

(2017) 01 DEL CK 0114
In the Delhi High Court
Case No : LPA 608 of 2016

Payal Abdullah

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Citation : (2017) 1 ADDelhi 473 : (2017) 161 DRJ 318

Hon'ble Judges : G. Rohini, CJ. and Mr. V. Kameswar Rao, J.

Bench : Division Bench

Advocate : Mr. Sunil Fernandes with Mr. Puneeth K.G, Advocates, for the Respondent No. 2; Mr. Jayant K. Sud with Mr. Honey Khanna, Mr. V. Pratap Singh, Ms. Vaishali Soni and Mr. Umang Singh, Advocates, for the Appellants; Mr. Sanjay Jain, ASG with Mr. Anurag Ahluwalia, CGSC and Mr. V. Pasayat, Advocate, for the UOI

Final Decision : Dismissed

Judgement

Mr. V. Kameswar Rao, J. - The present appeal has been filed against order dated August 19, 2016 passed by the learned Single Judge in Writ Petition (Civil) No. 5886/2016 and CM No. 24201/2016 whereby the learned Single Judge has dismissed the petition, being without merit.

2. The appellants, who are three in numbers and are the estranged wife and sons of Mr. Omar Abdullah, the Ex-Chief Minister of Jammu & Kashmir filed the writ petition seeking directions against the respondents not to evict them from the premises bearing No. 7, Akbar Road (Type-VIII) Bungalow, New Delhi on security grounds or in the alternative to allot a suitable government accommodation to them on security grounds wherein the officers of the Z plus category security can effectively protect them. They had also made a prayer in the writ petition that if the Court decides that the appellants are entitled to be allotted any other suitable accommodation other than the premises bearing No. 7 Akbar Road, New Delhi then direct the respondents not to evict the appellants from the said premises till suitable accommodation is allotted to them.

3. It was the case of the appellants before the learned Single Judge that the three appellants are enjoying Z and Z plus security. The accommodation was allotted to the husband/father of the appellants on November 22, 1999 when he was holding the post of Minister of State for Commerce and Industry and they have been living in the said bungalow since then. It was their case that they have been staying in the bungalow even during the time when Mr. Omar Abdullah was not holding any government office. By asking them to vacate the aforesaid bungalow, the Government is harassing them. They being the Z and Z plus protectees, there is a round the clock vigil required for their security; there are 94 personnel who are deputed at the afore noted bungalow to look after their security; 10 cars have been deputed for their security which includes three bullet proof vehicles. Large security lights and barrack for the 41 personnel permanently living in the bungalow besides four guard towers and two guard towers on the roof top are located in the accommodation and the direction to vacate, is against their interest.

4. The case of the respondent No. 1 Ministry of Urban Development was that the guidelines for discretionary allotment of General Pool Residential Accommodation, New Delhi is governed by OM dated November 17, 1997. Vide a subsequent OM dated December 27, 2000, it has been declared that no government accommodation will be allotted to any private person on any security considerations except to SPG protectees. Mr. Omar Abdullah was allotted the said bungalow on November 22, 1999 while he was holding the post of Minister of State for Commerce and Industry. Vide communication dated September 9, 2015, the said premises was placed at the disposal of Government of Jammu & Kashmir retrospectively with effect from August 11, 2009. Mr. Omar Abdullah assumed the charge of Chief Minister for the State of Jammu & Kashmir in January 2009 and he occupied the premises with his family in his capacity as the then Chief Minister. He has admittedly demitted the said office in January, 2015. The appellants are not entitled to retain the bungalow which has now to be allotted to the new Chief Minister of Jammu & Kashmir. It is reiterated that the appellants are admittedly Z and Z plus protectees but no government accommodation can be allotted to any person on security considerations except to SPG protectee.

5. The respondent No. 3 Ministry of Home Affairs has taken a similar stand before the learned Single Judge that the security arrangements for the appellants have to be done as per the Yellow Book issued by the said Ministry. The appellants are not Central protectees i.e their security protection categorization has not been done by the Central Government. In other words, they have to be protected by the State of Jammu & Kashmir. It was also the stand of the Ministry of Home Affairs that the appellants are residents of Delhi and are the part of the esteemed Abdullah family, a general threat is perceived from Kashmiri militants but there is no input of any specific or imminent threat to the three appellants. This threat assessment of the appellants has been reviewed by the Central Security Agency, which was the basis for the Ministry to take the stand in the

affidavit. It was also the stand of the Ministry that the threat assessment carried out by the Central Security Agency, is a secret document and the same cannot be annexed with the affidavit. It is also noted from the impugned judgment that the threat assessment carried out by the Central Security Agency was placed before the learned Single Judge and was perused by the learned Single Judge and on that basis, the Court had noted that there appears to be only a general threat to the appellants perceived from Kashmiri militants and largely for the reason, they are family members of Abdullah family.

6. It was also the stand of the Ministry of Home Affairs that the Delhi police will watch the interest of the appellants as they are admittedly the residents of Delhi and they would ensure that adequate security is provided to them at any place they chose to live in Delhi. Further stand was that depending upon the size of the bungalow, the number of security personnel required for the protection of such protectees would be enhanced or reduced accordingly . It is also stated three central protectees namely Mr. K.P.S. Gill, Mr. M.S. Bitta and Mr. Subramanian Swamy being central SPG protectees have been allotted government accommodation in view of a high level of threat faced by them.

7. The stand of the respondent No. 2 Resident Commissioner, Government of Jammu & Kashmir before the learned Single Judge was that the Jammu & Kashmir alone is responsible for providing security to the appellants who are residents of Delhi, it is the Delhi Police who would be responsible for their security and a letter of the DGP, Jammu & Kashmir dated October 19, 2013 was placed before the learned Single Judge. The following submissions were made on behalf of the appellants before the learned Single Judge:- (i) The appellants are Z and Z plus category security protectees. (ii) If they shift to a smaller accommodation as compared to the one which is now occupied by them, they cannot be provided with adequate security. (iii) The appellants have been discriminated as besides the afore noted persons there are other persons who are enjoying Government accommodation irrespective of the fact that they are not in government employment like Mr. Sachin Pilot, Dr. Fatana Nazibullah, Mr. Om Prakash Mathur and Mr. Th. Muviah who are enjoying the government accommodation.

8. The learned Single Judge rejected the stand of the appellants by noting that the bungalow was placed at the disposal of the State of Jammu & Kashmir with effect from August 11, 2009 for Mr. Omar Abdullah. He retained the accommodation till he demitted the office in January, 2015. Mr. Omar Abdullah has, in his communication to the respondent No. 1 dated June 4, 2016 informed that he is no longer in occupation of 7, Akbar Road, New Delhi and they are free to take whatever steps they deem necessary. The learned Single Judge held that the appellants were deriving their entitlement to retain the accommodation only through the official position of Mr. Omar Abdullah. They have no independent right or claim in this property. The accommodation now has been allotted to the new Chief Minister of Jammu & Kashmir. As on date, the appellants are residing

in the property as illegal occupants. They are admittedly not in government employment. It is also noted by the learned Single Judge that Mr. Omar Abdullah who is also a Z plus protectee is residing in a private accommodation at Nizamuddin where he is enjoying a security cover of a Z plus protectee and which has been provided to him by the Delhi Police. The father in law of the appellant No. 1 Mr. Farooq Abdullah is also staying in a private accommodation at Sagar Apartments, Tilak Marg. It is also noted by the learned Single Judge that the appellant No. 1 owns a 2300/- sq. feet flat. The learned Single Judge also held that if Mr. Omar Abdullah and Mr. Farooq Abdullah can live in private accommodation and have been given adequate security cover, there is absolutely no reason for the appellants to have a misconceived apprehension that they cannot be protected similarly. The learned Single has noted the undertaking of the respondent No. 3 Ministry of Home Affairs to the effect whatever may be the size of the accommodation to which the appellants propose to shift, adequate security cover will be provided to them and they will have no complaint.

9. The learned Single Judge has also rejected the plea of discrimination by holding that persons who have been given government accommodation are officers who are facing imminent threat whereas the appellants face only a general perception of threat.

10. Mr. Jayant K. Sud, learned Counsel for the appellants would submit that the appellants being the estranged wife and the children of the Mr. Omar Abdullah and themselves being the Z and Z plus protectees, could not have been evicted from the bungalow in question for security reasons. Even if the appellants are not entitled to the present accommodation, an alternative accommodation need to be provided where the security aspects can be taken care of. He would contend that the respondents have unfortunately overlooked these aspects while directing the eviction of the appellants. He would vehemently plead the case of discrimination as in similar manner other persons having protection have been allotted accommodation. He states that the order of the learned Single Judge is without considering in proper perspective the aforesaid consideration and need to be set aside and the reliefs as sought for in the writ petition need to be granted. He would rely upon the judgment of this Court in the case of Union of India v. Vijay Mam, LPA No. 332/2011 and connected appeals decided on June 1, 2012, to contend that this Court with regard to the Kashmiri Pandits who have been transferred out of Srinagar were allowed to be continued in the accommodation provided to them at a place where they were transferred and the Court has upheld the direction of the learned Single Judge directing the appellants before the Division Bench to allow them to occupy till such time the appellants take adequate, effective and reasonable steps to rehabilitate and resettle the respondents by making provisions for appropriate accommodation for the petitioners/respondents. He would also rely upon the judgment of this Court in the case reported as (2010) 117 DRJ 298 Shiv S. Sharma v. Union of India and Ors.

11. During the course of his submissions, Mr. Sud had also relied upon an OMs dated December 27, 2000 and July 24, 2003 to contend that the security protectees will not be required to surrender their house in Delhi in lieu of allotment of General Pool Residential Accommodation.

12. Having heard the learned counsel for the parties, there is no dispute that the appellants are the Z and Z plus protectees because of them being the estranged wife and children of Mr. Omar Abdullah. It has been accepted by the learned Single Judge Mr. Omar Abdullah, after he ceased to be the Chief Minister, has, himself written to the respondent No. 1 that they are free to take possession of the bungalow in question. He himself has shifted to a place in Nizamuddin where adequate security is being provided to him by the Delhi Police. Similar is the position with his father Mr. Farooq Abdullah. The learned Single Judge is justified in holding that they derive the right of a Z and Z plus security protectees only because being the family members of Mr. Omar Abdullah and Mr. Farooq Abdullah. Hence, the submission of Mr. Sud that the appellants being Z and Z plus security protectees need to be allotted accommodation by the Central Government is without any basis. We also note that the learned Single Judge has concluded that the bungalow in question was placed at the disposal of the Government of Jammu & Kashmir and it is the duty of the Government of Jammu & Kashmir to provide security to the appellants and, the DGP, Jammu & Kashmir, has on October 19, 2013, written a letter, for providing security to the appellants. Even the Ministry of Home Affairs has taken a stand that adequate security cover will be provided to the appellants.

13. The plea of Mr. Sud of discrimination is also not sustainable. Firstly, the threat perception having been determined by the Ministry of Home Affairs and which document was placed before the learned Single Judge and the conclusion of the learned Single Judge being that the appellants have only a general threat perception, not an imminent threat perception, cannot be questioned.

14. Secondly, the learned Single Judge has held that the case of the appellants cannot draw parallel with the case of Mr. K.P.S. Gill, Mr. M.S. Bitta and Mr. Subramanian Swamy as they face an imminent threat. The judgment relied upon by Mr. Sud in the case of Union of India v. Vijay Mam (supra), has no applicability in the facts of this case, inasmuch as, in the said case, the petitioners before the learned Single Judge were the employees posted in J&K and who were transferred out because of the threat perception from the Kashmiri militants and were given accommodation at the transferred place, and later sought to be evicted. The direction of the learned Single Judge was to continue the employees in their accommodation till adequate and reasonable steps are taken to rehabilitate and resettle them by making provisions for appropriate accommodation, which direction was upheld by the Division Bench. The Division Bench clarified that the direction was in peculiar facts of those cases and cannot be construed as general directions in all types of cases pertaining to right to shelter.

15. Similarly, the judgment of Shiv S. Sharma (*supra*), has also no applicability to the facts of this case.

16. Insofar as the plea of Mr. Sud relying upon the OMs dated December 27, 2000 and July 24, 2003 is concerned, suffice to state the said OMs contemplate that security protectees will not be required to surrender their own house in lieu of allotment of General Pool Residential Accommodation, which is not the case here as there is no allotment of General Pool Residential Accommodation to the appellants. Furthermore, when Mr. Omar Abdullah himself has shifted to a private accommodation, there is no reason why the appellants can be treated differently.

17. We do not see any merit in the appeal. The same is dismissed.