

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.199/2015

Dated this Thursday the 16th day of March, 2017

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

Shri Arvind Kumar Tiwari
Assistant Salt Commissioner,
Kakinada – 533 003.
R/at Le Monde Exim, Flat No.402,
Doongarshi Road Teen Batti,
Walkeshwar, Mumbai 400 006. ... *Applicant*
(Advocate Shri S.P. Saxena)

Versus

1. Union of India, through
The Secretary,
Ministry of Industry and Commerce,
Udyog Bhawan, New Delhi 110 011.
2. The Salt Commissioner
Jalana Dongri Lavan Marg,
Jaipur – 302 004.
3. The Dy. Salt Commissioner,
4th Floor, Exchange Building,
Ballard Estate, Mumbai 400 001.
4. The Assistant Salt Commissioner
4th Floor Exchange Building Ballard
Estate, Mumbai 400 001.

ORDER

ORDER

The applicant was working as Assistant Salt Commissioner at Kakinada at the time of filing the OA. He has filed the present OA praying for the following reliefs;

“8(a) to allow the Original Application,

(b) to hold and declare that applicant's stay in the quarter allotted to him in Mumbai till 16.11.2012, was not unauthorised, in view not conducting any proceedings under the P.P. Act, by the respondents,

(c) to further hold and declare that the applicant is liable to pay penal rent license fee towards his occupation of quarter allotted to him for the period 21.05.2011 till he has vacated the quarter on 16.11.2012 at double the normal license fee.

(d) to quash and set aside the impugned order/letter dated 16.02.2015.

(e) to pass any other order which may be considered just and proper in the facts and circumstances of the case,

(f) to award the cost of application”.

2. The impugned order dated 16.02.2015

challenged by him reads as follows:

“Sub: Appeal of Shri A.K. Tiwari, ASC against charging of revised rent and market rent of the Government Quarter – reg.

Ref: (i) Deputy Salt Commissioner, Mumbai's letter C.No.D-11015/2/Bldg/2013/928-31 dated 12.03.2014

(ii) Your letter C.No.A-16011/08/Per/Adm-I/2012-13/523-526 dated 21.03.2014

(iii) Salt Commissioner, Jaipur's letter C.No.I3(2)P/2011/701 dated 20.01.2015.

Sir,

With reference to the subject supra, it is stated that the then Deputy Salt Commissioner, Mumbai and the Estate Officer of Mumbai Region has already passed the orders and requested you to pay the arrears of licence fee in respect of the Departmental Quarter occupied by you even after

your transfer and rejection of your request for retention of the aforesaid quarter by the Salt Commissioner, Jaipur. Vide reference No.(iii) above, Salt Commissioner, Jaipur has addressed this office to examine the case and decide it under Section – 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 at our level under the powers vested with the Estate Officer.

After examining all the references and records referred to in your letter dated 21.03.2014 and the documents available in this office, it is stated that then then Deputy Salt Commissioner, Mumbai and the Estate Officer has already decided the matter regarding recovery of arrears of licence fee in respect of occupation of Departmental Quarter by you vide his letter C.No.D-11015/2/Bldg/2013/928-31 dated 12.03.2014 and the said order still holds good.

You are therefore required to pay the arrears of licence fee under Section-7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 being an amount of Rs.6,15,635/- (Rupees Six lakhs fifteen thousand six hundred thirty five only) as per the calculation sheet and statement of fixation of licence fee conveyed to you under the reference cited (i) above, in three monthly instalments on or before 31.05.2015".

3. This matter was heard on the issue of jurisdiction as to whether recovery of damage rent is to be levied on the applicant to the tune of Rs.6,15,635/- under the PP Act and the following order was passed;

“...6. The applicant has relied upon the judgment of the Hon'ble High Court at Delhi in *Sayed Azhar Ahmed Vs. Northern Railways & Ors.* in Writ Petition (C) No.5336/2008 delivered on 21.09.2010 wherein it has been held that the procedure prescribed in Section 4 of the Act and the issue of show cause notice under Section 7 of the PP Act are mandatory. The Hon'ble High Court had held that without taking recourse to

*the Public Premises Act, the action of the respondents in recovering damages from the salary of the petitioner was illegal. Similarly in **P.K. Kutty Vs. Union of India and others, (1994) 28 ATC 622 in OA 433/1994**, this Tribunal was of the view that since no action had been initiated under Section 4 or Section 7 of the Act, the respondents will not be entitled to recovery of damage rent except in the manner provided by the Act.*

7. *The Respondents in their reply dated 28.04.2015 have vehemently argued that the impugned order has been issued under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 over which this Tribunal has no jurisdiction. As per Section 9 of the PP Act, appeal shall lie in respect of order under Section 7 of the said Act to an appellate officer who shall be the District Judge of the District in which the public premises is situated or such other judicial officer in that District of not less than ten years standing as the District Judge may be designated in this behalf. It is the respondents' contention that as per sub clause (d) of Section 15 of the PP Act this Tribunal does not have jurisdiction to entertain the present OA. On his transfer to Dhrangdhra circle the applicant was allowed to retain the quarter for a period of two months upto 20.05.2011 on payment of normal license fee. His application of retention of quarter was rejected by the Commissioner of Salt and, therefore, for overstaying the period from 21.05.2011 to 17.11.2012, market value has been worked out.*

8. *The applicant has filed MA No.435/2015 in which he has contended that the respondents did not hold any proceedings under the PP Act and never called the applicant in person before the Estate Officer. They have unilaterally determined/finalized the damage rent to be paid by the applicant. The applicant has submitted that the record and proceeding held by the respondents under the PP Act 1971 should be called for to verify the legality of the same. This MA was taken up by me on 30.04.2015 and the same was admitted. Learned counsel for the respondents was directed to produce the record relating to the proceeding for recovery of damage rent under the PP Act which has been complied with and a set of documents pertaining to the passing of the order under*

the PP Act has been submitted in the Court.

9. *I have heard the learned counsels for both the parties and perused the documents submitted by them. The applicant has challenged the recovery of Rs.6,15,635/- on account of market rent for his overstay in the Government quarters.*

10. *The respondents have primarily taken the stand that since the recovery has been ordered under the PP Act, this Tribunal does not have the jurisdiction to adjudicate in the matter.*

11. *From the perusal of records, it is clear that the applicant had submitted a representation to the Deputy Salt Commissioner, Ahmedabad on 23.03.2011 to allow him to retain the Government quarter at Bhandup (E) for a period of 2 years. As per his application, he had requested that he should be allowed to retain quarters at the normal licence fee for a period of two months, double licence fee for a period of six months after that and for the rest of the period at market rent. He had represented that many other employees were allowed to retain their quarters on these terms. He had also mentioned that since no market rent has been fixed by the CPWD for that quarters, market rent may be fixed @ Rs.5000/- per month as an interim amount. On 17.01.2012 his request to retain accommodation was rejected by the Salt Commissioner (Respondent No.2). The applicant was asked to vacate the quarter immediately and hand over the vacant possession to Dy. Superintendent of Salt Bhandup. The said Bungalow was allotted to one Shri Ambika Prasad Mohanty who submitted representation to the Deputy Salt Commissioner for giving him possession of the quarter. The record show that on 10.04.2012 he had made a representation to this effect. The Deputy Salt Commissioner had written to the applicant on 13.08.2012 requesting him to vacate the quarters immediately. The Deputy Superintendent of Salt in his letter dated 26.12.2012 had fixed market rent for the SKS Bungalow at Rs.30,756/- with a market value statement. On 05.03.2013 the Deputy Salt Commissioner Mumbai had written to the Salt Commissioner, Jaipur to approve the calculation of monthly market rent of Rs.30,756/- and the total*

amount of recovery as Rs.5,80,871/- . A detailed statement for fixation of standard rent under FR 45-A and FR 45-B was attached to this letter. On 12.03.2014 the applicant was issued a notice for payment of market rent. A detailed calculation sheet was also attached to the letter as per which the amount due from the applicant was Rs.6,15,635/- . In his appeal to the Salt Commissioner dated 21.03.2014 the applicant had questioned the correctness of the amount of Rs.30,756/- per month and had mentioned that the CPWD is the competent authority for fixing market/damage rent and the CPWD has not been approached for such fixing of market/damage rent by the Regional office, Mumbai. On 20.01.2015 the Salt Commissioner had written to the Deputy Salt Commissioner, Mumbai that the case of Shri Tiwari (applicant) for recovery of outstanding dues falls under Section 7(1) & 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the provision for appeal against the Estate Officer notice under Section 7(1) and Section 7(2) can be made under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Deputy Salt Commissioner had examined the case de novo and decided it under Section 7 of PP Act. The Salt Commissioner had come to the conclusion that there is no provision for appeal to the Salt Commissioner as the Head of the Department against the orders of Estate Officer as per Section 9 of the PP Act 1971. Following this, the impugned order was passed.

12. From the perusal of the chronology of these events it appears that the respondents have proceeded against the applicant by fixing the market/damage rent @Rs.30,756/- and demanded an amount of Rs.6,15,635/- after giving him enough opportunities to vacate his quarter. It is however not clear whether this has been done as per the market rent fixed by the CPWD which is the accepted authority for evaluation of rent for fixing of market rent and damage rent. From the calculation sheet attached to the notice dated 12.03.2014, it appears that the respondents have made the calculation under FR 45-A. It is not clear as to why the respondents decided to switch over to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 instead of resorting to departmental proceedings to collect the market rent from the applicant. Even after

deciding to proceed under the PP Act, they have not followed the provisions of the Act scrupulously by issuing a notice to the applicant under Section 4. It will be useful to quote Section 4 and Section 7 of the PP Act at this stage;

The object of the Section 4 of the PP Act is to issue show cause notice which gives the affected person right to appear and state his case before the Estate Officer. Section clearly states that;

Section 4-

“(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Whether the estate office knows or has

reasons to believe that any persons are in occupation of the public premises, than without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

Section 7-

(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

2(A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer".

13. *In the present case, it is quite clear that this procedure has not been followed. This*

Tribunal had earlier dealt with a similar matter in 1994 in OA 433/1999 decided on 24.08.1999, P.K. Kutty (supra) Some of the relevant portions of the judgments are reproduced below;

“3. It is not disputed that no action was initiated by the respondents either under Section 4 or 7 of the Act. Under Section 4 if the Estate Officer is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. The notice shall specify the grounds on which the order of eviction is proposed to be made and shall ask the person concerned to show cause, if any, against the proposed order on or before such date as is specified in the notice and to appear before the Estate Officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown. Under Section 7(1) where any person is in arrears of the rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order. Sub-section 2 enables the Estate Officer to assess the damages on account of the use and occupation of such premises and may, by order require that person to pay the damages within such time and in such installments as may be specified in the order. Under sub-section 3 no order under sub-section (1) or sub-section (2) shall be made against any person until after the issue for a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections if any, and any evidence he may produce in support of the same, have been considered by the Estate Officer. The Act provides for an appointment of the Estate Officer and loads him of the power to initiate action and hold an enquiry with a view to determine the liability and the extent of the liability of the occupants to pay the damage

rent”.

14. *It is apparent that the respondents have resorted to the PP Act in a hurried and arbitrary manner without adducing any valid or legally sustainable ground. Since the applicant is going to retire on 31.05.2015 the amount of Rs.6,15,635/- is likely to be recovered from his retirement benefits in the event of the OA not succeeding. That being so, this obviously falls within the domain of service matter. By merely passing an order of recovery under the PP Act without following due procedure prescribed under it, the respondents cannot deprive the applicant of availing remedies under service law. I, therefore, hold that the present OA is maintainable and can be proceeded in this Tribunal. There is no order on interim relief at this stage. Both the parties will ensure that the case is heard expeditiously.”*

4. The grounds on which the applicant has based his prayer are at para 5 of the OA and reproduced herein below:

“5.1 *The Applicant on being posted at Mumbai, had applied for allotment of a quarter of his entitlement, and the Respondent No.3 had allotted an old and depleted quarter having more than his entitlement area 175 Sq. meter (also called as S.K.S Bungalow) to him viz. letter dated 07.02.2005, w.e.f. 27.02.2005, and the applicant shifted into the above quarter with his family.*

5.2 *The licence fee for above residential Govt. accommodation/quarter was Rs.83/- p.m. which was being recovered from the applicant from his monthly salary regularly.*

5.3 *On being again transferred from Mumbai to Dhrangadhra in Gujarat, the applicant reported there and joined duty on 22.03.2011.*

5.4 *At the place of transfer viz. Dhrangadhra in Gujarat, there was no Govt. quarter/accommodation.*

Accordingly the applicant could not be allotted Govt. quarter over there.

5.5 *The Applicant then applied to Respondent No.2 on 23.03.2011 through proper channel requesting that, he be permitted to retain Govt. quarter at Mumbai, since no Govt. quarters are available at Dhrangadhra (Gujarat), and he is not allotted any other Govt. accommodation over there. The request for retention of quarter at Mumbai for 2 years was due to applicant's childrens education at Mumbai. The application was duly recommended by the Regional office at Mumbai, to Respondent No.2, since permission to retain quarter was to be given by the Salt Commissioner, Jaipur, and nobody else.*

5.6 *The Respondent No.2 did not reject the request of the applicant for retention of quarter and no reply was given to the applicant. Hence, applicant's family continued to stay in the quarter at Mumbai, upto 16.11.2012.*

5.7 *The Respondent No.3, the Dy. Salt Commissioner, Mumbai vide his letter dated 13.08.2012 asked the applicant for vacation of the quarter, giving a reference of letter dated 26.07.2012 of Respondent No.2's letter to him.*

5.8 *A representation dt. 21.08.2012 was sent by the applicant to Respondent No.2 with copy to all respondents, which was no considered by letter dated 04.09.2012, and 26.09.2012, issued by the Respondent No.2.*

5.9 *The applicant came to Mumbai, from Gujarat and as directed by Respondent No.2 he vacated the quarter and handed over the vacant possession of the same to Respondent No.3 on 16.11.2012, after shifting his family elsewhere.*

5.10 *The Applicant also paid the license fee till Nov. 2011. However, since applicant's representation to Respondent No.2 for retention of quarter was pending from 1 ½ year, and not disposed of, the license fee for the period Dec. 2011 to 16.11.2012, when he vacated the quarter, could not be paid by the applicant in time, since the amount toward license fee*

for the said period to be paid by the applicant was not informed by any of the Respondents to the applicant.

5.11 *At no time, the Respondent No.2 had informed the applicant prior to Respondent No.3 letter dated 13.08.2012 along with Respondent No.2's letter dated 26.07.2012, whether his request for retention of the quarter for 2 year was accepted by Respondent No.2, or not.*

5.12 *Also at no time, the allotment of the applicant's quarter at Mumbai, was cancelled by the Respondents.*

5.13 *The Respondent did not also initiate any proceedings under the PP Act against the applicant and procedure prescribed by the said Act was not followed/initiated, as no notice for such proceeding was ever given to him.*

5.14 *The amount of Rs.06,15,635/- now ordered to be deposited by the applicant toward the penal/market rent of the applicant in terms of the impugned order is not calculated as per the relevant rules.*

5.15 *The Applicant is ready and willing to pay the license fee of the above said quarter for the period of his overstay from Dec.2011 to Nov.2012.*

5.16 *Since, PP Act, proceedings were not initiated and the Estate Officer has not submitted his report holding the applicant's stay as 'Unauthorised', the market rent cannot be charged from him, considering that his allotment was never cancelled.*

5.17 *The Respondent No.2 has, in some other cases, has permitted other employee as well as outsider to continue to occupy the Govt. accommodation much beyond the permitted period, but is not charge penal/market rent from them. A letter No.13(3)P/2005/6894 issued in one of the above mentioned case of an ex-employee Smt. Murthybai N. Balmiki, for allotment of quarter from 01.11.2005 to 01.10.2008 on payment of license fee of Rs.1453/- p.m. is enclosed as (Annexure A-9). Hence, when ex-employee or outsiders can be allotted Govt. accommodation and market rent not changed from*

them, the case of the applicant is on better footing and needs to be properly considered and charging of market rent is not justifiable for the old/depleted quarter allotted to the applicant.

5.18 *The panel or market rent charged from the applicant is not assessed by the CPWD Dept., but the respondents of their own have decided as to what must be the market rent to be charged to the applicant dt. 09.12.2014 along with enclosure dated 27.11.2014.*

5.19 *The Applicant is retiring on 31.05.2015 and it is apprehended that the respondents may suo-moto recover the amount of Rs.06,15,635/- from his retirement dues in an unjustified manner recovery of house rent is not permissible from pension and gratuity amounts of an employee".*

5. The Applicant filed **MA No. 435/2015** on 28.04.2015 praying for a direction to the respondents to produce the original records and proceedings in respect of the penal rent order to be recovered from the Applicant.

6. The Respondents have filed reply to MA No.435/2015 on 28.04.2015 and have contested the claim of the Applicant. Apart from the ground that the rent claimed by them is justifiable under the PP Act, it is also their contention that the OA suffers from suppressio veri and suggestio falsi since the the applicant has not come to this Tribunal with clean hands. The documents submitted by him cannot confer any right on him for retention of Government quarters and the applicant has not only

overstayed in the quarters allotted to him he has also failed to pay the market rent charged from him as per law.

7. The Respondents filed the reply to the OA on 11.06.2015 in which they have denied that the quarter allotted to the applicant was in a dilapidated condition. On the other hand at various times expenses have been incurred for repair of the building. As per the CPWD Rules, market rent at 6% of the cost of the land with cost of construction or as fixed by the CPWD, which ever is less has to be recovered from the applicant for the period of his overstay. On 17.01.2012 the applicant was informed by the Dy. Salt Commissioner, Mumbai that his request for retention of S.K. Bungalow at Bhandup was not agreed to and he should immediately handover the vacant possession of the bungalow to the Dy. Superintendent of Salt, Bhandup. Again on 16.04.2012 he was informed by the Dy. Salt Commissioner, Mumbai to vacate the quarters followed by similar instructions on 30.04.2012. On 12.03.2014 a letter was issued to him along with the calculation sheet to pay the rent of Rs.6,15,635/- . Since the applicant failed to do

so, letter dated 16.02.2015 was issued to him under the PP Act directing him to pay the amount of Rs.6,15,635/- .The respondents have reiterated that once an employee is transferred from one place to another, he should vacate Government accommodation immediately or within a period of two months for which normal rent is charged. Any stay beyond this period invites penal rent as per rules. The Applicant's request for retaining the quarters was rejected repeatedly but the applicant continued to stay in the Government quarters till 17.11.2012. The amount of Rs.6,15,635/- has been calculated as per rules and the applicant is liable to pay the same.

8. The Applicant in his rejoinder filed on 21.03.2016 reiterated his earlier stand that the respondents have erred in not conducting the eviction proceedings as per the PP Act, 1971 and no penal rent in respect of the Government accommodation can be sustainable in law, if proceedings are not conducted under the PP Act, 1971. It is the applicant's contention that the respondents have accepted that the applicant was entitled to continue in the official quarters,

since his children were studying in School/College. Therefore, retention of his quarters cannot be called unauthorized occupation. The Applicant has cited the judgment of this Tribunal in ***OA No.433/1994 decided on 24.08.1994, (1994) 28 Administrative Tribunals cases 622*** in which it was held that since no action had been initiated under Section 4 or Section 7 of the PP Act, the respondents could not be entitled to recover damage rent except in the manner provided by the Act. The Applicant has also mentioned certain case laws without elaborating on the judgments and the applicability of the judgments in the present case. The applicant claims that he was not given the letter C.No.13(2)P/2011/ 15746 dt. 29.11.2011 informing of the rejection of his request for retention of quarters for a period of 2 years.

9. The Respondents filed the reply to the rejoinder on 13.06.2016 in which they claimed that damage rent is to be recovered from the applicant as per Government of India's order for occupying quarters beyond permissible period and not as per the provisions of the PP Act, 1971. The PP Act is only for eviction of unauthorized

occupants from the Public Premises. The Applicant's contention that the quarters were very old does not give him an excuse to occupy it after the expiry of the retention period allowed under the rules. He was entitled to retain the quarters only for six months beyond the normal period on grounds of children's education and he never applied for retention for six months after the normal period of two months allowed under the law.

10. I have heard the learned counsels from both the sides and perused the documents submitted by them. I have also taken note of the judgments cited by the applicant during the course of arguments. The Applicant has relied upon the judgment of the Hon'ble Supreme Court in ***R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax & Anr., (1994) 6 SCC 589*** in which it was held that the Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorized occupation is pending, should have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. In another judgment in

N.C. Sharma Vs. Union of India & Ors. in WP No.3120/2002 decided on 10.02.2004, 2004 (3) Mh.L.J. 478 the Hon'ble High Court had held that order passed by authorities after the employees' retirement, recovering amount of rent from the DCRG or terminal benefits cannot be sustainable since prior opportunity was not given to him before seeking a recovery. The Applicant has also relied upon the judgment of the Hon'ble Supreme Court in **Bal Kishore Mody Vs. Arun Kumar Singh & Others, (2001) 10 SCC 174** in which Hon'ble Apex Court had directed the respondents to pay interest on the retiral benefits from the date on which the appellant submitted his pension papers, till the date of payment at the rate of 15% p.a. Similarly in **Yugal Kishore Vs. Delhi Jal Board, ILR(2007) II Delhi 76** it was held that the provisions of PP Act were not invoked by the respondents before deducting the sum of Rs.20237.70 from his retiral benefits and this action of the respondents was contrary to the provisions of Section 14 of the Act. In **Nandini J. Shah & Ors., Vs. Life Insurance Corporation of India & Ors., 2008 (5) Bom.C.R. 234** the Hon'ble High Court of Bombay had held that general rule of one who claims must prove is equally applicable to a proceeding before Estate

Officer with exception that where unauthorized occupation is admitted or it is so undisputedly evident for record that there is no possibility of authorized occupancy of petitioner. The Applicant has also cited the judgment of the Hon'ble High of Judicature at Patna in ***General Manager, East Central Railway, Hajipur & Ors. Vs. CAT, Patna Bench through the Registrar & Anr. in C.W.J.C. No.6609/2006*** in which the decision of the CAT was upheld to the effect that the University cannot be allowed to recover summarily the alleged dues from the retiral benefits according to its whims. In yet another judgment of Hon'ble High Court of Delhi in ***WP(C)No.5336/2008 delivered on 21.09.2010 in Sayed Azhar Ahmed Vs. Northern Railways & Ors.***, the Hon'ble High Court held that without taking recourse to the PP Act, the action of the respondents in recovering the damages from the salary of the petitioner is illegal.

11. The issue to be decided in the present OA is whether the respondents have acted legally in levying a penal rent on the applicant towards his occupation of official quarters allotted to him when he was working as Assistant Salt Commissioner in Mumbai. It is undisputed that

subsequent to applicant's transfer from Mumbai to Dhrangadhra on 22.03.2011, he had submitted an application on 23.03.2011 for retention of his Government accommodation at Bhandup (E) for a period of two years on the ground that his children were studying in school/college. The respondents claim that an order was passed on 29.11.2011 rejecting his request for retention of the Government accommodation. Vide letter C.No.D-11030/6/Bldg/2002/3248 dated 13.08.2012 the applicant was asked to vacate the official accommodation and hand over the vacant possession of the building to the Deputy Superintendent of Salt, Bhandup. The Applicant finally vacated the quarters on 16.11.2012. He was sent a notice on 12.03.2014 which reads as follows:-

“Sub: S.K.'s Bungalow, Bhandup – Payment of licence fee – Reg.

With reference to the subject supra, it is stated that on your transfer to Dhrangdhra Circle, you were permitted to retain the Dept. Quarter for a period of two months upto 20.05.2011 after transfer on Payment of normal licence fee, as per rule SR 317-B-11(2).

Further your request for retention of the

aforesaid quarter for a period of 2 years was also rejected by the Salt Commissioner, Jaipur vide his letter C.No.13(2)P/2011/15746 dt/ 29.11.2011. Accordingly you were asked to vacate the said quarter, but the same had not been complied with.

The Salt Commissioner Jaipur, vide his letter C.No.13(2)P/2011/9632 dt. 26.07.2012 had instructed us to recover the market rent from you. Accordingly the licence fee has been calculated as per revised licence fee worked out under FR-45 A for the period from 27.02.2005 to 30.06.2010 and for the period from 01.07.2010 to 20.05.2011 the rates as prescribed by the Directorate of Estate have been adopted. Further for overstaying for the period from 21.05.2011 to 17.11.2012, market value has been worked out.

The Copies of calculation sheet and statement of fixation of licence under FR45 A were sent to the Salt Commissioner Jaipur for their approval. The Salt Commissioner vide his letter C.No.13(2)P/2011/16035 dt. 19.11.2013 has asked us to recover the amount as worked by this office from you.

Therefore, you are requested to pay the Govt. dues being an amount of Rs.6,15,635/- (Rupees Six lacs fifteen thousand six hundred thirty five only), early.

The copies of calculation sheet and statement of fixation of licence fee under FR45-A are enclosed."

CALCULATION SHEET

<i>Period</i>	<i>Licence fee as per revised rate as per director of Estate's letter dt.28.4.2011 effective from 01.7.2010.</i>	<i>Licence fee already paid</i>	<i>Differential amount of licence fee.</i>
(A) 01.7.2010 to 20.05.2011 (10 months 20 days)	900 x10 =9000/- 900 x 20 = 581/- 30 Total =9581/-	Licence fee paid from 01.07.2010 to 28.02.2011 at 83/- per month 83 x 8 = 664/-	Rs.8917/-
(B) 21.05.2011 to 31.5.2011 =11 days 01.6.2011 to 31.10.2012 = (17 months)	Market Rent Rs.30756 per month. 30756/-x 11 31 =10913/- 30756/-x17 =522852/-	Nil	Rs.10913/-
01.11.2012 to 17.11.2012 (17 days)	30756/-x 17 30 =17428/-	Nil	Rs.522852/-
		Total licence fee	Rs.560110/-
	+ Water charge from April, 2008 to July 2012.		Rs. 19229/-
	Water charges from Aug.2012 to Oct./Nov.2012		Rs. 1532/-
		Total amount to be recovered	Rs.580817/-

Statement of outstanding dues recoverable from Shri A.K. Tiwari, Superintendent of Salt on a/c of Lic. Fee.

<i>Period</i>	<i>Rate of L.F.</i>	<i>Total L.F. Due</i>	<i>Recovered</i>	<i>Diff. due</i>
27.2.2005 to 28.2.2005	290	2/28x290=21	6	15
1.03.2005 to 31.03.2006	290	13x290=3770	1079	2691
1.04.2006 to 31.03.2007	521	12x521=6252	996	5256
01.04.2007 to 31.03.2008	940	12x940=11280	996	10284

01.04.2008 to 30.06.2010	1463	27x1463=39501	2241	37260
01.07.2010 to 28.02.2011	900	8x900=7200	664	6536
01.03.2011 to 30.04.2011	900	2x900=1800	0	1800
1.05.2011 to 20.05.2011	900	20/30x900=600	0	600
21.05.2011 to 30.05.2011	30756	11/31x30756=10913	0	10913
1.06.2011 to 31.10.2012	30756	17x30756=522852	0	522852
1.11.2012 to 17.11.2012	30756	17/30x30756=17428	0	17428
Total L.F.Due (Outstanding to be recovered) =				6,15,635/-

This was followed by another letter dated 16.02.2015 asking him to pay the arrears of licence fee under Section-7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 being an amount of Rs.6,15,635/- (Rupees Six lakhs fifteen thousand six hundred thirty five only) as per the calculation sheet and statement of fixation of licence fee.

12. This Tribunal after considering the issue of jurisdiction had passed the order that due procedure has not been followed under Section 4 and Section 7 of the PP Act and that the respondents have resorted to the PP Act in a hurried and arbitrary manner without adducing any valid or legally sustainable ground. It was also observed by this Tribunal that since the

applicant is going to retire on 31.05.2015, the amount of Rs.6,15,635/- was likely to be recovered from his retirement benefits in the event of the OA not succeeding. On that ground it was decided that the issue falls within the domain of service matter. It was also observed that by merely passing an order of recovery under the PP Act without following due procedure prescribed under it, the respondents cannot deprive the applicant of availing remedies under the service law. No interim relief was granted by this Tribunal and the pleadings were completed in the OA.

13. The applicant has retired on 31.05.2015 and a levy of Rs.6,15,635/- is pending against him. The respondents have not thrown light on whether this amount has been recovered from his retirement benefits. The rules relating to allotment of quarters are elaborated under Rule 45 of the Fundamental Rules. As per FR 45 (A) a Government employee is permitted to retain his house for a period of two months after transfer. In the present case, the applicant had applied for retention of his official accommodation on the ground of his children's education. This

application was sent immediately after his transfer but as per the respondents' submission his application was rejected on 29.11.2011 after eight months. The applicant claims that he never received the rejection letter dated 29.11.2011 and the first notice he received was dated 13.08.2012 following which he vacated the quarters on 16.11.2012. There is nothing on record to show that letter C.No.13(2)P/2011/15746 dt. 29.11.2011 was issued to the applicant. In normal circumstances if the application for retention of quarters was to be rejected it should have been done early so that the applicant could have taken steps for vacating the quarters. In the present case even going by the respondents' submission, the order rejecting his application has been issued after a gap of more than eight months. It is my considered view that the respondents will have to probe into the matter and decide on which date the applicant was informed about the rejection of his letter and the penal rent at market rates should be calculated only from that date. This calls for a remand back of the present matter to the respondents for disposal

of the appeal of the applicant against charging of market rent for the Government accommodation.

14. The dispute regarding the amount of market rent also needs to be resolved. The Respondents in their reply have submitted that the penal rent should be at the rate of 6% of the cost of the land with cost of construction or as fixed by the CPWD, whichever is less. The calculation sheet attached to their notice dated 12.03.2014 shows that the market rent is calculated at Rs.30,756/- p.m. The respondents have also produced a document dated 26.12.2012 during the argument wherein they have given the basis of the calculation as follows:

“Sub: Vacation of S.K.'s Bungalow at Bhandup (E) by Shri A.K. Tiwari, Superintendent of Salt-Regarding.

With reference to the Deputy Salt Commissioner, Mumbai's letter C.No.D-11030/6/Bldg./2008/4134, dt.08.11.2012 addressed to your office with a copy endorsed to this office on the above subject the market rent of the above building is calculated taking the cost of the land during 2011 as per the calculation given below-

- Dimension of the building – 175.70 Sq.Metre (Ref-SI No.128, page no.16 of the “Inventory of Fixed Assets of the Salt Department in Bombay Salt Region”)

- Cost of Land- Rs.33,500/- per Sq.Metre (Ref-Letter No.350/2012 dt. 22.11.2012 of the Sub-Registrar No.4, Kurla, at Nahur (W) MSD, copy enclosed).

*- Thus copy of land under the building-
175.07xRs.33500/- = Rs.5864845/-(A)*

- Cost of the building – Rs.12,728/- (Ref-SI.No.271(10) of the B. R. Vol-II)

<i>-Cost of Spl. Repairs-</i>	2001-02- Rs.39,200/-
	2005-06- Rs.46,200/-
	2006-07- Rs.83,765/-
	2007-08- Rs.19,000/-
<hr/>	
	<i>Total - Rs.273.665/-</i>
<hr/>	
<i>- Total cost of building- Cost of the building + Total</i>	

- *Total cost of building- Cost of the building + Total Cost of Spl Repairs.*

$$= 12728 + 273,665/-$$

$$= 286,393/- \quad (B)$$

$$- 6\% \text{ of } (C) = 6\% \text{ of } \text{Rs. } 6151238/- \\ = \text{Rs. } 369074.28$$

- Thus total yearly rent of the building- Rs.369074.28
Or Say = Rs.369074/-
- Thus monthly rent of the building- Rs.369074/-
12
= Rs.30756/-

Thus monthly rent of the building comes to Rs.30756/- (Rupees thirty thousand seven hundred fifty six only).

It is worth mentioning that Shri Tiwari's date of vacation of the quarters is not available in this office records. Hence, the same may kindly be ascertained from your office records please for further necessary action.”

15. However, this itself is not enough to levy the penal rent charged by the respondents unless it is compared with the rate fixed by the CPWD and it is determined that the levied rate is less than the rate fixed by the CPWD. Hence the calculation itself is questionable and needs to be fixed as per law.

16. The case law cited by the applicant on judicial pronouncements make it clear that once the occupation of the Government quarter is

treated as unauthorized, action has to be taken under the PP Act. ***OA No.433/1994 decided on 24.08.1994 (supra), R. Kapur Vs. Director of Inspection (supra), N.C. Sharma (supra), Bal Kishore Mody Vs. Arun Kumar Singh (supra), Yugal Kishore Vs. Delhi Jal Board (supra), Nandini J. Shah & Ors., Vs. Life Insurance Corporation of India (supra), General Manger, East Central Railway, Hajipur (supra) and Sayed Azhar Ahmed Vs. Northern Railways (supra).***

17. In the present OA the question of eviction from the Government premises by the Government employee is no longer relevant since the applicant has already vacated the quarter on 16.11.2012. The Respondents have not proceeded under Section 4 of PP Act, 1971 for initiation of the eviction proceedings. Similarly, after the vacation of the quarters by the applicant, the respondents have simply invoked Section 7 of the PP Act directing him to make the payment in their letter dated 16.02.2015. The relevant portion of the letter states "you are therefore, required to pay the arrears of licence fee under Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 being an amount of Rs.6,15,635/- (Rupees Six Lakhs Fifteen Thousand Six Hundred Thirty Five only)

as per the calculation sheet and statement of fixation of licence fee conveyed to you under the reference cited (i) above, in three monthly instalments on or before 31.05.2015". Although the Tribunal in its earlier order dated 08.05.2015 has made it clear that the collection of the amount of Rs.6,15,635/- as a licence fee is likely to be recovered from the retirement benefits of the applicant in the event of the OA not succeeding and that being so the issue falls within the domain of service matter, it was also pointed out that the respondents have not followed due procedure prescribed under the PP Act, 1971 while sending the letter dated 16.02.2012 (impugned letter as Annexure A-1). Having gone into the facts and points of law involved in this OA, I have come to the conclusion that the respondents have to revisit the question of period from which the penal rent has to be levied on the applicant and also have to determine the correct penal rent by application of the appropriate rules. Having determined the amount, the respondents will have to proceed under Section 7 of the PP Act, 1971 by issuing notice to the applicant under Sub-

para 3 of Section 7 and proceed accordingly.

18. In view of the above, the matter is remitted back to the respondents to redetermine the correct amount of penal rent and the date from which such penal rent is to be levied. Once so determined, the respondents will proceed to collect it by following the correct procedure prescribed under the Public Premises Act, 1971.

19. The OA is accordingly disposed of with the above directions. All MAs stand closed. No order as to costs.

(Dr.Mrutyunjay Sarangi)
Member (A)

dm.