

No. 5

MA-897/2003
OA-393/2003

22.04.2003

Present : Sh. C. Hari Shanker, learned counsel for
the applicant.

Heard Sh. C. Hari Shanker, learned counsel
for applicant in MA-897/2003.

2. The above MA has been filed by the applicant under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 for issuance of an ex-parte ad-interim stay of the impugned letter No.EC/36/DD/LIT/03-TS issued by the Estate Officer under sub-section(1) and clause (b) of sub-section(2) of Section (4) of the Public Premises (Eviction) of Unauthorised Occupants Act, 1971 (hereinafter referred as the PPE Act). The impugned letter is a notice issued by the Estate Officer under the PPE Act calling upon the applicant in OA-393/2003 to appear in person or through a duly authorised representative on 22.4.2003/today on the subject of vacation of Government quarter No.C-II/73, Bapa Nagar, New Delhi.

3. The admitted facts of this case are that the applicant has retired from service of the respondents w.e.f. 30.6.2002. He had been permitted by the competent authority under the PPE Act to retain the aforesaid Government quarter till 28.2.2003. Thereafter, the impugned notice has been issued by the Directorate of Estates under the provisions of the PPE

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Act. Sh. C. Hari Shanker, learned counsel for applicant has contended that even at the time when notice was issued by the Tribunal on 25.2.2003, the question of jurisdiction of the Tribunal had been thoroughly gone into in the light of the judgement of the Hon'ble Apex Court in Union of India Vs. Rasila Ram & Ors. (JT 2000(10)SC 503). He has submitted that the judgement of the Apex Court in Rasila Ram's case (supra) does not apply to the present case because the main contention of the applicant in the OA is with regard to non-receipt of pensionary benefits which were due to be paid to him when he superannuated from service in June 2002. Learned counsel has further submitted that the pensionary benefits, including gratuity and other retiral benefits have not been paid to the applicant so far. He has also submitted that the applicant, however, is facing a Departmental enquiry proceeding which is pending against him. He has further submitted that even when a Departmental enquiry is pending against the applicant, the respondents cannot withhold his gratuity and leave encashment. He has submitted that the provisional pension has been granted to the applicant in accordance with the CCS (Pension) Rules, 1972. Learned counsel has, therefore, contended that since the main issues in the OA relate to the non-payment of due pensionary benefits, the applicant cannot at the same time be asked to vacate the quarter allotted to him, although he frankly admits that there

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is no rule supporting the applicant's case though he contends that he has a right to retain the government quarter even after the period of lawful retention under the relevant rules. His further contention is that there is no 'order' passed by the Estate Officer and what has been impugned in the MA against which an ex-parte order is prayed for is only a show cause notice. He has, therefore, contended that in the facts and circumstances of the case, there is no bar for the Tribunal granting the ex-parte stay order as prayed for in MA-897/2003.

4. I have carefully considered the matter and the submissions made by the learned counsel for the applicant. I am unable to agree with the contentions as briefly mentioned above. I also respectfully disagree with the views taken by Hon'ble Dr. A. Vedavalli, Member(J) while issuing notice on OA and prayer for interim relief as in paragraph-9 vide order dated 25.2.2003. The impugned order in the OA dated 9.1.2003 has also been issued from the office of the Directorate of Estates on the subject of retention of the aforesaid Government quarter by the applicant. In that letter, it has been clearly stated that a decision has been taken to permit the applicant to retain the Government quarter No.C-II/73, Bapa Nagar, New Delhi for a period of four months w.e.f. 1.11.2002 to 28.2.2003 with terms and conditions and the licence fee payable by him upto 28.2.2003. It has

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been clearly stated further that the applicant shall not be granted any further extension and he should vacate the Government quarter on or before 28.2.2003 positively, failing which necessary action will be taken for vacation of the premises, as provided under the law, which presumably is the PPE Act, 1971. The Hon'ble Supreme Court in Rasila Ram's case (supra) has held as follows:-

1. The aforesaid appeals are directed against the order of the Full Bench of the Central Administrative Tribunal in a batch of applications before it, recording a finding that an order passed by the competent authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction would also come within the purview and jurisdiction of the Administrative Tribunal constituted under Administrative Tribunals Act, 1985. The Tribunal by the impugned order has construed the expression 'service matter' defined in Section 3(q) of the Administrative Tribunals Act and because of the expression 'any other matter whatsoever' occurring in Clause (v) thereof, it has come to the conclusion that the eviction of unauthorised occupants from the Government quarter, would tantamount to a service matter, and therefore, Tribunal retains jurisdiction over the same, in view of the overriding effect given to the Act by virtue of Section 33 of the said Act.

2. The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the "Eviction Act") was enacted for eviction of unauthorised occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act and the occupants must be held unauthorised occupants, as defined under 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 Eviction Act, and appropriate orders

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are passed thereunder, 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 Public Premises (Eviction of Unauthorised 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. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed."

5. It is clear from a perusal of the facts and the impugned order in MA-897/2003 that the impugned notice issued by the Directorate of Estates under the provisions of the PPE Act is in terms of the provisions of that Act. Taking into account the terms and conditions stipulated in the impugned order dated 9.1.2003 regarding the information given to the applicant that he should vacate the Government quarter on or before 28.2.2003, failing which necessary action will be taken for vacation of the premises as provided under the law and the present impugned notice, I am unable to agree with the contention of the learned counsel for the applicant, that it does not fall within the provisions of the PPE Act as an appropriate 'order' which has been passed by the competent authority i.e. Estate Officer. Therefore, the judgement of the Hon'ble Supreme Court in Rasila Ram's case (supra) is fully applicable to the facts of this case with regard to the actions being taken by the competent authority under the provisions of the PPE Act in respect of the

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Government quarter which was earlier allotted to the applicant while he was in service. In Rasila Ram's case the Hon'ble Supreme Court has held that "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." In view of this judgement, the Tribunal cannot assume jurisdiction on this matter.

6. However, I clarify that nothing has been stated on the merits of the case with regard to the claims for pensionary benefits which are stated to be the other main claims in the OA.

7. In this view of the matter, I am of the considered opinion that in the facts and circumstances of the case the judgement of the Hon'ble Supreme Court in Rasila Ram's case (supra) is fully applicable to the O.A. and this Tribunal has no jurisdiction to pass any orders with regard to the action being taken by the competent authority under the PPE Act with regard to the Government quarter.

8. In the circumstances of the case I respectfully disagree with the views expressed by the Tribunal in the order dated 25.2.2003. Accordingly,

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Registry may place the case before the Hon'ble Chairman to constitute a Larger Bench on the following question:-

Whether the Tribunal can adjudicate on the validity of the order dated 9.1.2003 issued by the Deputy Director of Estates impugned in OA-393/2003 and any interim order as prayed for in paragraph-9 and MA-897/2003 can be granted by this Tribunal in the light of the judgement of the Hon'ble Supreme Court in Rasila Ram's case (supra)?

(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)

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