

(2018) 12 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (LPA) No. 120 Of 2018 IA No. 01 Of 2018

Choudhary Mohammad Ramzan @APPELLANT@Hash State Of Jammu & Kashmir And Ors

Date of Decision : 13-12-2018

Acts Referred:

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 4, 5

Citation : (2018) 12 J&K CK 0049

Hon'ble Judges : Sanjeev Kumar, J; Rashid Ali Dar, J

Bench : Division Bench

Advocate : Hilal Akbar Lone, B. A. Dar

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This appeal under Clause 12 of the Latter's Patent Rules, is directed against the judgment dated 13th November, 2018, passed by the learned Single Judge in OWP No.612/2016 titled Choudhary Mohammad Ramzan V. State of J&K and others.

2. Briefly stated the facts leading to the filing of the instant appeal, as narrated in the writ petition, are that the petitioner being a prominent politician and exposed to serious security threat was forced to shift from his original place of residence i.e., Handwara District Kupwara, to some safer place in and around Srinagar. He claims that he applied to the respondents for allotment of Government accommodation. His request was acceded to by the respondents and vide order No.47-DE of 2008 dated 08.02.2008 he was allotted quarter No.60-J Nagar, Srinagar, initially for a period of one year, which term is stated to have been extended from time to time. Later on, the accommodation allotted in favour of the appellant/ petitioner, came to be changed from quarter no. 60-J Jawahar Nagar, Srinagar, to T-15 Tulsibagh, Srinagar, in terms of Government order No. 298-Est of 2009 dated 10.11.2009. It is further pleaded in the writ petition that petitioner continued to occupy the accommodation quarter no.60-J Jawahar Nagar, Srinagar till 10.11.2009 and thereafter quarter No. T-15

Tulsibagh, Srinagar. The petitioner retained his accommodation at Tulsibagh Srinagar after he became minister of Consumer Affairs and Public Distribution Department of the State. The petitioner continued to retain the accommodation even after his term as Minister expired and this he claims was done by him in view of the security threat to which he was exposed to being a political worker and Ex-Minister. It is thus submitted that petitioner has been in active occupation of the aforesaid accommodation on account of the threat perception.

3. The petitioner has also given details of the earlier round of litigation filed by him along with other similarly situated unauthorized occupants of Government accommodations which culminated into passing of a judgment by a Single Judge of this Court in a bunch of writ petitions with lead case being OWP no.545/2015 titled Choudhary Mohammad Ramzan v. State of J&K and others. The Government, after considering the report of the Committee constituted in terms of the judgment of the writ court in OWP no.545/2015, found the petitioner not entitled to the allotment of Government accommodation and was served with eviction notice under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act. The petitioner through the intervention of the Court or otherwise managed to continue in possession of the Government accommodation.

4. Finally, the respondent no.1 vide Government order no. 29-Est-of 2018 dated 23.03.2018 accorded post facto sanction to the hiring of private house no.04, namely, Nuzhat House at Airport road, Srinagar, and its allotment in favour of the petitioner on payment of rent under rules with effect from 16.04.2016 to 31.12.2017. In the said order itself, it was made clear that the said house allotted to the petitioner shall be deemed to be dehiere after the expiry of the allotment period. Petitioner accepted the order and continued in the accommodation i.e., house no. 04, namely, Nuzhat House at Airport Road, Srinagar, allotted in his favour by respondent no.1 but did not vacate even after the expiry of period of allotment.

5. The respondents, accordingly, initiated eviction proceedings and the petitioner filed the writ petition in which the impugned order dated 13.11.2018 came to be passed. There were other similarly situated unauthorized occupants of the Government accommodations who too were asked to vacate the Government accommodation on the ground that the allotments in their favour had either expired or they were not entitled to hold the Government accommodation. The said persons also filed writ petitions challenging the action of the respondents. All the writ petitions including the present one came to be clubbed and heard together under the lead case of OWP no.1750/2015 titled Mohammad Yaseen Shah v. State and others, and came to be dismissed by the learned Single Judge vide judgment impugned dated 13.11.2018. Like others, the petitioner too was held not entitled to the Government accommodation.

6. Having heard learned counsel for the parties and perused the record, we are of the view that the judgment of the learned Single Judge is in conformity with

law and does not call for any interference by the letter's patent bench. The appellant has not been able to make out any case to demonstrate his entitlement to continue in the Government accommodation despite the expiry of period of allotment as envisaged in the Government order no.29-Est-of 2018 dated 23.03.2018. The petitioner cannot be allowed to approbate and reprobate. The petitioner having accepted the accommodation allotted to him in terms of Government order dated 23.03.2018 is bound by the terms and conditions of the allotment contained in the said order. As noted above, it is unequivocally provided in the aforesaid order that on expiry of allotment order, the private house shall be deemed to have been dehiere. The petitioner having accepted the aforesaid order shall be deemed to have accepted in toto with all terms and conditions contained therein. Therefore, on the one hand, he cannot be allowed to choose to accept the order in so far as it confers the benefit of allotment of Government accommodation in his favour and on the other hand avoid consequences that are provided to ensue on the expiry of the allotment period.

7. That apart, as rightly held by the learned Single Judge, the entitlement of a person to Government accommodation based upon the assessment of threat perception is within the realm of the Executive and the courts cannot sit in appeal over the decision of the Executive in this regard. The Government has formulated set guidelines to assess the security threat perception of the individuals staying in the State of Jammu & Kashmir and to provide them the requisite security as recommended by the concerned security agencies. The appellant, as was stated by Mr B. A. Dar, learned Sr AAG, appearing for the respondents, is a protected person and has been given adequate security cover to protect him, however, as per the guidelines, he has not been found entitled to Government accommodation.

8. Learned counsel for the appellant also raised the plea of discrimination on the ground that there are several other similarly situated politicians, Ex-MLAs and Ministers who are still occupying the Government accommodations and no action against them has been initiated. All these issues raised by the learned counsel for the appellant were considered by a Division Bench of this Court at Jammu in LPA No.08/2018 titled Ajay Kumar Sadhotra v. State of J&K and others, decided on 24.04.2018. The observations of the Division Bench made in paras 33 and 37, in particular, are noteworthy and same are reproduced hereinunder: -

"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 ?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 conform his behaviour to the rule of a particular legal system. It is expected of the persons who once have 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.

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 '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 '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)."]

9. Under similar set of circumstances, another Division Bench of this Court at Srinagar, while disposing of LPAOW No.87/2018 titled *Taja Parveen & Ors. v. State of JK and others*, on 11.12.2018, took the similar view.

10. In view of the legal position enumerated hereinabove, we do not find any infirmity in the judgment passed by the learned Single Judge. This appeal is, therefore, found to be without merit and same is dismissed.