

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/00007/2015

Date of order : 13.1.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

R.N.MALLICK

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.Chatterjee, counsel

For the respondents : None

O R D E R

Ms.Bidisha Banerjee, J.M.

Heard Id. Counsel for the applicant. None appears for the respondents despite notice. Affidavit-of-service filed today is taken on record.

2. the applicant is aggrieved as allotment of residential quarter of June 2007 was cancelled on 10.8.15 without any show cause and without communication of such order denying the applicant's right to prefer appeal against the same. He has sought for the following reliefs :

- (1) A direction upon the respondent authorities to communicate to the applicant a copy of the order of cancellation of allotment passed against the applicant.
- (2) A direction upon the respondent authorities directing them to quash set aside and rescind the order of cancellation of allotment of residential quarter passed against the applicant.
- (3) A direction upon the respondent authorities preventing them from taking any action pursuant to the order of cancellation of allotment of residential quarter against the applicant.

3. It is noticed from the annexures to the application that a proceeding under Section 5(1) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [P.P.Act in short] has been initiated against the applicant which has culminated into an order declaring the applicant to be in an unauthorised occupation of the Public Premises since the quarter was automatically cancelled w.e.f. 10.8.15 due to his sub-letting to some unauthorised person in contravention of the proceedings contained in SR 317(B)(20) of Allotment Rules and even after such cancellation the applicant continued to occupy the premises. Accordingly a show cause notice was issued on 18.11.15 under

Section 4 of P.P. Act and it has been recorded that the competent authority has cancelled the allotment after following due procedure. Therefore the applicant has been asked to vacate the quarter within 15 days by the Estate Officer by his order dated 17.8.15.

It is further noticed that the order annexed at Annexure A/6 dated 17.8.15 is a show cause notice for sub-letting the said accommodation.

4. In view of the proceedings being initiated under P.P. Act in regard to unauthorised occupation of the quarter in question, we are of the view that this Tribunal would have no jurisdiction to entertain the lis irrespective of the fact whether the allotment was cancelled following due procedure or not.

5. Although the Id. Counsel for the applicant has pressed for admission of the matter and a direction for filing a reply, we are of the considered opinion that it would be an empty formality since the jurisdiction of the Court should depend upon the averment made in the ~~plaint~~ ^{would have it} and not on the defence made in the written statement and whether a Tribunal ^{would be} has jurisdiction or not is determinable at the commencement and not at the conclusion of the enquiry [AIR 1962 SC 1621, AIR 1967 SC 1801].

6. In *Rashila Ram -vs- UOI & Ors.* [(1989) 10 ATC 737] a Full Bench of the Tribunal explaining the scope of service matter held that

"in order to have harmonious interpretation between section 33 of the Administrative Tribunals Act and section 51 of the P.P. Act, it would be proper that when a person is aggrieved against an order of cancellation by the administrative authorities, he can approach the Tribunal at that stage if he is aggrieved by such orders after making necessary representations to the P.P. Act. It would be proper for the aggrieved employee to contest his case before the Estate Officer and may approach the Tribunal only after final orders have been passed by the Estate Officer under the P.P. Act."

The Hon'ble Apex Court did not approve of the aforesaid view of the Tribunal. In *UOI & Ors. -vs- Rashila Ram* [2002 SCC (L&S) 1016] the Hon'ble Court categorically held that the matter is not a service matter and the Tribunal would have no jurisdiction to interfere. The words of the Hon'ble Apex Court would be as under :

"The Public Premises (Eviction of Unauthorized Occupants) Act 1971 (hereinafter referred to as the 'Eviction Act') was enacted for eviction of unauthorized occupants from public premises. To attract the

said provision, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorized occupants as defined in the said Act. Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of the Eviction Act, and appropriate order passed thereunder, the remedy to such occupant 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 Tribunals 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 Public Premises (Eviction of Unauthorized Occupants) 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."

7. Accordingly the OA is dismissed due to lack of jurisdiction with liberty to the applicant to act in accordance with law. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

H. Banerjee
(BIDISHA BANERJEE)
MEMBER (J)

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