

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4136/2016

Reserved on : 21.12.2016.

Pronounced on :23.12.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Om Prakash Kant,
S/o Lt. Shri Ganesh Mal,
Aged 51 years, Group-A,
Designation-Accountant Member, ITAT,
R/o C-1/91, Moti Bagh,
New Delhi-110021.

.... **Applicant**

(through Sh. Vinay Kr. Garg, Sr. Advocate with Sh. Sagar Saxena,
Advocate)

Versus

1. Union of India through
Its Secretary,
Ministry of Urban Development,
Maulana Azad Road,
Rajnath Area,
Central Secretariat,
New Delhi-110001.

2. Directorate of Estates through
Estate Officer,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi-110001.

3. Assistant Director of Estates,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi-110001. **Respondents**

(through Sh. Gyanendra Singh, Advocate)

ORDER

This O.A. has been filed seeking the following relief:-

- “(a) quash the show cause notice dated 06.12.2016 directing applicant's eviction from House No. C-1/91, Moti Bagh, New Delhi.
- (b) quash the cancellation of the House No. C-1/91, Moti Bagh, New Delhi, dated 12.11.2016 which was never communicated to the Applicant.
- (c) pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.
- (d) award cost of the litigation to the Applicant.”

2. On 19.12.2016 notice was issued to the respondents in this case.

Learned counsel Sh. Gyanendra Singh accepted notice on their behalf. He was directed to take instructions and report on the next date i.e. 21.12.2016 on which date interim relief prayed for by the applicant was also to be considered. Accordingly, this case was heard today.

3. Learned counsel Sh. Gyanendra Singh appearing for the respondents took a preliminary objection that this Tribunal has no jurisdiction to entertain this O.A. as the order dated 06.12.2016 impugned in this O.A., quashing of which has been sought, has been passed under the Public Premises (Eviction of Unauthorised Occupant) Act, 1971. He stated that challenge to this order can only be made before an authority authorised under the aforesaid

Act and not before this Tribunal. He further submitted that Hon'ble High Court of Delhi in the case of **Smt. Babli and Anr. Vs. Govt. of NCT of Delhi & Ors.**, 2001(60)DRJ 788 has held that claim of allotment of government residential accommodation does not become condition of service unless the relevant service rules so provide. Sh. Gyanendra stated that in the instant case no such rule exists and, therefore, this Tribunal, which is mandated to hear only the service matters of the Government employees cannot entertain this O.A. He further argued that in the aforesaid judgment, Hon'ble High Court of Delhi has placed reliance on the judgment of Hon'ble Supreme Court in the case of **UOI Vs. Rasila Ram and Ors.**, JT 2000(10) SC 503 wherein the following was held:-

"Once, a Government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of [Eviction Act](#), and appropriate orders are passed there under, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression, "any other matter," in [Section 3\(q\)\(v\)](#) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the PPE Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal, over an order passed by the competent authority under the [Eviction Act](#) must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside."

Sh. Gyanendra Singh, learned counsel for the respondents submitted that the facts of the instant case were similar to the case of **Rasila Ram** (supra) and, therefore, this O.A. deserves to be dismissed.

4. Sh. Vinay Kumar Garg, learned Senior Counsel appearing for the applicant stated that the applicant was appointed as Accountant Member in Income Tax Appellate Tribunal (ITAT) on 16.04.2015. He joined the aforesaid Tribunal on deputation on 14.07.2015. He applied for and was allotted Type-6B accommodation in Moti Bagh, which he occupied on 13.11.2015. However, after almost a year of the allotment, the applicant was informed by Deputy Director of Estates vide letter dated 26.08.2016 that as per O.M. dated 05.03.2015 a separate pool had been created for Chairman and Members of the Tribunal in Common Wealth Games Village Complex. He was further informed that he had been wrongly allotted the accommodation under general pool category and that he should apply afresh under the CM pool. The applicant responded to this letter vide his communication dated 19.09.2016 in which he stated that he had been posted in the ITAT on deputation and still hold lien as an officer of the Indian Revenue Service. The respondents vide letter dated 10.10.2016, however, did not entertain his contention and directed him again to apply for fresh allotment under CM pool. The applicant again wrote to the respondents on 25.10.2016 reiterating his stand. However, the respondents cancelled the allotment of the Moti Bagh to the applicant w.e.f. 12.11.2016 and issued a show cause notice to him on 06.12.2016 under sub-section (1) and Clause (b) of sub-section (2)

of Section (4) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 asking him to show cause why eviction order should not be passed.

5. In response to the grounds taken by the respondents, learned counsel for the applicant drew my attention to Notification dated 27.07.1963, which pertains to the rules regulating the Recruitment and Service Conditions of persons appointed as Members of ITAT. Rule-13 of the aforesaid Rules reads as follows:-

“The conditions of service of a member in respect of matters for which no provision is made in these rules shall be the same as may for the time being be applicable to other employees of the Govt. of India of a corresponding status.”

5.1 Learned counsel argued that under this Rule the condition of service in respect of Members for all residual matters was to be same as those of employees of Government of India of corresponding status. Thus, the applicant was also entitled to same Government accommodation as Government of India employees of corresponding status. However, learned counsel for the applicant could not show service Rules of any Government of India officers wherein service conditions provide for allotment of Government accommodation. Thus, in my opinion, this Rule is of no help to the applicant.

6. Next, the applicant relied on the judgment of a Co-ordinate Bench of this Tribunal in the case of **B. Ravichandran Vs. UOI & Ors.**

(OA-4326/2015) dated 23.09.2016. I have carefully gone through this judgment and in my opinion this also cannot be of much help to the applicant for the following reasons:-

(i) In this case the applicant had approached the Tribunal at the stage when the allotment of residential accommodation of the applicant therein had been cancelled. No order under PPE Act had been passed. In the instant case, the order impugned by the applicant had been passed under the PPE Act, 1971. Thus, the instant case is clearly distinguishable from the case of **B. Ravichandran** (supra)

(ii) In **Ravi** Chandran's case the issue of Tribunal not having jurisdiction in matters regarding allotment/cancellation of Government accommodation was not raised before the Tribunal nor the judgment of Hon'ble High Court of Delhi in the case of **Smt. Babli and Anr.** (supra) cited. , Thus, this judgment is per incuriam of the judgment of Hon'ble High Court of Delhi in the case of **Smt. Babli and Anr.** (supra) and Hon'ble Supreme Court in the case of **Rasila Ram** (supra).

7. Learned counsel for the applicant has also placed reliance on the judgment of this Tribunal in OA-2434/2015 (**Arun Mishra Vs. DDA**) dated 24.09.2015. Brief facts of this case were that the applicant was working with DDA as a deputationist. When he did not vacate the official accommodation allotted to him even after end of his

deputation period, proceedings under the PPE Act, 1971 were initiated against him. He filed reply to the show cause notice. After consideration of his reply a final order of vacation of the accommodation was passed. At that stage, the applicant approached the Tribunal by filing OA-2434/2015. By an interim order, Tribunal stayed operation of the eviction order dated 09.07.2015. The respondent DDA filed Writ Petition No. 7279/2015 before Hon'ble High Court of Delhi. Hon'ble High Court of Delhi vide their order dated 04.08.2015 vacated the interim order granted by the Tribunal and directed that Tribunal decide the issue of maintainability of the OA first taking into account the judgment of Hon'ble Supreme Court in the case of **Rasila Ram** (supra) and Hon'ble High Court of Delhi in the case of **Smt. Babli** (supra). In accordance with the directions of the Hon'ble High Court of Delhi this Tribunal vide order dated 24.09.2015 came to the conclusion that the OA was not maintainable in so far as eviction proceedings were concerned but was maintainable in so far as the order dated 12.05.2015 regarding inter pool exchange was concerned as that was only an administrative order which could have been questioned under Section 19 of the Administrative Tribunals Act, 1985.

7.1 I have considered the aforesaid judgment. This Tribunal had clearly come to the conclusion that in so far as eviction proceedings were concerned, this Tribunal has no jurisdiction. The same is the

case herein as the order challenged in the present O.A. is a show cause notice issued under the PPE Act, 1971. The order dated 12.11.2016 regarding cancellation of the accommodation No. C-1/91, Moti Bagh allotted to the applicant merges in the show cause notice issued on 06.12.2016 under the PPE Act, 1971. Consequently, the ratio of Hon'ble Supreme Court judgment in the **Rasila Ram's** case (supra) would apply in this matter.

8. In view of the aforesaid, I agree with learned counsel for the respondents and am of the opinion that this O.A. is not maintainable for want of jurisdiction. Accordingly, it is dismissed. The applicant shall, however, have liberty to approach appropriate forum, if so advised. No costs.

**(Shekhar Agarwal)
Member (A)**

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