

(2018) 04 J&K CK 0046
In the Jammu And Kashmir High Court
Case No : LPAOW No. 08, 09, 10,12 OF 2018

AJAY KUMAR SADHOTRA & ANR

APPELLANT

Vs

STATE OF Jammu & Kashmir AND OTHERS

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Constitution of India, 1950 — Article 144
Jammu and Kashmir Public Premises (Eviction of un-authorized Occupants) Act, 1988
— Section 4, 4(1), 5, 12

Citation : (2018) 04 J&K CK 0046

Hon'ble Judges : JANAK RAJ KOTWAL, SANJEEV KUMAR

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These four Letters Patent Appeals, as they raise similar issues, have been heard together and are being disposed of by this common judgment.Â

2. Three appeals in LPA No. 08/2018, LPA No. 10/2018 and LPA No. 12/2018 arise from a common judgment rendered by a learned Single Bench

of this Court on 22.02.2018 in OWP No. 535/2016, OWP No. 547/2016 and OWP No. 1546/2015 and the fourth in LPAOW No. 09/2018 arises from

a common judgment rendered by another Single Bench of this Court on 22.02.2018 in OWP No. 1566/2015 filed by the appellant and three other petitions.

3. Heard learned counsel for the parties and perused the record.

4. Appellant in LPAOW No. 08/2018, Ajay Kumar Sadhotra, is a former Legislator and Cabinet Minister of the State. He was elected as Member

Legislative Council (MLC) in the year, 2009. In his capacity as MLC the appellant vide Government order No. 250 of 2009 dated 13.10.2009 issued

by the Director Estates, Jammu, herein respondent No. 2, was allotted Government accommodation in Quarter No. 17-A, Gandhi Nagar, Jammu. He

was inducted in the Council of Ministers as Cabinet Minister in the year, 2013. He continued occupying the said accommodation even after his

induction as Cabinet Minister. Appellant's term as MLC ended on 27.03.2015 and he ceased to be the Cabinet Minister with the change in

Government in the year 2015.

5. The appellant, however, did not vacate and continued occupying the said Government accommodation even after he ceased to be the MLC or the

Cabinet Minister. In the month of March, 2015 appellant approached this Court in OWP No. 372/2015 alleging inter alia that he was being threatened

forcible eviction from the said accommodation without adopting the due procedure as envisage under Sections 4 and 5 of the Jammu and Kashmir

Public Premises (Eviction of un-authorized Occupants) Act, 1988 (for short the Act) read with the Regulations formulated by the Government vide

order No. 169-GAD dated 10.02.2004 (for short the Regulations of 2004) and in discrimination with many other similarly circumstanced person.

During pendency of that writ petition, a batch of similar writ petitions with OWP No. 545/2015, Choudhary Mohammad Ramzan vs State of J&K and

ors. as the lead case was disposed of by a learned Single Bench of the Srinagar Wing of this Court vide judgment dated 01.05.2015 inter alia directing

the State Government to constitute a committee to make objective assessment of threat perception of each of the petitioners therein to retain the

Government accommodation in his use or to provide alternate Government/hired accommodation to him and to allow them to retain the

accommodation allotted to them till recommendations are received from the committee and necessary orders are passed. The writ petition filed by the

appellant, Ajay Kumar Sadhotra, along with two other petitions of the similar nature were, with the consensus of counsel for the parties, disposed of

by a learned Single Bench of this Court vide order dated 24.09.2015 with a direction to the respondents to consider the case of the petitioners therein

in light of the judgment dated 01.05.2015 (supra) and pass consideration order strictly in terms of paragraph 17 thereof, also having regard to clause

(e) (A)(iv) of Government order No. 1291-GAD dated 22.09.2014 and to maintain status quo till such an order is passed.

6. The committee constituted pursuant to and in compliance with the judgment dated 01.05.2015 (supra) submitted its report and recommendations

vide communication No. SHQ/PS-DC(Estates)/2015/32231 dated 19.12.2015. Pursuant to the report of the committee, the Deputy Director, Estates,

herein respondent No. 3, issued communication No. DDE/J/01 dated 01.04.2016 calling upon the petitioner to vacate the aforementioned Government

accommodation by or before 15.04.2016 and cautioning him that in case of his failure action as warranted under rules shall be taken without any

further notice.Â

7. Feeling aggrieved of the communication dated 01.04.2016, whereby appellant has been asked to vacate the said Government accommodation,

appellant approached this Court in OWP No. 535/2016. He primarily challenged and sought quashing of the report and recommendation of the

committee dated 19.12.2015 as also the communication dated 01.04.2016 in addition he sought a direction to the respondents restraining them from

evicting him from aforementioned Government accommodation.Â

8. Appellant in LPAOW No. 10/2018, Ashok Kumar Sharma, is a former Legislator. He remained elected Member of the Legislative Assembly

(MLA) of the State from 1996 to 2002 and nominated Member of the Legislative Council (MLC) from 2004 to 2009. In the year, 1997, he was

allotted Government accommodation in Quarter No. 59-C, Gandhi Nagar, which he occupied up to the year, 2012 whereafter he was allotted Quarter

No. 12, Rehari in his capacity as former Legislator. Appellant earlier approached this Court in OWP No. 865/2015 alleging inter alia that he was being

threatened forcible eviction from the said Government quarter without adopting the due procedure as envisage under the Act and the Regulations of

2004 and in discrimination with many other similarly circumstanced person. The said writ petition too was disposed of by a learned Single Bench of

this Court vide order dated 31.07.2015 with a direction to the respondents to consider the claim of the petitioner in light of the judgment dated

01.05.2015 (supra). Like in the case of appellant, Ajay Kumar Sadhotra, after report and recommendation of the committee, respondent No. 3 issued

communication No. DDE/J/05 dated 01.04.2016 calling upon the appellant to vacate the aforementioned Government accommodation by or before

15.4. 2016 and cautioning him that in case of his failure action as warranted

under rules shall be taken without any further notice.Â

9. Feeling aggrieved of the communication dated 01.04.2016, whereby appellant has been asked to vacate the said Government accommodation,

appellant approached this Court in OWP No. 547/2016. He primarily challenged and sought quashing the communication dated 01.04.2016 (supra) and

also sought a direction to the respondents restraining them from evicting him from the aforementioned Government accommodation.Â

10. Appellant in LPAOW No. 12/2018, Yogesh Sawhney, is a former Legislator and Minister. He was elected as Member Legislative Assembly

(MLA) in the year, 2009 and was inducted in the Council of Ministers as Cabinet Minister, which position he occupied up to the year, 2015. In his

capacity as Minister, he was allotted Government accommodation in Staff Quarter No. 3 Rehari Colony, Jammu. After he ceased to be the Minister,

he was served with notice dated 25.04.2015 under section 4 of the Act. He submitted his reply to the notice on 22.05.2005 and thereafter order of

eviction was passed by respondent No. 3 on 05.05.2015. Feeling aggrieved, appellant filed appeal against the order of eviction under Section 12 of the

Act before the 1st Additional District Judge, Jammu, which was dismissed by the appellate court by its order dated 12.10.2015. Appellant challenged

the order passed by the appellate court in OWP No. 1546/2015 before this Court seeking quashing of the said order as also the order of eviction dated

05.05.2015.

11. The aforementioned three writ petitions have been dismissed by the learned Single Bench by the common judgment dated 22.02.2018. In regard to

OWP No. 1546/2015 filed by the appellant, Yogesh Sawhney, learned Single Bench held that the appellant (therein petitioner) was served with a

notice under section 4(1) of the Act and the order passed under section 5 was upheld in appeal by the appellate court so his contention that the order

of eviction has been passed in violation of Sections 4 and 5 of the Act cannot be upheld. In regard to OWP No. 535/2016 filed by the appellant, Ajay

Kumar Sadhotra and OWP No. 547/2016 filed by the appellant, Ashok Kumar Sharma, learned Single Bench held that the appellants (therein

petitioners) approached this Court even before respondents could invoke the provisions of the Act against them and the writ petitions filed by them

were disposed of with a direction that their cases be considered in light of the

judgment of the Srinagar Wing dates 01.05.2015 (supra) so they cannot be allowed to take the plea that provisions of sections 4 and 5 of the Act were not followed in their cases. Learned Single Bench noticed that the directions issued by the Srinagar Wing vide judgment dated 01.05.2015 no way provide that in case the petitioners therein were entitled to security, they shall be entitled to retain the accommodation and observed that admittedly the appellants (therein petitioners) have no legal right to retain the accommodation in question. Learned Single Bench also rejected appellant's contention that their cases have not been considered in light of the observations made in judgement dated 1. 5. 2015. Learned Single Bench, thus, held that as the appellants (therein petitioners) admittedly do not have any legal right to retain the Government accommodation, they cannot seek writ of mandamus without any such right. In support, learned Single Bench relied uponÂ and referred to paragraph 34 of the Supreme Court judgment in S. D. Bandi v Divisional Traffic Officer, KSRTC and others, (2013) 12 SCC 631 referred to with approval in Lok Prahari v State of Uttar Pradesh and others, (2016) 8 SCC 389.

12. Appellant in LPAOW No. 10/2018, Chowdhary Gharu Ram is a former Legislator and Minister. He was allotted Government accommodation in Quarter No. 12-A Spl. Gandhi Nagar, which, after he ceased to be the Minister, was shifted to Quarter No. 24-B, Gandhi Nagar vide Government order No.Â Â Â Â 19-Est of 2010 dated 29.01.2010 issued by the Director Estates. He was served with a notice under Section 4 of the Act dated 16.06.2015, which was followed by order dated 04.07.2015 under Section 5 of the Act asking him to vacate the said Government accommodation within seven days, further cautioning him that in the event of his refusal to comply with the order, he shall be liable to be evicted, by use of such force as may be necessary. Appellant filed appeal under section 12 of the Act, which, however, was dismissed by the appellate court by its order dated 12.10.2010. Appellant approached this Court in OWP No. 1566/2015 challenging the notice under Section 4, order under Section 5 and the order of the appellate court dated 12.10.2015 and in addition sought a direction to the respondents restraining them from evicting him from the said Government accommodation. The learned Single Bench dismissed the writ petition along with three other similar petitions by a common judgment on 22.02.2018

holding inter alia that the petitioners therein have unauthorizedly stayed in the Government accommodation allotted to them and that they do not have

any right, much less an enforceable right, to occupy the residential accommodations. Learned Single Bench relied upon Supreme Court judgment in S.

D. Bandi (supra) and Lok Prahari (supra).

13. Hence these four Letters Patent Appeals.Â

14. To restate in brief, though at the cost of repetition, appellants Ajay Kumar Sadhotra and Ashok Kumar Sharma had approached this Court initially

in OWP Nos. 372/2015 and 865/2015 respectively even before they were proceeded against under Sections 4 and 5 of the Act. At their request, those

two petitions were disposed of for consideration of their claim in light of the judgment of the Srinagar Wing of this Court dated 01.05.2015 in

Choudhary Mohammad Ramzan's case. They approached this Court for the second time in OWP Nos. 535/2016 and 547/2016 respectively after

each of them was served with communication dated 01.04.2016 asking him to vacate the Government accommodation in question.Â Appellants,

Yogesh Sawhney and Choudhary Gharu Ram, on the other hand were duly proceeded against under Sections 4 and 5 of the Act and they approached

this Court after appeals filed by them under Section 12 of the Act were dismissed.Â

15. Common thread of submissions made at bar by the learned counsel appearing on behalf of the appellants was that the appellants are entitled to and

had been allotted/allowed to continue in occupation of the Government accommodation even after they ceased to hold official position/status for the

reason that they have been categorized as protected persons as, because of their public life and general security scenario of the State, they face

security risk, which persists even today and they still continue to be protected persons. Contention in this regard has been raised considerably and

loudly in the writ petition filed by appellant, Ajay Kumar Sadhotra, inasmuch as the appellant has challenged not only the communication dated

01.04.2016 whereby he has been asked to vacate the accommodation but also the report of the committee constituted pursuant to and in compliance

with the judgment dated 01.05.2015. It has been contended in the writ petition filed by him that he has been allotted Government accommodation not

only because of his status as Legislator/Minister but also because of the threat perception and his safety requirements as a protected person.

16. In support of this contention, learned counsel for the appellant, Mr. Ajay Sharma, Advocate sought to draw support from the judgment dated

01.05.2015 (supra) to make out that it was clearly held by the learned Single Bench that allotment of Government accommodation to the petitioners

therein was made for security purpose, having regard to the threat perception faced by them.

17. The allotment to and retention of Government residential accommodation by the Government servants, including Ministers and Legislators, is

governed by the Regulations of 2004 and eviction is governed by the Act. This is rather common ground of both the sides. Under the Regulations of

2004 the allotment and retention of the Government accommodation as a general rule is linked with the position/status of the allottee alone, as has

been observed by the learned Single Bench in the judgment dated 01.01.2015 (supra) too. The only exception to this general rule is provided under

clause 13(e) of the Regulations, which allows 5 per cent of the available residential accommodation to be kept at the disposal of the Minister Estates

for allotment to persons, other than Government employees. Under clause 13 of the Regulations, no allottee of a Government accommodation can

retain the accommodation for more than a month after he ceases to hold the official position/status, though this period extends to two months in case

of death of the allottee. The Regulations neither directly nor by implication link the allotment with the threat perception faced by a person or his

categorization as a protected person. No material has been produced on behalf of the appellants to show that the allotment of Government

accommodation to them had had an element of consideration to the threat perception faced by them and their security required.Â

18. In the judgement dated 01.05.2015, learned Single Bench of the Srinagar Wing has observed indeed that therein ""petitioners have not been allotted

Government accommodation only because of their status as Ministers, Members of Parliament, Legislators etc., but also because of the â??threat

perceptionâ? and their safety requirements as â??protected personsâ? and in that backdrop in paragraph 17 of the judgment has issued directions to

the Government to constitute a committee headed by Additional Director General of Police, Security, to make an objective assessment of threat

perception of each of the petitioners therein, need to allow them to retain present Government accommodation in their use or to provide alternate

Government/hired accommodation to them. In addition, learned Single Bench also directed that the committee shall examine the security cover or

number of security personnel required by the petitioners, so that they and their dependent family members are not exposed to any threat or risk and

had further directed the Government to issue necessary orders as warranted in facts and circumstances of the case, having regard to the

recommendations of the committee.Â

19. The finding of fact recorded by the learned Single Bench in the judgement dated 01.05.2015 to the extent that petitioners therein have been allotted

Government accommodation also because of the 'threat perception' and their safety requirements as 'protected person' relates to the writ

petitioners therein, which cannot be applied to the claim of the appellants herein. We are rather unable to apprehend that in Jammu city allotment of

residential accommodation to a Government servant, Legislator or Minister in any area is relatable to threat perception faced by him. Even if,

however, for the sake of discussion, it is presumed that the allotment of Government accommodation to a Government servant or a Minister/Legislator

embodies an element of his security requirement as protected persons, the same does not confer absolute right on him to retain the accommodation for

ever or for indefinite period as threat perception and security requirement of a person is not a static affair and is subject to periodic review by the

Government. That obviously was the reason that learned Single Bench in the judgment dated 01.05.2015 instead of allowing the writ petitions had

directed objective consideration of threat perception of each of the petitioners therein.

20. The committee constituted pursuant to judgment dated 01.05.2015 (supra), as its report/recommendations dated 19.12.2015 would indicate, has

considered the claims of not only the petitioners therein or the petitioners to whom benefit of that judgement was extended from time to time, but also

of the petitioners in all the writ petitions pending in this Court, who were occupying Government accommodation even after they ceased to hold the

official status/position, including herein appellants, Yougesh Kumar Sawhaney and Chowdhary Gharu Ram. Appellants, Ajay Kumar Sadhotra, Ashok

Kumar Sharma and Yogesh Sawhney had submitted their written representations to the committee and also participated in hearing before the committee in person/or through a representative. The committee accorded consideration to the claim of the appellants and others vis a vis the threat perception faced by each one of them, having regard to the report of the Security Review Coordination Committee constituted by the State Government pursuant to the guidelines of the Ministry of Home Affairs, Government of India laid down in the Yellow Book on the basis of the security review held on 22.08.2015.

21. The committee noticed that the guidelines laid down in the Yellow Book, while providing for quantum of security cover to be provided to the protected persons of respective categories, do not make a provision for providing Government accommodation to such persons. The Committee, therefore, opined that claim for Government accommodation on the basis of threat perception does not hold ground as per the existing norms of the Ministry of Home Affairs, Government of India and occupation of such accommodation on that score is not justified. The Committee in regard to retention of Government accommodation by the former ministers and former legislators, thus, recommended as under:

a) While Hon'ble Ministers on demitting office are required under rules to vacate the Govt. accommodation, however, for those who continue to face threat perception, it is recommended that the Govt. may provide them alternate accommodation for a reasonable duration (upto six months) within which Ex-Ministers shall make arrangements of their own Adequate security cover as per category shall be provided by the J&K Police as per the guidelines on the subject.

b) Similarly, the cases of Ex-Legislators shall be considered on the same analogy as mentioned above. Adequate security cover as per their category entitlement shall be provided by the J&K Police.

22. In assailing the report of the committee, it is contended in the petition filed by appellant, Ajay Kumar Sadhotra, that the committee did not accord consideration to the judgment of the learned Srinagar Wing dated 01.05.2015 read with the order passed in the petition filed by him and that the committee submitted the report in complete departure to the mandate of the judgment of the Supreme Court in S. D. Bandi's case (supra). It is

contended further that the report of the committee is totally misconceived, vague and based on misrepresentation of facts and discriminates the appellant and others against similarly situated former Legislators of ruling dispensation.Â

23. Averments made in the petition were similarly reiterated by the learned counsel, Mr. Ajay Sharma, appearing on behalf of the appellant, Ajay

Kumar Sadhotra and restated by the learned counsel appearing on behalf of other appellants. It was urged further that learned Single Bench in the

impugned judgment rendered in OWP No. 1546/2015 and the connected matters has fallen in error by holding that paragraph 17 of the judgment dated

01.05.2015 did not provide that the appellants were entitled to retain Government accommodation and that the learned Single Bench did not record any

finding in regard to the plea of hostile discrimination against the appellants in allowing similarly situated former Legislators/Ministers of ruling

dispensation to retain the accommodations allotted to them and that learned Single Bench erred in law by holding that the appellants do not have any

legal right to retain the Government accommodations. The submissions made by Mr. Ajay Sharma, Advocate on these points were similarly reiterated

by learned counsel appearing on behalf of the other appellants even though, as pointed out above, none of them have assailed the report of the

committee in the petitions filed by them.Â

24. Learned Advocate General, Mr. Jehangir Iqbal Ganie, appearing on behalf of the State, however, vehemently supported the report of the

Committee as also the impugned judgments. Mr. Ganie submitted that nowhere in the country nor in the State of Jammu and Kashmir a protected

person can claim Government accommodation as an alternative to residing in or arranging his own accommodation, though the Government has to

ensure security cover of a protected persons by providing stationary and mobile guards, having regard to the category he is placed in. Mr. Ganie, thus,

urged that the appellants have no legal right to retain the Government accommodation allotted to them at a time they were entitled to such allotment.

Learned Advocate General argued also that unauthorized retention of Government accommodation by the appellants and similar others persons is

causing great hardship to the Government in accommodating the Government servants, Legislators and Ministers, who are holding the office, besides

causing huge burden on the State exchequer as the Government has to hire private houses for them.

25. As said above, no material has been produced on behalf of the appellants to show that allotment of Government accommodation to them or

retention thereof even after they ceased to hold the official status/position had had an element of consideration to the security risk faced by them or

they having been categorized as protected persons in various categories. The judgment dated 01.05.2015 (supra) cannot be said to have held as a

general rule that the Ministers/Legislators in the State are allotted Government accommodation, not only because of their status but also because of

the 'threat perception' and safety requirement as 'protected persons'. Allotment and retention of Government accommodation is governed

by the Regulations of 2004, which have been formulated by a Government order and departure from the Regulations is not permissible without a

Government order in this regard. We are therefore, inclined to agree with and uphold the view taken by the learned Single Bench in each of the two

impugned judgments that the appellants (therein petitioners) do not have any legal and enforceable right to retain the Government accommodation

allotted to them.

26. We find ourselves unable to see a point in the plea raised to the effect that the report of the committee suffers from departure from the mandate

of the judgment in S. D. Bandi's case. The judgment in S. D. Bandi cannot be said to have created any safeguard for the persons who do not

surrender Government accommodation allotted to them even after they cease to hold the official status/position, which entitled them to such

accommodation. The anxiety felt by the Supreme Court, while dealing with that case, is well reflected both in the opening and the closing

paragraphs of the judgment, which we reproduce:

'1) The instant case relates to the occupation of government accommodation by members of all the three branches of the State, viz., the

Legislature, the Executive and the Judiciary beyond the period for which the same were allotted. The occupation of such government houses/quarters

beyond the period prescribed causes difficulty in accommodating other persons waiting for allotment and, therefore, the Government is at a loss on the

one hand in not being able to accommodate those persons who are in need and

on the other is unable to effectively deal with the persons who continue to occupy unauthorisedly beyond the period prescribed.â??

â??29) It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorized occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorized occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self realization among the unauthorized occupants. The matter is disposed of with the above terms and no order is required in I.As for impleadment and intervention.â??

27. The judgment in S. D. Bandi rather reminds the Government servants, Ministers, Legislators and other high dignitaries of their duty not to retain the official accommodation beyond the prescribed time after they cease to hold the official position/status, to the detriment of the other persons entitled to such accommodation. The judgment suggests stringent measure like stoppage or reduction of monthly pension of the unauthorized occupant, till the date of vacation of the premises. In regard to unauthorized retention of Government accommodation by Ministers and Members of Parliament, the judgment suggests also the initiation of action for breach of privileges enjoyed by them.Â

28. Another ground on which appellants, Ajay Kumar Sadhotra and Ashok Kumar Sharma, have challenged the notice dated 01.04.2016 issued to each of them is that they have been asked to vacate the accommodation occupied by them within a specified period without following the procedure prescribed under the Act, that is, without issuing a show cause notice to them under Section 4 of the Act.Â In this regard learned Single Bench in the impugned judgment rendered in OWP No. 1546/2015 and connected matters has held that even before the respondents could invoke the provisions of the Act against these two appellants (therein petitioners), they approached this

Court by filing the writ petitions, which were disposed of with a direction to respondents to consider their cases in light of directions issued by the Srinagar Wing in the judgement dated 01.05.2015 so their contention that the provisions of Sections 4 and 5 of the Act have not been followed cannot be accepted.Â

29. Learned counsel appearing on behalf of the appellants, Ajay Kumar Sadhotra and Ashok Kumar Sharma submitted that, notwithstanding the recommendation of the committee, appellants cannot be evicted unless they are declared 'unauthorized occupant' and are provided opportunity of being heard by issuing show cause notice under Section 4 of the Act, whereas the impugned communications dated 01.04.2016 have been issued without notice under Section 4.Â

30. Submissions on the similar line were made by the learned counsel appearing on behalf of the appellants Yogesh Sawhney and Choudhary Gharu

Ram, who in the writ petitions filed by them challenged the proceedings conducted under section 4 and 5 of the Act and the judgment rendered by the appellate court in the appeal under section 12 of the Act filed by each of them. Learned Senior Advocate, Mr. Sunil Sethi appearing on behalf of

appellant, Choudhary Gharu Ram, argued that the eviction order under section 5 of the Act was issued against the appellant without first declaring him

'unauthorized occupant' and the respondents did not accord consideration to the special circumstances, like health condition of the appellant and his

hailing from remote border area before passing the order of eviction and even the learned appellate court and the learned Single Bench did not

accord consideration to these important aspects of the case. The submissions made on behalf of appellant, Yogesh Sawhney, were also on the similar

line. Mr. M. K. Bhardwaj, learned Senior Advocate, argued that order of eviction was passed without first declaring appellant as 'unauthorized

occupant' and providing him opportunity to lead evidence to prove that he was entitled to retain the Government accommodation even after he

ceased to hold the office of Minister/Legislator.Â

31. In the appeals filed by appellants, Ajay Kumar Sadhotra and Ashok Kumar Sharma, we are inclined to agree with the view taken by the learned

Single Bench. The appellants, having pre-empted the action under Sections 4 and 5 of the Act by filing the writ petitions in OWP No. 372/2015 and

865/2015 and having obtained orders from this Court on their request that their claim be considered in light of the judgment in Choudhary Mohammad

Ramzan's case dated 01.05.2015, cannot be allowed to fall back to their right under section 4 of the Act after the ultimate result pursuant to the

writ petitions filed by them was not favourable to them. Appellants could well have vouched for their right under Section 4 of the Act at that time

instead of claiming the benefit under the judgment dated 01.05.2015. The common law doctrine of election is well attracted in these two cases, which

is well established in our jurisprudence. (See M/s New Bihar Biri Leaves Co and ors v State of Bihar and ors, (1981) 1 SCC 537 and Mumbai

International Airport Pvt. Ltd. v Golden Chariot Airport, (2010) 10 SCC 422).

32. It regard to the submissions made on behalf of appellants, Yogesh Sawhney and Choudhary Gharu Ram, it may be stated that the Act does not

contemplate declaring a person as 'unauthorized occupant' of a public premise like residential accommodation allotted under Regulations of 2004. The

â??unauthorized occupationâ?? is rather defined in section 2(g) which reads:

â??2(g) â??unauthorized occupation in relation to any public premisesâ??, means the occupation by any person of the public premises without

authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of

grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason

whatsoever.â??

33. Allottee of a Government accommodation, may it be a Government Servant, Minister or a Legislator, is required to vacate the accommodation

allotted to him latest within thirty days after he ceases to hold the official status/ position. His lingering on with the occupation beyond the prescribed

period would be without any legal authority and he will become unauthorized occupant thereof by operation of law and incur liability to be served with

a notice under section 4 of the Act calling upon him to show cause why an order of eviction against him should not be issued. There is nothing like first

declaring him â??unauthorized occupant? before issuing notice under Section 4 or issuing order of eviction under section 5. A legal system, as we

have, not only creates a right but creates obligations and duty also. Whereas section 4 of the Act contemplates issuing a show cause notice against an

unauthorized occupant of a Government accommodation before issuing the order of eviction under section 5, clause 13 of the Regulations of 2004

casts a duty on him to vacate the Government accommodation within 30 days after he ceases to hold the office/status in which allotment was made to

him. Every citizen has a duty to confirm his behaviour to the rule of a particular legal system. It is expected of the persons who once have had held

high positions and more from former Ministers and Legislators, who happened to be public representatives and law makers, that they vacate the

Government accommodation in time instead of waiting for a show cause notice or order for their compulsory eviction. None other than a former

Minister or a former Legislator can understand the difficulty, which is faced by the eligible persons waiting for Government accommodation and the

financial burden, which is faced by the State exchequer, when Government premises are not vacated by unauthorized occupants.Â

34. That apart, it may be stated that the notice under section 4 of the Act enshrines the compliance of the principles of natural justice, in particular the

principle of audi alteram partem before issuing the order of eviction. Principle of audi alteram partem envisages that no one should be condemned

unheard. No adverse order by a judicial, quasi-judicial or administrative authority against a person should be passed without notice and providing him

opportunity of being heard. We may state that we cannot rather entertain any confusion or disagreement about the importance of following the

principle of audi alteram partem and in that the importance of issuing notice under Section 4 of the Act before issuing order of eviction under Section

5.

35. Having said so, we, having regard to the legal position in retrospect and as it by now has by virtue of various judicial pronouncements developed,

cannot subscribe to a view that High Court in exercise of Writ jurisdiction should set aside an order once it is shown that the same has been passed in

breach of the principle of audi alteram partem, without requiring the petitioner to show that the prejudice has been caused to him and the position

would have been different had he been issued notice and heard. In R. S. Dass v. Union of India & ors., 1986 Supp. SCC 617, Supreme Court have

observed; â??it is well established that Rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and

the back-ground of statutory provisions, nature of the right which may be affected and the consequences which may entail, in the facts and circumstances of each case.Â

36. What is required to be determined is whether and to what extent the prejudice has been caused by not following the principle of audi alterem partem and can the situation change or improves if the order is set aside and opportunity in terms of the principle is provided. It may be stated that if an adverse order is passed in breach of the principle of audi alteram partem the affected person may approach the Court to say that the prejudice has been caused by not hearing him. But if no substantial or de facto prejudice is caused question of breach of the principle would not arise. If it can be said that the situation would not have been different had the person been heard, no prejudice can be said to have been caused.

37. If the facts are admitted or indisputable and there is no possibility of change or improvement in situation even after hearing the person against whom the order is passed â??useless formality theory? can be brought into service. This theory has now got recognition and can be applied in the cases where the facts are admitted or indisputable. The â??useless formality theory? has received consideration of the Supreme Court. [See M. C. Mehta v. Union of India, (1999) 6 SCC 237 (AIR 1999 SC 2583).Â Â Â

38. In all these four appeals, appellants have been found not to possess any legal and enforceable right to retain the Government accommodation allotted to them after they ceased to be Ministers/Legislators. The main plank of their claim that they are entitled to continue in occupation of Government accommodation because of their being protected persons does not sustain in view of the finding of the committee (supra) as stated above. There is no scope in law for allowing retention of Government accommodation beyond the period of eligibility on compassionate grounds like, ill health or education of children of the unauthorized occupant or his hailing from a remote area or not having his own accommodation in the city. The appellant, therefore, cannot be heard raising pleas that notice under section 4 of the Act was not issued or sufficient opportunity of being heard was not provided to them even though plea on that score is not otherwise maintainable as discussed above.Â

39. We find no substance in the allegation of hostile discrimination meted out to

the appellants by allowing similarly situated persons of ruling dispensation to retain the accommodation allotted to them. The report and the recommendation of the committee do not make any distinction or discrimination/among the former Ministers/Legislators who are retaining Government accommodation beyond the period of their entitlement. It recommends that all such persons may be provided alternate accommodation up to six months to enable them to make arrangements of their own.

It gives list of five former Ministers/Legislators residing at Srinagar who have been recommended for providing hired accommodation by the Government up to 31.03.2016 and six former Ministers/Legislators residing at Jammu, which includes herein appellants, Ajay Kumar Sadhotra, Yogesh Kumar Sawhney and Ashok Kumar Sharma, for providing them hired accommodation by the Government up to 31.12.2015.

40. No discrimination or unfavorable treatment to the appellants is evident from the report of the committee. It was stated by the learned Advocate General at bar and the Court was assured that the Government is in the process of effecting eviction of all the unauthorized occupants in light of the report and recommendations made by the committee and the notices to appellants, Ajay Kumar Sadhotra and Ashok Kumar Sharma, which were impugned in the writ petitions filed by them, have been issued in the same sequence. We trust the State Government in this regard and are not inclined to examine further the issue in this regard as we do not intend to give the benefit of negative equality to the appellants, even if the Government so far has not initiated action against some of the illegal occupants who are similarly situated with the appellants. We, nonetheless, put a note of caution for and remind the State Government of its duty under Article 144 of the Constitution of India to implement the judgment of the Supreme Court in *S. D. Bandi*'s case and further remind the Government of the affidavit filed on behalf of the State of Jammu and Kashmir in that case to the effect that Government is ready to comply with further/additional directions being issued by the Supreme Court.

For all that said and discussed above, these appeals have no merit and are dismissed.