

(2016) 08 DEL CK 0011
In the Delhi High Court
Case No : W.P.(C) No. 5886 of 2016

Payal Abdullah & Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

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

Citation : (2016) 4 RCRCivil 150

Hon'ble Judges : Indermeet Kaur, J.

Bench : Single Bench

Advocate : Amit Khemka, Rishi Sehgal and Sanjeev Verma, Advocates, for the Appellant; Anurag Ahluwalia, CGSC, Sunil Fernandes Standing Counsel for Govt. of J&K along with Estate Officer, Resident Commission of Govt. of J&K with Deepak Pathak, Advocate, for the Respo

Final Decision : Dismissed

Judgement

Indermeet Kaur, J. (Oral) - W.P.(C) 5886/2016 & C.M. No. 24201/2016 (stay)

1. There are three petitioners before this Court. Petitioner No. 1 is the estranged wife of Mr. Omar Abdullah; petitioners No. 2 & 3 are the sons of Mr. Omar Abdullah. Mr. Omar Abdullah is the Ex- Chief Minister of State of Jammu and Kashmir. Admittedly all the three petitioners are enjoying `Z" and `Z+" security. Whereas petitioner No. 1 is enjoying `Z" security and petitioners No. 2 & 3 have been given a `Z+" security. They are presently residents of 7, Akbar Road, New Delhi (type VIII bungalow). This accommodation had been allotted to their father namely Mr. Omar Abdullah by the Assistant Director of Estates, Directorate of Estates, Ministry of Urban Development, Government of India on 22.11.1999. This was while he was holding the post of Minister of State for Commerce and Industry. Petitioners have been living in this bungalow since that time.

2. The contention of the petitioners is that the petitioners have continuously been staying in this bungalow since that period of time and even during the time when Mr. Omar Abdullah was not holding any Government office (for the years

2002 to 2008), they were not asked to shift out from the accommodation. The grievance of the petitioners is that the Government is now harassing them to vacate the aforementioned bungalow. Contention being that since all the three petitioners are 'Z' and 'Z+' protectees, there is a round the clock vigil required for their security; there are 94 personnel who are deputed at the aforementioned bungalow to look after their security; 10 cars have also been deputed for their security which includes 3 bullet proof vehicles. Large security lights and barrack for the 41 personnel permanently living in this bungalow besides four guard towers and two guard towers on the roof top are located in this accommodation. In these circumstances, the contention of the respondents that they should shift out of this accommodation when they continue to be 'Z' and 'Z+' protectees is against their interest.

3. Prayer (a) is that the petitioners should not be directed to be evicted from the aforementioned bungalow for the aforementioned security reasons. The alternate prayer is for allotment of a suitable Government accommodation for the said security reasons and till an alternate Government accommodation is allotted to them, they should not be asked to shift out of this accommodation.

4. Respondents before this Court are the Ministry of Urban Development and Minister of Home Affairs both of whom are represented by a counsel. They are respondent No. 1 and respondent No. 3 respectively. Respondent No. 2 is the Resident Commissioner, State of Jammu and Kashmir.

5. Pleadings are compete.

6. The stand of respondent No. 1 (Ministry of Urban Development) is that the guidelines for discretionary allotment of General Pool Residential Accommodation, New Delhi is governed by O.M. No.12035/2/97-Pol.II (Pt.II) dated 17.11.1997 which has been issued by the Ministry of Urban Affairs and Employment, Directorate of Estates. Vide a subsequent O.M. No.12035/8/93-Pol. II (Pt.) dated 27.12.2000 issued by the said Ministry, 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 22.11.1999 while he was holding the post of Minister of State for Commerce and Industry. Vide communication dated 09.09.2015, the said premises i.e. 7, Akbar Road, New Delhi has been placed at the disposal of Government of Jammu and Kashmir retrospectively w.e.f. 11.08.2009.. Mr. Omar Abdullah had assumed charge as Chief Minister for State of Jammu and Kashmir in January, 2009 and he occupied these premises with his family in his capacity as the then Chief Minister. He has admittedly demitted the said office in January, 2015. The next Chief Minister Mr. Mufti Mohammed Sayeed had assumed charge as Chief Minister for State of Jammu and Kashmir on 01.03.2015. The petitioners are not entitled to retain this bungalow which has now to be allotted to the new Chief Minister of Jammu and Kashmir. It is reiterated that the petitioners are admittedly 'Z' and 'Z+' protectees but no Government accommodation can be allotted to any private person on security considerations except to SPG appointee.

7. The stand of respondent No. 3 (Ministry of Home Affairs) is also similar. Their stand is that the security arrangements for the petitioners will be done as per the Yellow Book issued by the Ministry of Home Affairs (perused). The petitioners are not central protectees i.e. their security protection categorization has not been done by the Central Government. Admittedly both the sons of petitioner No. 1 are 'Z+' protectees and petitioner No.1 herself is a 'Z' security protectee but they have to be protected by the State of Jammu and Kashmir. This affidavit further states that since the petitioners are residents of Delhi and are a 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 aforementioned three petitioners. This threat assessment of the petitioners has been reviewed by the Central Security Agency on the basis of which this submission has been noted in the counter affidavit. Further stand of respondent No. 3 is that the threat assessment carried out by the Central Security Agency is a secret document and the same cannot be annexed with the affidavit. A copy of the same has however been placed on record (in a sealed cover) for the perusal of the Court which has been perused and this Court notes that there appears to be only a general threat to the petitioners perceived from Kashmiri militants and this is largely for the reason that they are family members of the Abdullah family i.e. Mr. Omar Abdullah and Mr. Farooq Abdullah but there is no indication of any specific threat to the aforementioned petitioners. Further stand of respondent No.3 is that the Delhi Police will watch the interest of the petitioners as they are admittedly 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 is 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. This affidavit further states that at present three central protectees namely Mr. K.P.S. Gill, (Ex-DGP, Punjab), Mr. M.S. Bitta, (Chairman, All India Terrorists Front) and Mr. Subramanian Swamy, (Member of Parliament) being central SPG protectees have been allotted Government accommodation in view of a high level of threat faced by them. Such a threat is not faced by the petitioners.

8. The stand of respondent No. 2 (Resident Commissioner, Government of Jammu and Kashmir) is that the state of Jammu and Kashmir alone is responsible for providing security to the petitioners who are residents of Delhi; it is the Delhi Police who would be responsible for their security and a copy of the letter of the DGP, Jammu and Kashmir dated 19.10.2013 has been placed on record to substantiate this submission. Submission being reiterated that it is not the State of Jammu and Kashmir who will look after the issue of security and protection of the petitioners. It is admitted that the petitioners are 'Z' and 'Z+' category security protectees. The apprehension of the petitioners is that if they shift to a smaller accommodation as compared to the one which is now occupied by them and they cannot be provided with adequate security is misconceived. Petitioner No. 1 has a residence on the second floor at West End, New Delhi measuring 2300 square feet. The State Government with the assistance of local

police will ensure that adequate and appropriate security (which is for a 'Z' and 'Z+' protectee) will be afforded to the said protectees. Mr. Omar Abdullah had also written to the Resident Commissioner, Jammu and Kashmir vide his letter dated 04.06.2016 (perused) that he is no longer in occupation of the premises and the Department is free to take whatever steps they wish to. It is pointed out that Mr. Omar Abdullah has now shifted to a private residence in Delhi i.e. House No. 22, First Floor, Nizamuddin (East). He continues to enjoy 'Z+' security cover; he has no complaint on the security provided to him. The father-in-law of petitioner No. 1 (Mr. Farooq Abdullah) also being a 'Z+' protectee is residing at Sagar Apartments, 6 Tilak Marg, New Delhi which is also an area approximately 2300 square feet and where also the security cover provided to him has not been the ground for any complaint whatsoever. The case of the petitioner that she is entitled to retain the present accommodation for this reason is thus without any basis.

9. In rejoinder, learned counsel for the petitioner submits that he has been discriminated. Besides the aforementioned persons i.e. Mr. K.P.S. Gill, Mr. M.S. Bitta and Mr. Subramanian Swamy, there are other persons who are also enjoying Government accommodation irrespective of the fact that they are not in Government employment. Attention has been drawn to the reply filed by the petitioner to the affidavit of respondent No. 2. It is pointed out that Mr. Sachin Pilot, Dr. Fatana Nazibullah, Mr. Om Prakash Mathur and family of late Sh. Th. Muviah who are all stated to be enjoying Government accommodation which is at the cost of exchequer. The petitioners are deliberately harassed and discriminated upon.

10. Arguments have been heard.

11. Before delving into these submissions, this Court notes that the legal process as envisaged under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 now stands exhausted. The petition under Section 5 of the said Act had been filed by respondent No.1 which has been decided in their favour. An appeal had been filed against this order before the District Judge which has also been disposed on 16.08.2016. A copy of the said order has been placed on record. The order of the Estate Officer has been upheld. The contention of the petitioners that they cannot be granted adequate security cover except in the aforementioned bungalow i.e. 7, Akbar Road, New Delhi had also been noted. The Court had declined all these submissions and the learned District Judge vide his order dated 16.08.2016 had upheld the order of the Estate Officer directing that the Government accommodation presently being enjoyed by the petitioners be vacated.

12. The perusal of the record satisfies this Court that the prayers made by the petitioners cannot be answered in their favour. Admittedly this accommodation i.e. 7, Akbar Road, is a type VIII bungalow and had been allotted to Mr. Omar Abdullah while he was holding office of Minister of Commerce and Industry. This was in the year 1999. The petitioners which includes his wife and his two children

are living in this accommodation since that date. It is also an admitted position (as is evident by the counter affidavit of respondent No.1) that vide letter dated 09.09.2015, the Ministry of Urban Development has placed this bungalow at the disposal of the State of Jammu & Kashmir w.e.f. 11.08.1999. Mr. Omar Abdullah had assumed charge as Chief Minister of state of Jammu and Kashmir in January, 2009. In that capacity, he continued to retain the said accommodation. He demitted the office in January, 2015. The communication of Mr. Omar Abdullah to the Ministry of Urban Development dated 04.06.2016 also clearly informs the State that he is no longer in occupation of 7, Akbar Road, New Delhi and they are free to take whatever steps they deem necessary.

13. A conjoint reading of affidavits of respondents No. 1 & 3 also clearly show that the entitlement to a type VIII was the entitlement of Mr. Omar Abdullah who was occupying it in his capacity firstly as Minister of Commerce and Industry and thereafter in his capacity as Chief Minister of the State of Jammu and Kashmir. This accommodation was placed at the disposal of State of Jammu and Kashmir dated 11.08.2009 with retrospective effect from 2009. Mr. Omar Abdullah who became the Chief Minister of Jammu and Kashmir demitted this office in January, 2015. The affidavit of respondent No. 2 (para 10) clearly states that this accommodation i.e. 7, Akbar Road stood allotted to the State Government (State of Jammu and Kashmir) w.e.f. 11.08.2009 when the State intended to use the same for the official residence of the Chief Minister of Jammu and Kashmir. The petitioners were admittedly deriving their entitlement to retain this accommodation only through the official position of Mr. Omar Abdullah. They have no independent right or claim in this property. This accommodation now has to be allotted to the new Chief Minister of Jammu and Kashmir. The admitted position as on date is thus that the petitioners are residing in this property as illegal occupants. They have been evicted vide orders of the Competent Court under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Their entitlement to stay in the aforementioned Government allotted bungalow is no longer available to them. They are admittedly not in Government employment. Mr. Omar Abdullah who had demitted his office as Chief Minister of the State of Jammu and Kashmir demitted office in January, 2015. He categorically in his letter dated 04.06.2016 stated that this bungalow is no longer in his occupation. In fact, Mr. Omar Abdullah who is also a 'Z+' protectee is residing in a private accommodation at Nizamuddin where he is enjoying a security cover of a 'Z+' protectee and which has been provided to him by the Delhi Police. The father-in-law of petitioner No. 1 Mr. Farooq Abdullah (also a 'Z+' protectee) is also staying in a private accommodation at Sagar Apartments, Tilak Marg. This area is equivalent to an area owned by petitioner No. 1 (2300 square feet) where Mr. Farooq Abdullah is also enjoying an adequate security cover (provided to him by Delhi Police in coordination with Ministry of Home Affairs) and for which also he has no complaint. This is an admitted position. The fact that the present petitioners have no independent claim to this property is also an admitted fact. They are in fact deriving their right of a 'Z' and 'Z+' security only because they

are family members of Mr. Omar Abdullah and Mr. Farooq Abdullah. If Mr. Omar Abdullah and Mr. Farooq Abdullah can live in private accommodations and have been given adequate security covers; there is absolutely no reason for the petitioners to have a misconceived apprehension that they cannot be protected similarly. The secret document (placed on record and perused by the Court) also show that there is no specific threat to the petitioners; a general threat perception has alone been noted.

14. This Court has also been informed that 94 personnel who were guarding the present accommodation were coming in three shifts i.e. 31 personnel at one point of time. The counter affidavits of both respondent No. 2 and respondent No.3 state that depending upon the size of the accommodation, the security can be enhanced or reduced; if the accommodation where the petitioners will be housed is smaller than the present accommodation, a vigil of 94 security personnel may not be required and could be reduced. The undertaking of respondent No.3 (Minister of Home Affairs) is also noted which is to the effect that whatever may be the size of the accommodation to which the petitioners propose to shift, adequate security cover will be provided to them and they will have no complaint.

15. Noting the above factual matrix, this Court is of the view that the entitlement of the petitioners to retain this accommodation is wholly illegal. It is a Government accommodation. Petitioners have no claim or right upon it. They are liable to be evicted forthwith. Their apprehension that they will not be given an adequate security cover is misconceived; if the husband and father-in-law of petitioner No. 1 can be adequately secured (living in private accommodations), there is no reason as to why the petitioners cannot be protected. In fact petitioner No. 1 is a 'Z' category protectee and Mr. Omar Abdullah and Mr. Farooq Abdullah are 'Z+' protectees (so also petitioners No. 2 & 3).

16. This Court is thus of the view that all the 3 petitioners can be adequately looked after and whichever private accommodation they proposes to shift to, this Court notes the undertaking of respondent No.3 that there will be an adequate security cover provided to the petitioners.

17. Submission of the petitioners that they have been discriminated qua other persons is also misconceived. This Court notes the stand of respondent No.1 that Mr. K.P.S. Gill, Mr. M.S. Bitta and Mr. Subramanian Swamy are central protectees and they have been given Government accommodation only because of an imminent threat faced by them whereas the petitioners face only a general perception of threat (as noted in the security document and perused by this Court). In rejoinder, a plea had been taken up by the petitioners that they are Central protectees and not State protectees. This Court notes that this submission did not find mention in the body of the main petition but it was in response to the counter affidavit of respondent No. 2 that this submission has been argued. The secret document perused by this Court also make the stand of respondent No. 2 clear. 'Z' and 'Z+' security have been granted to the

petitioners by the State of the Jammu and Kashmir because they are the wife and children of Mr. Omar Abdullah respectively. This fact that they are `Z" and `Z+" protectees has also been stated in the affidavit of the Additional Resident Commissioner of the State of Jammu and Kashmir; the Central Government i.e. Delhi Police would only look after their interest and ensure their security and for the limited purpose the colloquial term `Central Protectees" has been used in the letter dated 19.10.2013 (heavily relied upon by the petitioners). This is clearly only for the reason that Delhi Police would be providing the security cover to the petitioners in coordination and cooperation with the Ministry of Home Affairs (respondent No.3). This argument of the petitioners that they are Central protectees is thus clearly a misunderstood argument.

18. Petition is without any merit. Dismissed.

19. Order dasti under the signatures of the Court Master.

CrI. M.A. No. 12800/2016 (under Section 340 of the Cr.PC)

20. Renotify on 14.09.2016.