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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4555/2019 & CM APPL. 20277/2019

MS. SHOBHA

..... Petitioner

Through: Mr. Baldev Krishan, Advocate.
(baldevkrishan50@gmail.com)
(9810134261)

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Kushagra
Kumar, Advocate for R-1/ UOI.
(ripudamanbhardwaj@gmail.com) (9818030700)
Ms. Avnish Ahlawat, SC,
GNCTD (Services) with Mr.
Nitesh Kumar Singh, Ms.
Laavanya Kaushik & Ms. Aliza
alam, Advocates for R-DOE.
(avnish@ahlawatassociates.in)
(9313964461)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

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J U D G M E N T

11.05.2023

MINI PUSHKARNA, J.

1. The present writ petition has been filed for quashing and setting aside the judgment dated 19.11.2018 passed by the learned District & Sessions Judge in *PPA No. 161/2016*. There is further prayer for setting aside the order dated 04.08.2014 issued by the Directorate of Estates, Govt. of India by which the allotment of government accommodation in favour of the petitioner was cancelled. The

petitioner has also challenged the eviction order dated 17.06.2015 passed by the Id. Estate Officer and the order of recovery of damages as per letter dated 11.01.2019 issued by the Directorate of Estates, Govt. of India.

2. Facts in brief are that the petitioner was allotted government quarter no. 679, Sector 7, R.K. Puram, New Delhi (Type-A), which was a one room accommodation. The said government quarter was allotted to the petitioner on 10.06.2011, by virtue of petitioner being in service under the District and Sessions Judge (HQ), New Delhi. The petitioner started living in the said accommodation along with her family and did not draw any House Rent Allowance (HRA) from the date of occupation of the said government quarter.

3. On 20.08.2013, a surprise check and door to door verification of tenants in govt. quarters was conducted by the officials of Police Station, R.K. Puram, New Delhi. During the said verification, it was found that the petitioner herein had unauthorizedly constructed one room with tin shed on the side of the quarter for subletting purpose. One person was found to be living there for last two years. Pursuant to this, F.I.R. dated 30.08.2013 under Section 188 of the Indian Penal Code (IPC), 1860 was registered in Police Station R.K. Puram. The matter was referred to National Lok Adalat, wherein the petitioner pleaded guilty. She was admonished by the Judge, Lok Adalat and matter was closed.

4. Subsequently, vide notice dated 17.01.2014, the petitioner was called upon to show cause as to why an order of cancellation of allotment should not be made against her in respect of the said

government quarter on ground of subletting of the said government quarter. The said notice was duly responded to by the petitioner by specifically denying the allegation of subletting. Along with the reply, the petitioner also attached documents showing her bona fide use and occupation of the premises in question.

5. Thereafter, vide order dated 04.08.2014, the allotment of the government accommodation in question in favour of the petitioner was cancelled. The petitioner was directed to vacate and handover full vacant possession of the premises.

6. Against the said cancellation order, the petitioner filed an appeal before the Directorate of Estates, which was rejected vide order dated 22.12.2014.

7. After the rejection of the appeal of the petitioner, the matter was referred to the Estate Officer on 22.12.2014, as per application of the Directorate of Estates dated 22.12.2014. Subsequently, by order dated 17.06.2015, the Estate Officer passed eviction order against the petitioner on the ground that the petitioner continued to occupy the public premises even after her allotment was cancelled w.e.f. 04.08.2014.

8. Against the aforesaid eviction order dated 17.06.2015 passed by the Estate officer, the petitioner filed an appeal before the learned District & Sessions Judge being the Appellate Authority. The said appeal was dismissed by the learned District and Sessions Judge, New Delhi District, Patiala House Courts by the impugned judgement dated 19.11.2018 in *PPA No. 161/2016*. Thus, the present writ petition was filed on behalf of the petitioner.

9. It is the case of the petitioner that right from 10.06.2011 when the said quarter was allotted to the petitioner till 30.11.2018 when she surrendered the said premises to the Central Public Works Department (CPWD), the petitioner stayed in the said premises along with her family.

10. As per the petitioner's case, the entire allegation of subletting of the said government accommodation was based on complaint made by some unknown person at the behest and instance of the next door neighbour of the petitioner, who had an altercation with the petitioner's husband, which took place on 20.08.2013. Thus, an FIR was registered on 20.08.2013 under Section 188 of the IPC. The said case was finally disposed of by Lok Adalat, wherein it was recorded that the petitioner herein pleaded guilty for offence in question and the case was compounded after admonishing the petitioner for the said offence.

11. It is the case of the petitioner that prior to allotment of the government accommodation in the name of the petitioner, there existed a temporary structure of a tin shed in the form of a *jhuggi*, on the back side of the said quarter. The said *jhuggi* was away from the main residence allotted to the petitioner. The same was occupied by someone having no relation whatsoever with the petitioner and the said person was occupying the said *jhuggi* even prior to shifting of the petitioner in the quarter in question. However, it is submitted that the main accommodation allotted in the name of the petitioner was never allowed to be used by the petitioner to anyone for any purpose whatsoever.

12. It is submitted that without considering the submissions made by the petitioner, cancellation order was issued by the respondent. It is further submitted that no notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) was received by the petitioner. The Estate Officer had purportedly issued notice dated 21.01.2015 to the petitioner, which was issued on the wrong address, i.e., Quarter No. 679, R.K. Puram, Sector 8, instead of Sector 7, wherein government accommodation was allotted to the petitioner. Thus, no show cause notice under Section 4 of the PP Act was ever issued or served to the petitioner.

13. Subsequently, the petitioner received notice dated 06.05.2015 in a pending case under Section 7 of the PP Act. The petitioner duly replied to the said notice thereby denying the allegation of subletting of the quarter allotted to her at any point of time.

14. It is submitted that on 20.05.2015, the petitioner attended the proceedings before the Id. Estate Officer by appearing in person, as per hearing notice dated 06.05.2015, received under Section 7 of the PP Act. The petitioner submitted all the documentary evidence. On the said date, i.e., 20.05.2015 when the petitioner appeared before the Id. Estate Officer, no one was present on behalf of respondent herein. It is submitted that no evidence of any sort, whether documentary or oral, was submitted by the respondent before the Id. Estate Officer in support of their allegation of subletting. Even the petitioner was not allowed to adduce any evidence in support of her contention of bona fide use and occupation of the said residence for herself right from the date of its allotment. It is the case of the petitioner that the petitioner

was not heard at all and the matter was reserved for order.

15. Ld. Counsel for the petitioner submits that after the rejection of the appeal of the petitioner, she surrendered the premises on 01.12.2018.

16. In support of his submissions, learned counsel appearing for the petitioner has relied upon the following judgments:

- (i) *New Okhla Industrial Development Authority (NOIDA) Vs. Yunus & Ors, 2022 (2) Scale 797/ 2022 (AIR) 847*
- (ii) *New India Assurance Co. Vs. Nusli Neville Wadia & Ors, 2008 AIR (SC) 876/ 2007 (14) Scale 556*
- (iii) *Shangrila Food Products Vs. L.I.C. of India, 1996 (AIR) SC 2410/1996 (5) Scale 289*
- (iv) *UOI & Another Vs. Sunil Dutt, 2010 (167) DLT 42*

17. On the other hand on behalf of respondent, it is submitted that a complaint was received against the petitioner for subletting the premises in question. Accordingly, FIR was registered against the petitioner. In accordance with the FIR, one Raj Kumar was found in occupation and he further accepted during the course of investigation that he was a tenant in the said quarter since two years. It is further submitted that the petitioner pleaded guilty with respect to the said FIR, as duly recorded in the order dated 23.11.2013 passed by the Lok Adalat. The petitioner had constructed a temporary structure on the side of the allotted quarter for subletting purpose.

18. It is submitted that since the petitioner was occupying the public premises even after cancellation of allotment in her favour, she is liable to pay penalty. Thus, it is submitted that the petitioner is liable to pay damages for subletting to the tune of Rs. 16,22,836/-. It is

further submitted that the petitioner has already vacated the premises in question, thus, the order against the petitioner has attained finality.

19. I have heard Id. Counsels for the parties and have perused the documents.

20. The facts that have come to the fore are that there were allegations against the petitioner for subletting of the government accommodation allotted to her in that there existed a *jhuggi* on the backside of the allotted government accommodation, which had been sublet by the petitioner and she was receiving rent for the same. Documents on record also show that the said temporary structure existing near the allotted government accommodation was completely demolished by the Central Public Works Department (CPWD), as intimated by CPWD by its letter dated 20.02.2015 to the Directorate of Estates. Letter dated 20.02.2015 written by the CPWD in this regard is reproduced as below:-

*“ Government of India
Central Public Works Department
Office of the Executive Engineer
M Division, East Block4, Level 7, R.K. Puram, New Delhi-110604
Phone No. 26109330 Fax 26190790 E-mail Deleem.cpwd@nic.in
Ref. No. 24(70)/EE/M Div/2015/e-648 Dated 20/02/15*

*To
The Assistant Director
Directorate of Estates,
Nirman Bhavan, New Delhi.*

*Subject: Regarding Notice in respect of Quarter No.679,
Sector-7, R.K. Puram, New Delhi.*

*On the subject cited about it is informed that Jhuggi near
Quarter No. 679, Sector-7 has been completely removed
which fact has been verified by the sub-divisional*

engineer (copy enclosed). You are therefore requested to close the said complaint.

Encl. As above

*Sd/-
(S.K. Tripathi)
Executive Engineer*

Copy to:

- 1. Assistant Engineer I/M Sub-Division for information.*
- 2. Allottee of Quarter No. 679, Sector-7, R.K. Puram, New Delhi for information.*

Sd/- Executive Engineer”

21. Further, it has come on record that the petitioner herein was residing in the government quarter allotted to her, along with her husband and child. The petitioner had placed on record the copy of certificates dated 20.05.2015 issued by DAV Public School, R.K. Puram, fee receipts of her son, I-card showing that her son was studying in the school in nearby vicinity, copies of IGL gas bills/invoices, Electricity Bill issued by BSES, Passbook of the savings bank account maintained with State Bank of India and other documents, which showed the residence of the petitioner at the government quarter allotted to her.

22. As per the facts and documents on record, there was no charge against the petitioner that she had sublet the actual accommodation that had been allotted to her. There is nothing on record to show that the allotment of government residence under the Allotment of Government Residences (General Pool in Delhi), Rules 1963, can be cancelled on the ground that the allottee of the quarter has let out another public premises, which was never allotted to him/her. The petitioner may be guilty of encroachment on public land by way of

construction of a temporary structure and allowing a third party to stay therein, however, that certainly would not amount to subletting, as there is nothing on record to show that the premises that were actually allotted to the petitioner had been sublet.

23. The petitioner has been charged with contravention of the provisions contained in S.R. 317-B-20 of the Allotment of Government Residences (General Pool in Delhi), Rules 1963 on the ground that the petitioner had completely/partially sublet the government accommodation allotted to the petitioner to some unauthorised person. S.R. 317-B-20 of the aforesaid Rules is reproduced as under:

“S.R. 317-B-20.(1) No officer shall share the residence allotted to him or any of the outhouses, garage and stables appurtenant thereto except with the employees of the Central Government eligible for allotment of residence under these rules. The servants’ quarter, outhouses, garages and stables may be used only for the bona fide purposes including residence of the servants of the allottee or for such other purposes as may be permitted by the Directorate of Estates:

Provided that the officer shall send prior intimation to the Directorate of Estates in such form as may be prescribed by the Director intimating full particulars of the officer and his family residing in the quarter and full particulars of the sharer and his family,

(2) No Officer shall sublet the whole of his residence:

Provided that an officer proceedings on leave may accommodate in the residence any other officer eligible to share Government accommodation as Caretaker for the period specified in SR 317-B-11 (2) but not exceeding six months.

(3) Any Officer who shares or sublets his residence shall do so at his own risk and responsibility and shall remain personally responsible for any licence fee payable in respect of the residence and for any damage caused to the residence or its precincts or grounds or services provided therein beyond fair wear and tear.

(4) A Lady Officer to whom accommodation has been allotted in the Working Girls' Hostel will not be eligible to share the accommodation with any other officer. However, the Directorate of Estates may allow children not exceeding the age of 12 years to reside with an officer."

24. Perusal of the aforesaid shows that no government employee is allowed to share the residence allotted to such government employee, as the same will amount to subletting. The said Rule does not refer to construction of an unauthorised structure on public land that does not form part of the premises allotted to a government employee and subletting the same. Therefore, the present is certainly not a case of subletting, when the charge is with respect to premises that have not even been allotted to the petitioner herein.

25. In similar circumstances, this Court in the case of ***P.B. David Vs. The Estate Officer and Anr., 2018 SCC OnLine Del 11568***, allowed the petition of the petitioner in the said case, whose allotment of first floor quarter had been cancelled on the ground of subletting the terrace above the first floor quarter. This Court held that the petitioner therein continued to live in the first floor quarter that had actually been allotted to the petitioner and that there was no ground for eviction on the basis of subletting the terrace above the first floor, when the terrace was not the actual premises that had been allotted to

the petitioner therein. Thus, it was held as follows:

“10. That being the admitted position, I have enquired from the counsel for the respondents, whether the allotment of Government residences under the Allotment of Government Residences (General Pool in Delhi) Rules aforesaid can be cancelled on account of the allottee of the quarter having let out another public premises which were never allotted to him and which may have just been lying vacant.

11. The counsel for the respondents has no instructions on the same.

12. The counsel for the respondents however states that the petitioner indulged in ‘misuse’ by so subletting the quarter on the terrace above the first floor.

13. However it is not shown that the said misuse also is actionable under the Allotment of Government Residences (General Pool in Delhi) Rules aforesaid.

14. It is else not in dispute that the petitioner has been residing in the quarter allotted to him.

... ..

19. It is however not as if the Special Executive Magistrate had recorded the statement of the said occupants or that the said statement was subjected to cross-examination by the petitioner. The respondent no. 1 Estate Officer also did not examine the said occupants.

20. In my opinion the aforesaid notice recording the stand taken by the occupants, of the quarter on the terrace above the first floor, of the petitioner collecting rent from them, cannot bind the petitioner.

21. No other evidence on the basis of which it has been held by the respondent no. 1 Estate Officer that it is the petitioner who inducted persons into the quarter on the

terrace above the first floor or was collecting rent from them, has been shown.

22. The aforesaid documents at best show that the petitioner, inspite of coming to know of the trespass of the quarter on the terrace above the first floor, did not take any action and rather allowed the occupants to remain.

23. However it is not shown as to how the same would amount to a ground for cancellation of allotment in favour of the petitioner of the first floor quarter or of eviction, as a consequence thereto.

24. Though the possibility of the petitioner having inducted the occupants found in the accommodation on the terrace above the first floor quarter allotted to the petitioner and even collecting rent and user charges from them cannot be ruled out in the circumstances aforesaid but on such possibilities and without there being any material on record, this Court cannot in exercise of jurisdiction under Article 227 allow the impugned orders to stand specially when no Rule providing for eviction of allotted accommodation on such ground is cited.”

26. Even otherwise the documents on record show that the notice under Section 4 of the PP Act was never served upon the petitioner. Perusal of the documents as placed on record show that the Estate Officer directed issuance of notice to the petitioner herein under Section 4 of the PP Act, in the proceedings under the PP Act as initiated on behalf of Directorate of Estates, Government of India. The case was fixed for 02.02.2015 by the Estate Officer with direction to issue notice to the petitioner herein. The Proceedings Sheet of the proceedings before the Learned Estate Officer show that none appeared before the Estate Officer on 02.02.2015. It was, thus, directed that hearing notice be issued to the petitioner herein on the

correct address for 20.05.2015.

27. The next order sheet dated 20.05.2015 before the Estate Officer shows that the petitioner herein was present in person before the learned Estate Officer, while none appeared for the respondent herein before the learned Estate Officer. The learned Estate Officer recorded in his order dated 20.05.2015 that the petitioner had submitted relevant documents to prove her case, and thus, the matter was kept for orders. Thereafter, by order dated 17.06.2015, the learned Estate Officer passed the eviction order against the petitioner herein.

28. There is nothing on record to show that notice under Section 4(1) of the PP Act was actually served upon the petitioner. The only notice received by the petitioner, as manifest from the documents on record, was under Section 7(1) of the PP Act, which directed the petitioner to appear before the Estate Officer on 20.05.2015. Thus, it is on the basis of the said notice under Section 7(1) of the PP Act that the petitioner appeared before the Estate Officer on 20.05.2015, when the matter was simply reserved for orders after receiving some documents from the petitioner.

29. Examination of the order sheets of the Id. Estate officer, as aforesaid, shows that no actual hearing took place before the learned Estate Officer. Neither the respondent department appeared before the learned Estate Officer, nor adduced any evidence before the learned Estate Officer on the aspect of subletting by the petitioner. Similarly, no opportunity of hearing or adducing any evidence was afforded to the petitioner. When the petitioner appeared before the Estate Officer pursuant to receipt of notice, the learned Estate Officer merely took

the documents from her and reserved the case for orders.

30. It is clear that proper procedure was not followed by the learned Estate Officer and no evidence was recorded by the Estate Officer in order to determine the *lis* between the parties. The learned Estate Officer just took the documents as produced by the petitioner and kept the matter for orders.

31. It is relevant to note that when the matter was kept for orders by the learned Estate Officer on 20.05.2015, none was present for the respondent Department, as recorded in the order sheet for the said date. Subsequently, the learned Estate Officer passed eviction order dated 17.06.2015 against the petitioner. No evidence was led by the respondent to establish the fact of subletting by the petitioner herein. Further, no opportunity was granted to the petitioner to lead evidence to rebut the said allegation of the respondent. The learned Estate Officer being a quasi-judicial authority, was bound to follow a fair procedure in accordance with the Principles of Natural Justice before passing any eviction order.

32. The Estate Officer is enjoined to hold an inquiry in terms of Rule 5 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971. Rule 5 reads as under:

“5. Holding of inquiries.—(1) Where any person on whom a notice or order under this Act has been served desires to be heard through his representative he should authorise such representative in writing.

(2) The estate officer shall record the summary of the evidence tendered before him. The summary of such evidence and any relevant documents filed before him shall form part of the records of the proceedings.”

33. Thus, an Estate Officer is required to record summary of evidence tendered before him. The procedure as followed in the present case was totally unjustified and in violation of the Principles of Natural Justice.

34. Hon'ble Supreme Court in the case of *New India Assurance Company Ltd Vs. Nusli Neville Wadia and Another*, (2008) 3 SCC 279 has categorically held that the Estate Officer with a view to determine the *lis* between the parties, must record summary of the evidence. It has been further held that though the statute does not require a lengthy hearing or a lengthy cross examination, but the noticee should be given an opportunity to file an effective show cause. Thus, it has been held as follows:

“31. When an application for eviction is based on such grounds, which require production of positive evidence on part of the landlord, in our opinion, it would be for it to adduce evidence first; more so in a composite application where the evidence is also required to be led on the quantum of damages to be determined by the Estate Officer.

32. There may be a case where the tenant may take a defence which discloses no prima facie case in which event the Estate Officer may ask him to lead evidence. But there may be cases where the ground of eviction, having regard to the defence taken by the occupants, may be required to be gone into.

33. The appellant's stand in this case is clear and unambiguous. It intends to evict the respondents on the grounds specified in the notices issued by the Estate Officer.

34. The Estate Officer with a view to determine the lis between the parties must record summary of the evidence. Summary of the evidence and the documents shall also form part of the record of the proceedings.

35. Procedure laid down for recording evidence is stated in the Rules. The Estate Officer being a creature of the statute must comply with the same. When a notice is issued, the occupant of the public premises would not only be entitled to show cause but would also be entitled to produce evidence in support of the cause shown.

Concept of fairness

36. The procedural aspect as to who should lead evidence first, thus may have to be determined on the basis of the issues arising in the matter. When we say so, we do not mean that the procedure involved being a summary one, the issues are required to be specifically framed but that which is the principal issue(s) between the parties must be known to the Estate Officer.

37. Thus under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the occasion would arise for multi-level inquiry: primary inquiry will be to arrive at a conclusion on “unauthorised occupant”, and intermediate inquiry would be as to the eviction of “unauthorised occupant”.

38. The question has been succinctly dealt with by a Division Bench of the Bombay High Court in Minoo Framroze Balsara v. Union of India [AIR 1992 Bom 375] wherein Bharucha, J. (as the learned Chief Justice then was) opined: (AIR p. 389, para 36)

“36. ... the government company or corporation must so act not only when terminating the authority of

an occupant of public premises of its ownership to occupy the same but also when, thereafter, it seeks his eviction therefrom.”

*39. The statute, although, does not require a lengthy hearing or a lengthy cross-examination but the noticee should be given an opportunity to file an effective show-cause. An effective show-cause can be filed when eviction is sought for a specified ground and the occupants must know the particulars in relation thereto.
... ..”*

35. In the present case the Estate Officer clearly did not act fairly. The petitioner was not afforded any actual, substantive or effective opportunity to present the case in her defence. The High Court of Karnataka in the case of *M/s. Blaze and Central (P) Ltd., Bangalore Vs. Union of India and Ors., 1980 SCC OnLine KAR 99*, thus, held as follows:

“13. This takes me to the second contention relating to the denial of natural justice. Learned Counsel for the petitioner urged that the Estate Officer did not record the statements of the witness produced for the Bank in the presence of the petitioner and he did not even furnish a copy of the statement of that witness in spite of a specific request made for the purpose. The learned District Judge was summarily rejected the latter part of the contention on the ground that there is no provision under the Act to, furnish copies of the statements recorded in the proceedings. This reasoning would be leading into the trap of legalism of the 17th century. The Act need not provide for all the minor details low an enquiry should be conducted by the Estate Officer. The Estate Officer must hold an enquiry as required under Section 4 of the Act,

read with the public Premises (Eviction of Unauthorised Occupants) Rules, 1971. Rule 5 of the Rules provides that the Estate Officer shall record the summary of the evidence tendered before him and the summary of such evidence and any relevant documents filed before him shall form part of the record of the proceedings. Exercise of the power under the Act is undoubtedly quasi-judicial. The petitioner has a right to be heard before the Estate Officer and if the right to be heard is to be a real right which is worth anything, it must carry with it a right to know the evidence of the opposite side. The petitioner must therefore be told what evidence has been given or what statements have been made by the opposite side. In other words, to put it shortly, the petitioner must be given a fair opportunity to correct or contradict the statements recorded or the evidence collected in his presence or absence. This one principle uniformly appears in all the cases commencing from the celebrated judgment of Lord Loreburn L.C. in Board of Education v. Rice [(1911) A.C. 179 at page 182.] wherein the following passage appears:

“Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty, of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose usually be of an administrative kind but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They

can obtain information in anyway they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.”

Since then, Judges and writers have expanded the procedure laid down by statutes and laid down the obligation to observe the principles of natural justice where it is not plainly contrary to the intention of the legislature. The courts recently have also resorted to such alternatives to natural justice as “fairplay in action” or “fairness of procedure” or “the fundamental principles of a fair trial”, while discouraging a tendency to subject hearing to “legal strait-jackets”. Sometimes, “fairness” has been understood to impose a higher standard than that required by natural justice. In a historic decision of our Supreme Court in Menaka Gandhi v. Union of India [(1978) 1 SCC 248 : A.I.R. 1978 S.C. 597 at 624.] Bhagawati, J., who spoke for the majority view observed:

“The principles of reasonableness must be right and just and fair and not arbitrary, fanciful or oppressive otherwise it would be no procedure at all.”

A tribunal or a person to whom judicial or quasi-judicial functions are entrusted is thus presumed to have an obligation to act with fairness, that is not only the obligation to observe the principles of natural justice but, on the contrary, to observe a higher standard of behaviour than that required by natural justice.”

36. The Id. Estate Officer, as a quasi-judicial authority was required to follow the Principles of Natural Justice by according hearing to the petitioner and recording evidence to establish the charges against the petitioner. Merely on the basis of F.I.R. against the petitioner or proceedings before the Lok Adalat or purported admission by the petitioner in her representation to the respondent, the charges against the petitioner cannot be held to be proved. Besides, as noted

hereinabove, there was no charge against the petitioner for subletting the actual premises allotted to her.

37. While holding that adherence to Principles of Natural Justice by quasi-judicial body is of supreme importance, Supreme Court in the case of **Canara Bank Vs. V.K. Awasthy, 2005 SCC OnLine SC 637**, has held as follows:

“10. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.....”

11. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

38. Similarly, emphasising that function of the judicial and quasi-

judicial authorities is to secure justice with fairness, Supreme Court in the case of ***Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others, 2015 SCC OnLine SC 489***, has held as follows:

“24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.”

39. Perusal of the impugned judgment dated 19.11.2018 passed by the learned District and Sessions Judge shows that the said judgment has been passed taking into account the F.I.R. dated 30.08.2013 against the petitioner, that had been lodged on the basis of surprise checking which showed that the petitioner had unauthorizedly constructed one room on the side of the quarter and had given it on rent to some person. Further, the learned District Court has relied upon the order dated 23.11.2013 passed by the National Lok Adalat, wherein the petitioner herein had pleaded guilty with respect to the contents of the F.I.R. Thus, on the said basis it has been held by the learned District Court that the petitioner herein had kept a tenant in

part of the quarter allotted to her and that she had partially sublet the said quarter. The aforesaid finding of the learned District Court cannot be upheld, as the learned District Court itself recognises the fact that a temporary structure had been constructed on the side of the allotted government quarter, that had actually been sublet. Thus, it is clear that there is no finding against the petitioner that the petitioner had sublet the actual quarter allotted to her. Therefore, the finding by the Ld. District Court that the petitioner had admitted to her guilt before the Lok Adalat, cannot be countenanced. No alleged admission on the part of the petitioner could be the basis of the impugned judgment, in the absence of any evidence led by the department before the Estate Officer to prove the charge of subletting. The said alleged admission on part of the petitioner cannot tantamount to admission of charge of subletting, as there is nothing on record to show that the petitioner ever sublet the actual quarter allotted to her.

40. The Id. District Court has proceeded on totally untenable grounds in passing the impugned judgment by holding that the petitioner herein had sublet part of the said quarter in view of the petitioner's own admission before the Lok Adalat and in her appeal before the Director Estates – II. As already held in the preceding paragraphs, there is nothing on record to show that the petitioner had sublet the actual government accommodation allotted to her. Besides, the Id. Estate Officer did not follow any proper procedure at the time of passing the impugned order, which was passed without recording any evidence or granting any hearing to the petitioner. Further, it has also come on record that no notice under Section 4(1) of the PP Act

had ever been served upon the petitioner and that the petitioner had appeared before the Estate Officer on the basis of receipt of notice under Section 7(1) of the PP Act.

41. Hence, it is difficult to sustain the eviction order passed against the petitioner, as upheld by the Id. District and Sessions Court. In view thereof, the cancellation of allotment order dated 04.08.2014 by the Directorate of Estates, Government of India, the eviction order dated 17.06.2015 passed by the Estate Officer and the impugned judgment dated 19.11.2018 passed by the District and Sessions Judge in *PPA No. 161/2016*, is set aside.

42. This brings us to the issue of damages, as imposed upon the petitioner. The petitioner has been imposed with penalty of Rs. 16,22,836/- as subletting damages. The letter dated 11.01.2019 issued by the Directorate of Estates is reproduced as below:

“ *No. 679/7/RKP/TAA/2019*
Government of India
Ministry of Housing & Urban Affairs
(Directorate of Estates)
Nirman Bhawan,
New Delhi
Dated 11-01-2019

To
Admn. Civil Judge
District and Sessions Judge,
Tis Hazari,
New Delhi-110054

Sub: Outstanding Licence fee/damages dues in respect of
Qtr no. 679 Sec-7 RK Puram New Delhi allotted to Smt.
Shobha JJA.

In continuation of this Directorate letter no. DE/8/5850/RKP/E/2014 dated. 27.12.2015, the subletting damages as calculated of Rs.16,22,836/- (Rupees Sixteen Lakh twenty two thousand Eight hundred Thirty six only) to be recovered from Smt. Shobha JJA allottee of Qtr no 679 Sec-7 RK Puram New Delhi.

*Salem Ahmed
(Suptd. Accounts)”*

43. The respondent has relied upon Office Memorandum (OM) dated 04.06.2013, which is the basis of calculation of the damages as revised by OM dated 22.07.2016 and OM dated 07.09.2016.

44. While considering the issue of damages, this Court notes that there was never any allegation against the petitioner that she had let out the actual government accommodation allotted to her. As regards the unauthorised structure, the documents on record show that the said structure was demolished by the CPWD as intimated by the CPWD in its letter dated 20.02.2015 to the Directorate of Estates.

45. Further, facts on record also establish that the petitioner has already vacated the premises in question on 01.12.2018.

46. Further, facts on record also show that the petitioner was residing in the one room government accommodation actually allotted to her. The documents viz. consumption of gas, testimonial of son of the petitioner studying in the nearby school etc were placed on record by the petitioner in order to show that she continued to live in the allotted government residence along with her family.

47. Thus, as per the facts established, there was no allegation as such against the petitioner for subletting the actual government

accommodation allotted to her. As per the stand of the petitioner, the said temporary structure was existing even prior to the allotment of the government accommodation in question to her and therefore, she let the said existing structure continue to exist and the person who was living therein.

48. Levy of damages has been provided for in Section 7 of the The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act), which reads as under:

“Section 7. Power to require payment of rent or damages in respect of public premises.

(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.

[(2A) 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 ² [compound 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 cause³ [within seven days from the date of issue thereof], 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.

[(3A) If the person in unauthorised occupation of residential accommodation challenges the eviction order passed by the estate officer under sub-section (2) of section 3B in any court, he shall pay damages for every month for the residential accommodation held by him.]

[(4) Every order under this section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice.]”

49. Thus, Section 7(2) of the PP Act provides that the Estate Officer may assess the damages on account of use and occupation of such premises by an unauthorised occupant, having regard to such principles of assessment of damages, as may be prescribed.

50. Parameters that are to be considered by an Estate Officer in determination of damages payable by the unauthorised occupant, have been detailed in Rule 8 of the PP Act, which reads as under:

“8. Assessment of damages. - *In assessing damages for unauthorised use and occupation of any public premises the estate officer shall taken into consideration the following matters, namely:-*

(a) the purpose and the period for which the public premises were in unauthorised occupation;

(b) the nature, size and standard of the accommodation available in such premises;

(c) the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;

(d) any damage done to the premises during the period of unauthorised occupation;

(e) any other matter relevant for the purpose of assessing the damages.”

51. Perusal of the aforesaid provisions manifests that the assessment of damages has to be made by the Estate Officer keeping in mind the parameters as laid in Rule 8, as aforesaid. Thus, an independent assessment is required to be made by the Estate Officer while calculating the payable damages. The Estate Officer discharges quasi-judicial functions and is required to follow the Principles of Natural Justice at the time of making such assessment.

52. In the present case, there is nothing on record to show that the Estate Officer has considered the principles and parameters as laid down in the statute, while calculating the damages. No evidence has been led in order to determine the question of damages. No opportunity of hearing was granted to the petitioner and no evidence was recorded on her behalf. Rather, the order sheets of the proceedings before the Estate Officer show that the Estate Officer simply took the reply/documents of the petitioner on record and reserved the matter for judgment.

53. The Estate Officer has acted in a mechanical manner and has calculated the damages on the basis of circular of the respondent, without any independent application of mind and without following

the due process. The damages have been imposed without any deliberation or reasoned process.

54. Further, when the eviction order against the petitioner itself has been held to be bad in law, there is no question of imposition of any damages upon the petitioner. Thus, in view of the aforesaid detailed discussion, the damages as imposed upon the petitioner are set aside.

55. The present writ petition is allowed in terms of the aforesaid directions.

(MINI PUSHKARNA)
JUDGE

11th May, 2023
au/c

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