COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

1.

OA 4597/2024

Ex Col Vipin Raj Sirohi ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. K Ramesh with
Ms. Archana Ramesh, Advocates
For Respondents : Mr. Neeraj, Sr. CGSC

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
05.12.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant has questioned the tenability of an order dated 23.07.2024 (Annexure A1) passed by the Estate Officer appointed under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. By this order, the statutory Estate Officer has imposed penal rent on the applicant and directed its recovery exercising the powers vested in him under Section 7 read with Sub-Section (2) and (2A) of the Act of 1971.

2. On the last date of hearing, while considering the matter for admission, the learned Sr. CGSC for the respondents raised preliminary objections regarding the

maintainability of this application. The objections were based on the grounds that an order passed under Section 7 read with Sub-Section (2) and (2A) of the Act of 1971 is subject to a statutory appeal under Section 9 before the District Judge. Therefore, the jurisdiction of this Tribunal to deal with the matter is ousted, as the impugned order was passed by a statutory authority under a special enactment. When the special enactment provides a statutory remedy for challenging such an order, the general remedy available for the redressal of service disputes under the AFT Act does not apply.

3. On the last date when these objections were raised, the learned counsel for the applicant sought time to seek instructions on the matter. Today, she informed us that, earlier, when orders were passed in the matter of eviction of the applicant and a show cause notice (SCN) was issued under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the applicant had approached this Tribunal. The Tribunal had granted certain relief to the applicant in OA vide Diary No. 988/2019 and MA 656/2019, and at that time, no objections of the nature as made today were raised. Furthermore, learned counsel for the applicant submits that the Armed Forces Tribunal was

created for the redressal of all service disputes pertaining to a member of the Army Act, Air Force Act, and Navy Act, and since the impugned order involves the recovery of penal rent from the applicant's salary for the property in question, the jurisdiction of this Tribunal is available.

4. However, learned Sr. CGSC for the respondents reiterated the earlier arguments submitting that since the impugned order was passed in exercise of the statutory powers available to the Estate Officer under the Act of 1971, the applicant should seek recourse to the remedy available under that Act. Therefore, the general powers for adjudicating service disputes under Section 14 of the Armed Forces Tribunal Act, 2007 will not be available in the present case.

5. Having heard learned counsel for both parties, we are of the considered view that it is a well-settled principle of law and statutory interpretation that when a special enactment has been created for a specific purpose and action is taken under that such special enactment the recourse available under a general law will not apply if a specific remedy is provided under the special enactment. In this case, both the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, and the Armed Forces Tribunal Act,

2007, are special enactments created by the Parliament of India. However, the Armed Forces Tribunal Act, 2007, confers jurisdiction in general on this Tribunal under Sections 14 and 15 to deal with service matters related to Armed Forces personnel and appeals regarding actions taken or punishments imposed after Court Martial.

6. The power available under Section 14 is a general jurisdiction with regard to all matters pertaining to service disputes of Armed Forces personnel. On the other hand, the powers available to the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, are specific to the eviction of unauthorized occupants from properties belonging to the Union of India and for the recovery of disputes on rent, penal rent and other related provisions.

7. Thus, even though both the Armed Forces Tribunal Act, 2007 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are special enactments, the Armed Forces Tribunal Act deals with the general provisions concerning service disputes of Armed Forces personnel, whereas the Public Premises Act deals with specific disputes related to the eviction of unauthorized occupants from

Union government properties and the recovery of rent/ penal rent etc.

8. As far as the property in question is concerned, it belongs to the Ministry of Defence (MoD), i.e., the Union of India through the Ministry of Defence. The action is being taken against the applicant and his wife for their eviction from the property and recovery of penal rent. The power exercised by the Estate Officer is a special power available to him under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Therefore, we are of the considered view that the powers available under the specific provisions of the Public Premises Act, 1971, have been exercised by the Estate Officer. Under Section 9 of the said Act, the impugned order is subject to appeal before the District Judge. The general powers available to us in the matter of redressal of service grievances under Section 14 of the Armed Forces Tribunal Act are therefore ousted by the special remedy provided under the Public Premises Act in matters of recovery of rent and eviction from properties belonging to the Union of India.

9. That being so, we find merit in the objections raised by the respondents, merely because such objections were not raised on previous occasions and were not considered by the

Court, we cannot usurp jurisdiction that is not available in accordance with the statute. We must follow the principles of law, and when a statutory remedy of appeal before an independent judicial authority (no less than the District Judge) is available to the applicant, the applicant should take recourse to that remedy. Invoking the general jurisdiction of this Tribunal under Section 14 treating it as a service dispute, is not permissible in the facts and circumstances of the present case.

10. Accordingly, upholding the objections raised by the respondents, we dispose of the matter with liberty to the applicant to file an appeal before the learned District Judge of the district within whose jurisdiction the property is situated, or where the impugned order has been passed.

11. In view of the above, the OA stands disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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