that case the department had not taken action for eviction under the Public Premises Act but in this case, the department has taken recourse to Public Premises Act for eviction. In our view, this is a distinction without any difference. The question of eviction is quite distinguishable from the recovery of penal rent. The department had to approach the competent authority under the Public Premises Act for eviction, since there is no provision under the Service Rules enabling the authority to evict a person who is in unauthorised possession. But when there is rule for recovery of normal rent and penal rent, then there is no necessity to approach the competent authority under the Public Premises Act in view of the law laid down by the Full Bench.

5. The next submission is that the claim is made for recovery of damage rent from 1991 to 1997 and this cannot be done

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since claim beyond three years is barred by limitation. Reliance was placed on a decision of the Supreme Court reported in AIR 1976 SC 1637 (New Delhi Municipal Committee v/s. Kalu Ram & Another). That was a case where the tenant was not a servant or employee of the Municipal Committee. He was a member of the public. Therefore, the question of recovering normal rent or penal rent from his salary does not arise, since he was not an employee. We can take judicial notice that public buildings, either of Government or other public organisations like L.I.C., Bank, etc. are given on rent to members of the public. There is no provision for recovering rent from them either penal or normal rent, except approaching the competent authority under the Public Premises Act under Section 7. In such a case when a suit is filed in a Court or when the authority under the Public Premises Act is approached for recovering rent, normally the law of limitation is attracted and that is what the Supreme Court has observed in the said judgement. But here, the department has not approached this Tribunal for passing a decree against the applicant for one year's rent or ten years rent. The department has not filed an application before the Competent Authority under Section 7 of the Public Premises Act. The department has not filed any suit in the Civil Court for recovering the amount. Therefore, the law of limitation is not attracted to the facts of the present case. No rule or law is brought to our notice that for recovering the rent from the salary there is any law of limitation.

In addition to this, the applicant himself is responsible for the delay, if any, in the competent authority demanding the arrears from the applicant. The applicant is liable to pay penal

rent for unauthorised possession of the Government quarters. The Estate Officer passed an order that his possession is illegal. If the matter stood there, then only the competent authority has to recover the penal rent immediately. But the applicant challenged the order unsuccessfully before the City Civil Court and later before the High Court. It is seen that as soon as the question of unauthorised possession is finally settled, action is taken to demand the penal rent. For one thing, the question of limitation does not arise when penal rent is to be recovered from the salary and for another, the litigation was pending for many years and therefore, the question of limitation will not apply for the demand of arrears of normal rent or penal rent.

6. The only other submission which was pressed into service is, that when the applicant has continued in possession of the premises by virtue of the said order of the Court, then recovery of damage rent is not permissible and reliance was placed on a Decision of a Division Bench of the Tribunal in Dominic James v/s. Station Commander (Military), Sub-Area, Bombay & Others reported in 1992 (21) ATC 735. Nodoubt, in that case the Tribunal has observed that if a person has continued in possession by virtue of a stay order or an interim order passed by a Court or Tribunal, then he is not liable to pay damage rent. No doubt, the observation in this judgement supports the submission of the applicant's counsel.

On first principle we cannot agree with the above view since any interim order or stay order granted by a Court or Tribunal is in the aid of final relief to be granted in the case.

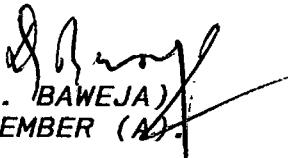
If in the final relief the claim is rejected, then the interim order comes to an end and will not enure to the benefit of the applicant. For instance, in this case, the applicant was found to be in unauthorised possession. If he approaches a Court and takes an interim order, it will only protect him from paying the penal rent during the pendency of the application. If ultimately the High Court or Tribunal dismisses the appeal, he cannot say that his possession is lawful and that he is not liable to pay penal rent. The interim order merges with the final order to be passed by the Court or Tribunal.

We are fortified in our view by a recent judgement of the Supreme Court in the case of Kanoria Chemicals and Industries Ltd. & Others v/s. U.P. State Electricity Board & Others reported in 1997 (5) SCC 772 where the Supreme Court has held that if a party obtains a stay order or interim order, he becomes liable to pay the amount if ultimately he fails in the case. Though in the usual course we would have referred this matter for hearing by a larger Bench in view of the observations of the Division Bench mentioned above, it may not be necessary now in view of the law declared by the Apex Court. Therefore, the argument of the applicant's counsel that applicant is not liable to pay penal rent is rejected.

7. Then a grievance was made that the demand includes some of the payments already recovered from the applicant's salary. This is a matter which has to be considered by the competent authority by looking to the accounts and necessary direction can be given. We, therefore, find no merit in the application and is liable to be dismissed.

We have granted interim order dated 16.02.1998 that the recovery should be restricted to Rs. 1,000/- per month. Now, since we have finally disposed of the application and having regard to the facts and circumstances of the case, we feel that recovery at the rate of Rs. 2000/- (Rupees : Two Thousand only) per month would be just and reasonable.

8. In the result, the application is dismissed, but however, the respondents should recover the penal rent from the applicant's salary at the rate of Rs. 2000/- (Rupees : Two Thousand only) per month, till the date of his retirement and subsequently, to recover the balance according to law. It is also made clear that the competent authority should look into the accounts and find out as to how much amount has been already recovered till today and the total amount due from the applicant as on today be calculated and communicated to the applicant within a period of four months from the date of receipt of a copy of this order. If there is any mistake in calculation, we give liberty to the applicant to make a representation to the competent authority to look into the same. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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