

(2018) 08 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No.2224, 1165 Of 2015, Cpow No.485 Of 2015

Noor Mohammad Bhat @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 03-08-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 08 J&K CK 0008

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Since common question of facts as well as law is the subject matter of both the writ petitions, being OWP Nos. 2224/2015 and 1165/2015,

therefore, I propose to decide the same by a common order.Â

2. The case of the petitioner is that, being a political activist, he and his other family members were threatened of dire consequences by the militants.

Therefore, the petitioner, as stated, approached the competent authority for the allotment of accommodation in some protected area. This request of

his was considered and appreciated by the competent authority vide Government order No. 52-Est of 2010 dated 26th of March, 2010, wherein his

residential accommodation was shown in Set No. W-4 Tulsi Bagh, Srinagar. Thereafter, the petitioner, apprehending that he may be evicted from the

said Government accommodation, filed a writ petition, being OWP No. 1040/2015. This Court, on consideration of the matter and in terms of judgment

dated 23rd of June, 2015, disposed of the said writ petition in the following terms:

â??â?|â?|Accordingly, I deem it proper to direct the official respondents to examine any consider the case of the petitioner in the light of the

averments made in the writ petition within a period of six weeks, which period shall begin from the date a certified copy is served on the competent

authority and to accord the same treatment to him as has been given to the similarly situated persons and if they find that there is any real threat

perception to the life and liberty of the petitioner, they shall allow him to continue to use the said accommodation in accordance with the rules. Till

such decision is taken, the petitioner shall not be evicted and be allowed to retain the aforesaid accommodation.â??

However, as stated, the said accommodation allotted to the petitioner was allotted to some other person by the respondents, constraining the petitioner

to file another writ petition, being OWP No.1165/2015, seeking a direction in the name of the respondents to handover the possession of the

Government accommodation, i.e. Set No. W-4 Tulsi Bagh, to him. On consideration of the matter, this Court, in terms of order dated 10th of July,

2015, directed as under:

â?? In the said background respondents are directed to put back petitioner in the premises allotted where from he has been evicted and

handover the goods like electronics taken away from petitioner, allow him to occupy the premises, till decision in terms of writ court order 23rd Jun

2015.â??

In pursuance of the aforesaid directions of this Court, the respondents have passed an order bearing No. 41 of 2015 dated 2nd of July, 2015, whereby

the claim of the petitioner has been considered and found devoid of any merit, as such, rejected. This rejection order passed by the respondents has

been called in question by the petitioner in the instant petition, wherein he has sought the indulgence of this Court in granting him the following

relief(s):

A. A Writ in the nature of Certiorari for quashing the impugned order No.41 of 2015 dated 2nd of July, 2015, passed by the respondent No.4;

B. A Writ in the nature of Mandamus commanding upon the respondents to handover the possession of the government accommodation namely set

No.W4 at Tulsibagh which has been temporarily occupied by some other person without any allotment order;

C. A Writ in the nature of Mandamus commanding upon the respondent No.3 to handover the belongings/ goods of the petitioner which include TV,

Refrigerator, Washing Machine, Furnishing and other utensils forthwith.

OR IN THE ALTERNATIVE

D. A Writ in the nature of Mandamus commanding upon the respondents to make alternate arrangement in favour of the petitioner in terms of the

accommodation him in any other public premises at Tulsibagh Srinagar.â??

3. The respondents, in their objections filed in opposition to the writ petition, have stated that the petitioner has not come before the Court with clean

hands as, on the one hand, he has claimed that there is a threat to his life and liberty as also to his other family members and, on the other hand, the

petitioner has, in his petition, admitted that he visits his home every weekend and returns back therefrom on every Monday. It is stated that mere

affiliation of the petitioner or any other person with any political party cannot be made a basis for obtaining allotment of Government accommodation

at Srinagar nor can the occupation of Government Accommodation by any other person be allowed to be taken as a ground for allotment of residential

accommodation belonging to the Estates Department. The respondents have proceeded to state that the petitioner and other similarly circumstanced

persons, affiliated with different political parties having threat perception, have an alternate remedy available to approach the Inspector General of

Police, CID, of the concerned Division of the State for providing Government accommodation, who, after assessing the threat perception, shall

forward his report to the Inspector General of Police, Security. Based on this report of the CID wing, the Inspector General of Police, Security, is the

authority who decides whether or not Government accommodation is to be provided to any such person.Â

4. Heard the learned counsel for the parties, perused the record and considered the matter.

5. The law provides that the correctness of the reasons that prompted the Government to take a decision and take a course of action instead of the

other, is not a matter of concern in the judicial review and the Court is not the appropriate forum for conducting such investigations. The scope of the

judicial review has to be confined to find out whether the Government decision was against the statutory provisions or violative of the fundamental

rights of the citizens of the State.

6. In the case of â??Federation of Railway Officers Association & Others vs.Union

of Indiaâ??, reported in â??AIR 2003 SC 1344â??, the Apex

Court of the country observed that the wholesome rule in regard to judicial interference in an administrative decision is that if the Government takes

into consideration all the relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, Courts

would keep off the same.

7. In the case of â??BALCO Employees Union (Regd.) vs. Union of India &Ors.â??, reported in â??MANU/SC/0779/2001â??, the Supreme

Court held that it is evident that it is neither within the domain of the Court nor the scope of the judicial review to embark upon an enquiry as to

whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the

behest of a petitioner merely because it has been urged that a different policy would have been fairer or wise or more scientific or more logical.

8. The respondents have contended that the security situation has drastically improved in the State since the year 2007 and providing of Government

accommodation to the petitioner at Srinagar, in such improved situation scenario, is unjustified. It has also been stated that in case there is any threat

perception to the petitioner, he can seek protection from IG, Security in pursuance of Government order No. 1655-GAD of 1998 dated 21st of

December, 1998.

9. This Court in its decision dated 22nd of February, 2018 passed in a batch of writ petitions, lead case being OWP No.1566/2015, while dealing with

a similar issue, observed as under:

Learned counsels for the petitionersâ?? submitted that the impugned order is bad in law and the same requires to be quashed as the petitioners have

been discriminated because the other similarly placed persons have not been proceeded against. It is further submitted that the cancellation of the

allotment would adversely affect the education of petitionersâ?? children who are studying at Jammu. It is further submitted that the petitioners are

the active mainstream political activists and if they are evicted from the government accommodation they will be put to risk of life. Furthermore, it is

submitted that the petitioners are bonafidely using the premises in question and are paying the rent also, therefore, there is no reason for the

respondents to order their eviction.

On the other hand, learned Advocate General, while rebutting the arguments of the learned counsel for petitioners, submitted that the petitioners are not vested with any right much less an enforceable right to seek continuation in the Government accommodation. He further submitted that petitioners have failed to carve out any ground which would reasonably strike the judicial conscience to tilt in their favour. He further submitted that the respondents are duty bound to provide the Government Accommodation to the office bearers of the current dispensation and the respondents are required to make available the accommodation from those who are no more holding any public office. He further submitted that the respondents have followed the procedure established under law and ordered the cancellation of the allotment in question. The learned Advocate General further submitted that the status of the petitioners in the quarters in question is that of an unauthorized occupant and they are continuing at the said premises in disregard of the norms and this Court cannot come to the rescue of unauthorized occupants. He further submitted that in OWP no. 661/2005 the petitioner is staying in the quarter in question even without any formal allotment order.

Considered the rival submissions of learned counsel for the parties.

The court does not feel convinced of the case having been made out in favour of the petitioner. Instead it appears that the petitioners have apparently unauthorizedly stayed in the Government accommodations in question. They ought to have gladly surrendered the possession of the quarter in question after they ceased to be holding any public post. This is how, reasonably, the system works. There are certain parameters those govern the allotment of government accommodation, its occupation, retention and vacation. Every administrative privilege is per se a finite affair and any otherwise impression of the occupant is a misnomer and bound to meet its fate. The petitioners do not have any right muchless an enforceable right to occupy the residential accommodation commensurate with the office (s) held by them earlier and which are beyond their present entitlement. The rights and duties are correlative as the rights of one person entail the rights of another person; similarly the duty of one person entails the rights of another person. The Honâ??ble Supreme Court while so holding in case titled S. D. Bandi v. Karnatake SRTC, relied upon by the learned Advocate General, and

reported as (2013) 12 SCC 631, has held that the unauthorized occupants must appreciate that their act of overstaying in the premise directly infringes

the right of another and no law or directions can entirely control this act of disobedience but for the self-realization among the unauthorized occupants.

There are catena of judgments on the issue and the courts of the country have heavily come upon the unauthorized occupants occupying the public

premises beyond the permissible period. The action of the respondents therefore, cannot be faulted.

In writ petitions, OWP no. 151/2005 and 1566/2015, the order of the appellate court also has attained finality.

In the facts and circumstances of the writ petitions the legal position, seems to me to be uncomplicated. The allotment of quarter to a public servant

can be cancelled at any time, however, in due regard of the applicable norms and if there is any violation on the part of the respondents to follow the

prescribed Rules in this behalf, the same is obviously open to challenge in appropriate proceedings and that is exactly what the petitioners have done,

as in their opinion, the action initiated by the respondents for their eviction from the government accommodation in question has infringed their right

which is however, unsubstantiated.

The petitioners are in possession and occupation of the premises in question for years now on the orders obtained by them during the pendency of

these writ petitions. The petitioner in OWP no. 1566/2015 has obtained the status quo order on 28.10.2015 and is continuing at the premises in question

since then; the petitioner in OWP no. 151/2005 has obtained the statusquo order way back in the year 2005 on 24th day of March and is continuing

since then; the petitioner in OWP no. 1010/2007 has obtained the statusquo order on 10th December, 2007 and is continuing since then similarly, the

petitioner in OWP no. 661/2005 has obtained the statusquo order on 10th October, 2005, and is continuing since then. The dates are reflected to bring

to the light the fact that the eviction proceedings have been hijacked for decades together by the unauthorized occupants, petitioners. The statusquo

order obtained by the petitioners cannot be allowed to run till eternity thereby prejudicing the interests and rights of those who are waiting in line

having earned a right for the allotment of government accommodation.

The Supreme Court in case titled Lok Prahari v. State of Uttar Pradesh and

others, referred and relied upon by the learned Advocate General, reported as (2016) 8 SCC 389, has held that a Minister which includes Chief Minister is permitted to retain his residence for 15 days after demitting office. The law, therefore, does not favour the unauthorized occupants to continue enjoying the possession of the bungalows they are no more entitled to retain.

The court has got a chance, through the instant petitions, to know about the sorry state of affairs in the respondent department. In one of these cases there is not even any allotment order in favour of the petitioner and he is continuing in the premises and further seeks to continue. Astonishing it is that the respondent department has allowed the flats to be used without any allotment orders. This appears to be just the tip of the iceberg. The number of such cases would obviously be quite high and obviously the occupiers of such quarters would not be paying any rent or premium towards the allotment resulting in a huge loss to the public exchequer. I am of the view that in case such a trend is allowed to remain in place any further it would amount to contributing towards the wrong.

Having regard to what has been observed hereinbefore, the writ petitions are held to be without any merit, therefore, dismissed. Upholding the impugned orders, the interim directions are vacated. Respondents, in particular the respondent, Director, Estates J&K, are directed to evict the petitioners from the Government accommodation in question forthwith and allot the same to the eligible applicants strictly in terms of the Jammu and Kashmir Estates Department (Allotment of Government Accommodation) Regulations, 2004, notified in terms of Government Order No. 169-GAD of 2004 dated 10.02.2004, and report compliance to that effect. Disposed of along with connected MPs. Registry to place a copy of the judgment on each file.

10. The decision aforesaid passed by this Court was assailed by the petitioners therein before the Division Bench of this Court in various Letters Patent Appeals, with lead case being LPAOW No. 08/2018, wherein the Division Bench, while upholding the judgment passed by this Court, dismissed the said appeals.

11. It needs must be said that the competent authority, after taking an overall view of the threat perception to an individual, has to form its subjective

opinion in a matter in view of the peculiar facts and circumstances of such case. It is within the domain and area of the competent authority to accept or reject the request of the individual for providing Government accommodation. The policy decision of the competent authority constituted by the Government which declined the relief to the petitioner cannot be called in question in the Court, unless and until the same is arbitrary or, to put in other words, it is irrational and not circumspect or is wayward, aberrant, malicious and capricious, offending the basic requirement of Article 14 of the Constitution of India. The petition of the petitioner does not fall within the purview of these parameters. The decision of the competent authority on such matters, i.e. providing of security, shelter and accommodation to a person, cannot be challenged in a Court of law. The competent authority is the best judge to look into these aspects of the case. The Court cannot substitute or rewrite a policy in a case like the present one. The Court cannot delve into an area which requires a critical analysis and examination by those who have the expertise on the subject and can well see who requires to be protected and who does not require supervision and support. It is within the realm of the competent authority to take a call on such an issue. That being the position, the petitions of the petitioner are devoid of any merit. These entail dismissal and are, accordingly, dismissed alongwith all connected MP(s). Interim directions, if any, in force as on date, shall stand vacated.

12. As a corollary to the order passed hereinabove, the contempt proceedings bearing No. 485/2015 shall stand, accordingly, closed.

13. Registry to place a copy of this order on each file as also on the contempt petition aforesaid. Â