

(2020) 09 JH CK 0223

In the Jharkhand High Court

Case No : Writ Petition(C) No. 1961, 1986 Of 2020

Randhir Singh @ Randhir Kumar Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 30-09-2020

Acts Referred:

Jharkhand Government Premises (Allotment, Rent, Recovery And Eviction) Act, 2002
— Section 2(g), 3, 4, 4(a), 4(b), 8
Ministers (Salaries, Allowances And Miscellaneous Provisions) Act, 1981 — Section 4(3)
Jharkhand Government Premises (Allotment, Rent, Recovery And Eviction) Rules, 2004
— Rule 5, 18, 19
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 09 JH CK 0223

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Rajiv Sinha, Rohit Sinha, Ajit Kumar, Rajiv Ranjan

Final Decision : Dismissed

Judgement

1. These cases are taken up through video conferencing.

2. W.P.(C) No.1961 of 2020 has been filed for quashing and setting aside notification no.587(Bha.)/Ranchi dated 21st May, 2020 (Annexure-6 to the writ petition) issued under the signature of the Joint Secretary, Building Construction Department, Government of Jharkhand, Ranchi, whereby House No.E-6, Sector-II, HEC, Dhurwa, Ranchi (in short E-6) has been allotted to the petitioner-Randhir Singh inasmuch as the premises in question has been illegally occupied by a senior police officer of the State Government and also because the petitioner is entitled to F-type accommodation. Further prayer has been made for quashing and setting aside the order as contained in letter no.72 dated 3rd July, 2020 (Annexure-10 to the writ petition) passed by the Sub Divisional Officer, Sadar, Ranchi- respondent no.3, whereby the petitioner has been asked to vacate F-type accommodation i.e. Pashupalan Bhawan, Doranda, Ranchi, which was allotted to him being the Minister in the erstwhile State Government.

3. W.P.(C) No.1986 of 2020 has been filed for quashing of the notification as contained in memo no.275(Bha)/Ranchi dated 14.02.2020 (Annexure-10 to the writ petition) whereby the petitioner-Navin Jaiswal has been allotted House No.E-9 Sector-II, HEC, Dhurwa, Ranchi (hereinafter referred as 'E-9') and the present accommodation of the petitioner i.e. F-type, Forest Bunglow No.2, Doranda, Ranchi has been allotted to Haji Hussain Ansari. Further prayer has been made for quashing letter no.62 dated 20.03.2020 and letter no.123 dated 04.06.2020 issued by the respondent no.6 whereby the petitioner has been directed to vacate the Forest Bunglow No.2. It has also been prayed for quashing memo no.66 dated 03.07.2020 and letter no.73 dated 03.07.2020 both issued by the respondent no.7 whereby the petitioner has been directed to vacate the quarter retained by him.

Factual Matrix in W.P.C No.1961 of 2020

4. The factual background of the case as stated in the writ petition is that the petitioner-Randhir Singh was a Minister (Department of Agriculture and Sugarcane Development, Government of Jharkhand) in the erstwhile Bhartiya Janta Party (B.J.P.) Government and F-type accommodation i.e. Pashupalan Bhawan, Doranda, Ranchi was allotted to him vide Building Construction Department's Order No.40 dated 9th March, 2015 in terms with the Jharkhand Government Premises (Allotment, Rent, Recovery and Eviction) Act, 2002 (hereinafter to be referred as 'the Act, 2002') and The Jharkhand Government Premises (Allotment, Rent, Recovery and Eviction) Rules, 2004 (hereinafter to be referred as 'the Rules, 2004'). The petitioner has been re-elected as a member of Legislative Assembly from Sarath (Deoghar) Legislative Assembly Constituency in Jharkhand Legislative Election 2019 on the symbol of B.J.P. After getting re-elected, the petitioner wrote a letter to the Chief Minister on 7th January, 2020 for allotment of Qr. No.F-50, Sector-III, Dhurwa, Ranchi. He also wrote similar letter dated 3rd February, 2020 to the Building Construction Department, Jharkhand, Ranchi. On 5th February, 2020, a meeting of Gazetted House Allocation Committee was held under the chairmanship of the Chief Minister, who also happens to be the departmental minister of the Building Construction Department, Government of Jharkhand. In the said meeting a decision was taken for allotment of houses to the Ministers/M.L.As., in pursuance of which, notification no.275(Bha.)/ Ranchi dated 14th February, 2020 was issued and the petitioner was allotted House No.E-104, Sector-II, HEC, Dhurwa, Ranchi. However, the said premises was in dilapidated condition and as such the petitioner vide letter dated 17th February, 2020 requested the Secretary, Building Construction Department, Government of Jharkhand- respondent no.2 to either allot House no.F-50 or F-49. Thereafter, vide impugned notification no.587(Bha.)/ Ranchi dated 21st May, 2020, the petitioner was re-allotted House No.E-6, Sector-II, HEC, Dhurwa, Ranchi. However, the petitioner came to know that the said premises was illegally occupied by a senior police officer, who was allotted the ground floor of the same building. The petitioner again wrote letter no.100 dated 2nd June, 2020 to the Chief Minister, requesting inter alia to allot

him F-type accommodation, as similarly situated Ex. Ministers were allotted F-type accommodation, and even an M.L.A., who was elected for the first time, was also allotted F-type accommodation. During the lockdown period in the wake of Covid-19 Pandemic, when the petitioner was in his constituency, the Executive Engineer, Building Construction Department, Building Division-I, Ranchi-respondent no.4 vide letter no.118 dated 4th June, 2020 asked the petitioner to immediately vacate the presently occupied premises and to hand over the same to the Building Construction Department, Government of Jharkhand. The said letter was not served to the petitioner, rather it was pasted on the walls of the presently occupied premises. Thereafter, the petitioner again wrote letter no.151 dated 2nd July, 2020 to the Chief Minister, requesting, inter alia, to allot him F-type accommodation, however, the same remained unresponded. Subsequently, the respondent no.3 issued impugned letter no.72 dated 3rd July, 2020 (received by the staff of the petitioner on 4th July, 2020), asking the petitioner to vacate the presently occupied premises within 72 hours and to hand over the same to the respondent no.4, failing which the same would be vacated forcibly. The petitioner vide letter no.154 dated 4th July, 2020 (sent through special messenger) immediately requested the Chief Minister-cum-Departmental Minister of the Building Construction Department, Government of Jharkhand to first get the premises E-6, Sector-II, HEC, Dhurwa, Ranchi vacated from the clutches of the concerned police officer and to get it renovated, so that the same would be habitable and till then the petitioner would not be in a position to vacate the presently occupied premises for which the impugned letter dated 3rd July, 2020 had been issued.

Factual Matrix as stated in W.P.(C) No.1986 of 2020

5. The petitioner-Naveen Jaiswal was elected from Hatia Constituency in the State Assembly By-Elections of 2012 as well as State Assembly Elections of 2014 and 2019. In the year 2015, the State Government vide office order as contained in memo No.417 dated 09.03.2015 had allotted him Forest Bungalow No.2, Doranda Ranchi in the capacity of MLA of Jharkhand Legislative Assembly. Since then the petitioner has been residing in the said premises with his family members including old father and mother who are aged about 80 years and 75 years respectively. Subsequent to the petitioner being re-elected as member of Jharkhand Legislative Assembly in the Assembly Election, 2019, a nationwide lockdown was announced by the Central Government w.e.f 23.03.2020 in the wake of corona (Covid-19) pandemic which was also strictly implemented in the State of Jharkhand and the same was revised time to time. The petitioner vide representation dated 27.01.2020 and 11.02.2020 approached to the Secretary, Building Construction Department, Government of Jharkhand and the Chief Minister, State of Jharkhand, respectively, for allowing him to continue in the Forest Bungalow No.2, however no any action was taken on the said representations. In the meantime, vide impugned notification dated 14.02.2020, Forest Bungalow No.2, Doranda, Ranchi has been allotted to a Minister, namely, Hazi Hussain Ansari and the petitioner has been allotted quarter no.E-9,

Sector-2, H.E.C, Dhurwa, Ranchi.

Argument advanced by the learned counsel for the petitioners

6. Mr. Rajiv Sinha, learned counsel, appearing on behalf of the writ petitioner-Randhir Singh submits that the impugned notification dated 21st May, 2020 has been issued in colourable exercise of power because the premises in question is in illegal occupation of a senior police officer. Moreover the same is not meant for re-elected people's representative, who happens to be a Minister in the erstwhile government. It is further submitted that the respondents have been discriminating the petitioner as against similarly situated persons, as some of the Ex. Ministers in the erstwhile government, who are presently the M.L.As. only, have been allowed to retain F-type accommodation on their request, however, they have denied the said request of the petitioner. Learned counsel for the petitioner also submits that there is no uniform rule or guideline prescribed in the matter of allotment of premises from the central pool, particularly for the people's representative, which has resulted in arbitrary and unreasonable decision making. The impugned letter dated 3 rd July, 2020 has also been issued by the respondent no.3 in an arbitrary manner, as the said respondent instead of getting the premises in question vacated from the illegal possession of the said officer, has asked the petitioner to vacate the presently occupied premises in which the petitioner is residing with his family. It is also submitted that Section 3 of the Act, 2002 provides for cancellation of allotment for any public purpose, however, before cancellation of the previous allotment, the competent authority is required to give a show cause notice to the allottee as to why the allotment should not be cancelled and, thereafter, to pass an order of cancellation. However, in the present case, no such order of cancellation of allotment has been passed against the petitioner. It is further submitted that in view of Section 4 of the Act, 2002, the competent authority may evict a person from a premise and take possession of the same after issuing notice, directing him to vacate the premises within one week from the date of service of such notice, if any of the conditions enumerated in sub- sections (a) and (b) of Section 4 of the Act, 2002 are applicable. However, none of the said conditions is applicable in the present case. It is submitted that on receipt of the show cause reply of the petitioner, the respondent no.3 vide letter dated 07.07.2020 requested the respondent no.2 to issue fresh direction with regard to getting the F- type "Pashupalan Bhawan" premises vacated. Since the said letter has been issued in accordance with the provision of section 4 of the Act, 2002, the competent authority is now required to take appropriate decision in the matter. It is further submitted that since no order has been passed under section 3 of the Act, 2002 for cancellation of allotment of F-type Pashupalan Bhawan occupied by the petitioner, he cannot be treated to be in unauthorized occupation of the said premises as has been defined under section 2(g) of the Act, 2002. It is also submitted that without prejudice to the aforesaid contention of the petitioner, he can vacate the presently occupied premises provided that the State Government gets the premises in question vacated from the clutches of a senior police officer and

hand over it to the petitioner in liveable condition. It is further submitted that the structure of E-6 has been changed by the respondent authorities by constructing boundary wall which is in contravention of rule 18 and 19 of the Rules, 2004. Due to such changes made in the structure of E-6, now the said quarter is not fit for the petitioner due to non-availability of parking space as also for security and privacy reasons.

7. Mr. Ajit Kumar, learned senior counsel, appearing on behalf of the writ petitioner-Navin Jaiswal, submits that since the petitioner is being forced to vacate the said premises where he lives with his family including the old aged parents, the action of the respondents is in the teeth of the Central Government guidelines issued on 29.06.2020 in the wake of corona (Covid-19) pandemic, whereby it has been advised that the persons above 65 years of age and the persons with co- morbidities, pregnant women, and children below the age of 10 years should stay at home except for essential and health purposes. It is further submitted that as per the tradition and custom in vogue, the allotment of quarters to MLAs are not disturbed and they are allowed to continue with the same quarter if they have been re-elected. However the respondents have arbitrarily violated those precedents. It would be evident from the notifications dated 21.05.2020 and 22.05.2020 that the allotment of many Ministers or MLAs have been changed, may be on their request or for oblique motives which shows that there is no such fixed guidelines with regard to grading of quarters and eligibility for allotment of particular types of quarter in favour of the Ministers or MLAs. It is also submitted that the junior MLAs or first time elected MLAs have been allotted bigger bungalow whereas the former Ministers and senior MLAs have been allotted smaller quarters. The manner in which the notifications have been issued time and again by the respondents and the manner in which they have made allotments or have changed allotments, goes to show that they have adopted pick and choose method to please their favourites and to harass others such as the petitioner who is in opposition. The respondents have not formulated any fixed procedure for allotting quarters to MLAs/Ministers and even the provisions of Bihar (now Jharkhand) Government Premises (Rent, Recovery & Eviction) Act, 1956 and Bihar (now Jharkhand) Government Premises (Rent, Recovery & Eviction) Rules, 1957 have not been followed by them. It is further submitted that even if the respondents take shelter of any law or provisions governing the subject matter for supporting the impugned orders, they are duty bound to consider the representation of the petitioner and to take appropriate decision on the same and/or stay hands from eviction order at least till the present Covid-19 restriction is over.

8. It is also contended by the learned senior counsel for the petitioner-Navin Jaiswal that the provisions of the Act, 2002 and its allied rules have not been followed in the case of the petitioner. Form-A of Rules, 2002 prescribes the format of serving notice to any allottee of government quarter so as to pass order of cancellation of allotment under section 3 of the Act, 2002 by the competent authority, however, the petitioner has neither been served any notice

in Form-A nor any order has been passed by the competent authority. It is further submitted that the petitioner has also not been served with a show cause notice in Form-B for any order of eviction under section 4 of the Act, 2002. If the law provides for an action to be done or taken in a particular manner and procedure, the same has to be done in that manner and procedure only, otherwise the same cannot be done at all.

9. In support of the aforesaid contention the learned senior counsel for the petitioner- Navin Jaiswal puts reliance on the judgment of the Hon'ble Supreme Court rendered in the cases of Babu Verghese & Others Vs. Bar Council of Kerala & Others reported in (1999) 3 SCC 422 as well as Dharani Sugars and Chemicals Ltd. v. Union of India & Others, reported in (2019) 5 SCC 480.

10. It is further submitted that since no order has been passed by the competent authority either under section 3 or 4, there is no question of filing of appeal by the petitioner under section 8 of the Act, 2002 and as such the petitioner has no efficacious/alternative remedy available under the Act, 2002.

Argument advanced on behalf of the State-respondents

11. Per contra, Mr. Rajiv Ranjan, learned Advocate General, appearing on behalf of the respondents, raises a preliminary objection with regard to the filing of the writ petitions and submits that the petitioners have alternative/ efficacious remedy available under the Act, 2002 read with Rules, 2004 and as such the present writ petition is not maintainable.

12. It is further contended by the learned Advocate General that there is a procedure for allotment of any premises under the central pool and the decision for allotment is taken by the Gazetted House Allocation Committee under rule 5 of the Rules, 2004. So far as allotment of the government accommodation to the Council of Ministers as well as the MLA's is concerned, it is dealt with by the High Powered Committee i.e. Gazetted House Allocation Committee constituted by the Government of Jharkhand comprising of the Departmental Minister (in the instant case the Chief Minister) in terms with rule 5 of the Rules, 2004. The accommodations have been allocated to the petitioners as well as other Ministers and MLAs as per the decision of the said Committee after assessing and obtaining the report from various sources including the intelligence reports as well as looking into the requirement of the Council of Ministers and the MLAs.

13. It is also submitted by the learned Advocate General that the petitioner-Randhir Singh was earlier allotted House No. E- 104, Sector- II, HEC, Dhurwa, Ranchi, however on his application, informing inter alia, that the same was in a dilapidated condition, quarter E-6 has been allotted to him. Learned Advocate General also submits that the petitioner-Randhir Singh is not entitled to retain the presently occupied premises, which has now been allotted to Sri Stephen Marandi, a multitime MLA and a senior political leader. The petitioner has himself admitted in paragraph-15 of the writ petition that he is ready to vacate F-type Pashupalan Bhawan premises, if E-6 premises is freed from the clutches of the

concerned senior police officer, who is said to be in unauthorized occupation of the same. In this view of the matter, the petitioner's contention cannot be accepted that the decision making process of the Gazetted House Allocation Committee is arbitrary or discriminatory. Learned Advocate General also asserts that there is no impediment in giving vacant possession of the premises in question to the petitioner and the same shall be handed over to him without any delay.

14. It is further submitted by the learned Advocate General that so far the petitioner-Navin Jaiswal is concerned, the decision of the Gazetted House Allocation Committee was notified on 14.02.2020 and the said decision was communicated to the petitioner through Vidhan Sabha as well as by the Executive Engineer of the respondent department vide memo dated 20.03.2020 and 04.06.2020 making request to the petitioner to vacate the premises. It is also submitted that the newly allotted accommodation to the petitioner is fully furnished house containing all the amenities required for a decent and respectable living. So far the issue of violation of the Central Government's notification in connection with Covid-19 Pandemic is concerned, it is submitted that by reasons of the impugned notification, the petitioner has not been displaced, rather he has been requested to shift to the newly allotted E-9 premises., as Forest Bungalow No.2 has been allotted to a present Cabinet Minister, namely, Hazi Hussain Ansari in terms with his requirement and work as well as for security reasons and as such there is no arbitrariness on the part of the committee as alleged by the petitioner.

Finding of the Court

15. Heard learned counsel for the parties and perused the materials available on record. The learned Advocate General has raised preliminary objection with regard to the maintainability of the writ petitions on the ground that alternative/ efficacious remedy is available to the petitioners by filing appeal before the State Government as provided under section 8 of the Act, 2002.

16. The Hon'ble Supreme Court in the case of Dhampur Sugar Mills Ltd. Vs. State of U.P and Others, reported in (2007) 8 SCC 338, has held as under:-

23. As to alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ-petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be terms as alternative or equally efficacious. Once a policy decision has been taken by the Government, filing of appeal is virtually from "Caesar to Caesar's wife", an empty formality or futile attempt. The High Court was, therefore, right in overruling the preliminary objection raised by the respondents.

17. In the case of M.P State Agro Industries Development Corpn. Ltd. & Another Vs. Jahan Khan, reported in (2007) 10 SCC 88, the Hon'ble Supreme Court has

held as under:-

12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: *Whirpool Corporation Vs. Registrar of Trade Marks* [(1998) 8 SCC 1], *Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Ors.* [(2003) 2 SCC 107] , *State of H.P. Vs. Gujarat Ambuja Cement Ltd.* [(2005) 6 SCC 499 and *Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd.* [(2005) 8 SCC 242].

18. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In the present cases, the petitioners' contention is that the respondents have violated their fundamental rights of being treated at par with other MLAs. Moreover, the record of the cases reveals that no order has been passed by the Competent Authority within the meaning of section 2(b) of the Act, 2002 against the petitioners which necessitates the aggrieved person to file appeal under section 8 of the Act, 2002. It is evident that after Jharkhand Legislative Election 2019, new government was formed and the Gazetted House Allocation Committee, headed by the Chief Minister, vide impugned notifications made fresh allotment of government accommodation to the Ministers and the MLAs treating deemed cancellation of earlier allotments of the respective premises. The impugned notifications of allotment of accommodations have been made by the Committee headed by the Chief Minister and in such a situation, sending the petitioners to the appellate authority cannot be said to be an alternative and efficacious remedy, rather it would be an empty formality or futile attempt. Thus, looking to the nature of cases and in the interest of justice, it would be appropriate to adjudicate the present writ petitions without relegating the petitioners to avail alternative remedy.

19. The main contention of learned counsel for the petitioner-Randhir Singh is that the respondent authorities have arbitrarily and discriminately directed the petitioner to vacate the F-type "Pashupalan Bhawan", which was allotted to him, being a Minister in the erstwhile government and he has been allotted E-6

premises which is in illegal occupation of a senior police officer. Moreover the structure of the same has been changed by constructing boundary wall inside the premises. The learned senior counsel for the petitioner- Navin Jaiswal has argued that while issuing the impugned notification(s) for allotment of government accommodations to the Ministers and the MLAs, the respondents have adopted pick and choose method to please their favourites in absence of specific rule elucidating the criteria for allotment of any government accommodation to the public representatives.

20. Now the question before this court is as to whether the impugned notifications allotting the new accommodations to the petitioners (E-6 in the case of petitioner-Randhir Singh and E-9 in case of petitioner- Navin Jaiswal) and their old accommodations having been allotted to other Ministers/MLAs as also the consequential letters for their eviction from old accommodations require any interference of this Court under Article 226 of the Constitution of India.

21. The judgment of the Hon'ble Supreme Court rendered in the case of S.D. Bandi Vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors., reported in (2013)12 SCC 631, would be relevant in this context. The Hon'ble Apex Court in the said case, while dealing with the issue relating to occupation of government accommodation by the members of all the three branches of the State i.e. legislature, judiciary and executive beyond the period of allotment, has held as under:-

"34. 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 unauthorised 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 unauthorised 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-realisation among the unauthorised occupants. The matter is disposed of with the above terms and no order is required in IAs for impleadment and intervention"

22. It may, thus, be construed that no law or direction can control unauthorized occupation of accommodation allotted to the employees/officers/people's representatives and other high dignitaries. It is the matter of self-realization by the allottees of government accommodation that the rights and duties are correlated. Thus, after demitting the office, one should vacate the premises himself/herself without waiting for any order of eviction to be issued by an appropriate authority. It should be kept in mind by the allottees that by not vacating the premises, they are infringing the rights of lawful claimants of the same.

23. In the case of Lok Prahari through its General Secretary Vs. State of Uttar Pradesh &Ors., reported in (2018)6 SCC 1, the Hon'ble Supreme Court while finding the provision of Section 4(3) of the U.P. Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 to be violative of the doctrine of equality, has declared the same to be ultra vires to the Constitution of India and has held as under:-

"38. Natural resources, public lands and the public goods like government bungalows/official residence are public property that belongs to the people of the country. The "Doctrine of Equality" which emerges from the concepts of justice, fairness must guide the State in the distribution/allocation of the same. The Chief Minister, once he/she demits the office, is on a par with the common citizen, though by virtue of the office held, he/she may be entitled to security and other protocols. But allotment of government bungalow, to be occupied during his/her lifetime, would not be guided by the constitutional principle of equality.

39. Undoubtedly, Section 4(3) of the 1981 Act would have the effect of creating a separate class of citizens for conferment of benefits by way of distribution of public property on the basis of the previous public office held by them. Once such persons demit the public office earlier held by them there is nothing to distinguish them from the common man. The public office held by them becomes a matter of history and, therefore, cannot form the basis of a reasonable classification to categorise previous holders of public office as a special category of persons entitled to the benefit of special privileges. The test of reasonable classification, therefore, has to fail. Not only that the legislation i.e. Section 4(3) of the 1981 Act recognising former holders of public office as a special class of citizens, viewed in the aforesaid context, would appear to be arbitrary and discriminatory thereby violating the equality clause. It is a legislative exercise based on irrelevant and legally unacceptable considerations, unsupported by any constitutional sanctity."

24. The Hon'ble Supreme Court in the aforesaid case has held that after demitting the office, the Chief Minister is treated as a common citizen and the public office held by him becomes as a matter of history and, therefore, it cannot form the basis of special category of persons to be entitled for the benefit of special privileges.

25. I have also perused the judgment of the Division Bench of the Patna High Court rendered in the case of Tejashwi Prasad Yadav Vs. State of Bihar and Others, reported in AIR 2019 Pat 34, which was also affirmed by the Hon'ble Supreme Court vide order dated 08.02.2019 passed in S.L.P No.2667 of 2019. In the said case the appellant who was a Deputy Chief Minister in the Government of Bihar was allotted a bungalow on the basis of the decision of the Gazetted Housing Allotment Committee. When the coalition government got dissolved and new government was formed, the said bungalow was allotted to the Deputy Chief Minister of the new government and the appellant was allotted a new bungalow of the category of minister being the leader of opposition. The appellant

challenged the said decision of the Committee by filing a writ petition in the Patna High Court, which was dismissed by the learned Single Judge, and thereafter he filed Letters Patent Appeal before the learned Division Bench, however, the same was also dismissed. While dismissing the LPA, the learned Division Bench held that the appellant was allotted a bungalow earmarked for a minister being the leader of opposition whereas the Deputy Chief Minister of the newly elected government was allotted the bungalow which was earmarked for the Deputy Chief Minister and as such there was no arbitrariness found in the decision of the authority. The learned Court in paras 27 and 28 has held as under:-

27. Then comes the issue of the purpose of such allotment as urged on behalf of the appellant where both the appellant and the Respondent No. 5 are entitled to the same category of Bungalows. It is correct that the appellant after becoming the leader of the opposition is entitled for a Bungalow which can be allotted to a Minister of the Government. The question is, can he still insist upon to occupy the same Bungalow that was allotted to him as a Minister when he was in Government. As pointed out above, there was a change in Government and with this change, the authority to allot and reallocate came as a necessary concomitant for the exercise of discretion by the new Government in the matters of allotment of Bungalows. The privilege, therefore, to retain the Bungalow was dependent upon the discretion of the Government subject to the condition that the allotment would be of the same category to the leader of the opposition as that to a Minister. It is not the case of the appellant that by virtue of the new allotment to the appellant of Bungalow No. 1, Polo Marg, Patna that is presently occupied by the Respondent No. 5, is of a lesser category or not of a category which is available to a Minister. In our considered opinion, so long as the category of the Bungalow remains the same and is a furnished Bungalow, it cannot be said that the State Government has exercised its discretion or authority which is not vested in it in law. Since the appellant has been allotted a Bungalow of the same category, the exercise of power cannot be held to be arbitrary.

28. We may conclude by saying that our proud nation came to be liberated under the leadership of a great soul who is all familiar throughout the world as Mahatma Gandhi, who lived for his ideals and his shelter was the sky and the earth beneath with all humanity as his family. Looking up to his ideals, we find that this squabble over the allotment of a Bungalow should not have been made a cause of dispute as if it was a division of some private property. The distribution and allotment together with ear-marking of a Bungalow to a Minister or to an elected representative is only for the purpose to ensure that a representative of the masses in this democracy is given facilities to enable him to discharge his obligations and serve the interest of the people. The facilities provided are not personal benefits, the retention whereof is only till the representative serves the interest of the people subject to the Constitutional and legal limits as prescribed. In the above circumstances, we do not find any reason much less a Constitutional or a legal infirmity so as to warrant exercise of

discretion under the extraordinary jurisdiction endowed upon this Court under Article 226 of the Constitution of India. We are certain that the rights which are being agitated upon are not such rights so as to place them at par on the pedestal of legally enforceable indefeasible rights. The Letters Patent Appeal, therefore, lacks merit and is, accordingly, rejected.

26. In the aforesaid case, the leaned Division Bench of Patna High Court while answering the question as to whether the appellant can insist to occupy the same Bungalow which was allotted to him as a Minister when he was in the earlier government, held that with the change of Government, the authority to allot and re-allot came as a necessary concomitant for exercise of discretion by the new Government in the matter of allotment of bungalows and the privilege to retain the bungalow was dependent upon the discretion of the Government subject to the condition that the allotment would be of the same category to the leader of opposition as that of a Minister.

27. Thus, I am of the considered view that the petitioners are required to vacate the presently occupied premises, as the Gazetted House Allocation Committee has allotted the earlier accommodation of the petitioners to another MLA and Minister, respectively, after change of the government. The petitioners by not evicting the presently occupied premises are infringing the right of the other allottees. The petitioners are the people's representative and, thus, their responsibilities are higher than a general government officer/employee. There is no doubt that the petitioners are entitled to government accommodations being the MLAs. In view of rule 5 of the Rules, 2004, there is a committee for allotment of the government premises i.e. Gazetted House Allocation Committee, which has allotted the premises in question to the petitioners, and the presently occupied premises of petitioner- Randhir Singh has now been allotted to Stephen Marandi, an MLA and a senior political leader and the presently occupied premises of the petitioner-Navin Jaiswal has been allotted to one of the Cabinet Ministers, namely, Hazi Hussain Ansari. The petitioners being the people's representatives are required to show good gesture setting high standards by vacating the presently occupied premises to their brother members. If the petitioners have any grievance with regard to the premises in question, they may agitate the matter before the Gazetted House Allocation Committee under the provisions of Rules, 2004. It is evident that earlier also when the petitioner-Randhir Singh had raised grievance against the allotment of premises E-104 and had requested the Secretary, Building Construction Department, Government of Jharkhand, he has been re-allotted House No.E-6, Sector-II, HEC, Dhurwa, Ranchi vide impugned notification no.587(Bha.)/Ranchi dated 21st May, 2020. Nonetheless, the petitioner- Randhir Singh cannot retain the presently occupied premises even after demitting the office of Minister of the State Government. Similarly, the petitioner- Navin Jaiswal also cannot retain the premises which has now been allotted to a Cabinet Minister. If this practice is allowed to continue, there will be an anarchy in the matter of allotment of government accommodation/premises.

28. The learned counsel for the petitioner-Randhir Singh has assiduously contended that the premises in question has been occupied by a senior police officer, moreover the structure of the premises has also been changed by constructing boundary wall inside the premises. Even if the said fact is taken to be true, the same would not entitle the petitioner to retain the possession of the presently occupied premises, which has now been allotted to another Member of Legislative Assembly. The allegation of unauthorized occupation of the premises in question by a senior police officer has been denied by the Advocate General. It has been submitted by the learned Advocate General that the said police officer is using the ground floor of E-6 building and since the 1st floor was vacant, the same was being utilized by him temporarily in which he had put his household items which have now been removed. The learned Advocate General has also submitted that a boundary wall has been erected inside the premises to segregate the first floor from the ground floor for providing an arrangement of separate entrance for the petitioner.

29. So far the judgments relied upon by Mr. Ajit Kumar, learned Senior Counsel for the petitioner-Navin Jaiswal to contend that if the law provides for an action to be done or taken in a particular manner and procedure, the same has to be done in that manner and procedure only, otherwise the same cannot be done at all, I find that the Gazetted House Allocation Committee has followed the earlier precedent while allotting government accommodations to the Ministers/M.L.A after the new government was formed. Since neither the allotments of the petitioners have been cancelled under Section 3 of the Act, 2002 nor any order has been passed under Section 4 of the Act, 2002 for their eviction by the competent authority, there was no requirement of serving notice either in Form-A or Form-B. Hence the judgments relied upon by the learned senior counsel are not applicable in the present cases.

30. In view of the facts and circumstances of the present case and considering the submission of the learned Advocate General with respect to the present condition of the premises of E-6, the petitioner- Randhir Singh is directed to vacate the presently occupied premises i.e. F- type accommodation (Pashupalan Bhawan) within a period of two weeks from the date of the order with further direction to the respondent-State to provide vacant and peaceful possession of the premises in question (Premises No.E-6, Sector-II, HEC, Dhurwa, Ranchi) to the petitioner which has been allotted to him vide impugned notification no.587(Bha.) dated 21st May, 2020.

31. So far the petitioner-Navin Jaiswal is concerned, he has not raised any such difficulty in taking over the possession of Premises No.E-9, Sector-II, HEC, Dhurwa, Ranchi except that he has been living with his old parents. The specific stand of the learned Advocate General is that the said premises is a fully furnished accommodation containing all the amenities required for a decent and respectable living. Hence, the petitioner-Navin Jaiswal is also directed to vacate his earlier accommodation i.e. F-type, Forest Bungalow no.2 Doranda, Ranchi

within a period of two weeks from the date of order which has now been allotted to one of the Cabinet Ministers, namely, Hazi Hussain Ansari. The respondents are directed to hand over the peaceful and vacant possession of the newly allotted premises i.e. E-9, Sector-II, HEC, Dhurwa, Ranchi to the petitioner-Navin Jaiswal.

32. One of the contentions of the learned senior counsel for the petitioner-Navin Jaiswal is that he is living with his old aged parents and as such in view of the guideline of the Central Government dated 29.06.2020 he may not be forced to vacate the old premises till the Covid-19 restriction period is over. It is evident that the premises presently occupied by the petitioner is at "Doranda" and the newly allotted accommodation is at "Dhurwa" and as such he has to move about 05 kms. from his old residence within Ranchi township itself and as such I do not find the said ground raised by the petitioner is so strong to allow him to retain the premises occupied by him at present.

33. Before parting with the case, this Court is, however, prompted to appreciate the argument of learned counsel for the petitioners that at present there is no uniform rule/guideline/resolution in the matter of allotment of government accommodation to the Ministers/MLAs from the central pool keeping in view the entitlement and inter se seniority of the MLAs due to which there is a possibility of arbitrary and unreasonable decision making by the committee. In support of the said contention, learned counsel for the petitioners have invited the attention of this Court to the notifications dated 14th February, 2020 and 21st May, 2020, wherein some of the erstwhile ministers who are presently M.L.As. have been allowed to retain F-type accommodation and even few first time elected M.L.As. have been allotted the said accommodation (F-type), however, the petitioners have been denied the said category of accommodation. It is not understood as to on what basis an MLA who is on same footing can be provided different/higher type of accommodation.

34. The learned Advocate General has though contended that the Gazetted House Allocation Committee decides the entitlement of any member for a particular type of government accommodation taking into consideration various factors including intelligence report and their requirements, no such rule/guideline/resolution has been shown to the Court, which deals with the manner in which the entitlement of a Minister/MLA for a particular type/category of accommodation is decided keeping in view their inter se seniority. Moreover, it is evident from the record that the grade/type of the forest bungalow in the earlier allotment order with respect to the petitioner-Navin Jaiswal was not mentioned, however, in the present allotment, the same bungalow has been marked as F-type which suggests that the grade/type of government accommodations are not earmarked so as to make allotment to the Ministers/MLAs.

35. In the case of Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh & Ors., reported in (2011) 5 SCC 29, the Hon'ble Supreme Court has held as under:

"65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State."

36. The Constitution Bench of the Hon'ble Supreme Court in the case of S.G. Jaisinghani Vs. Union of India & Ors., reported in AIR 1967 SC 1427, has held as under:

"14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of law. (See Dicey -- Law of the Constitution -- 10th Edn., Introduction ex). "Law has reached its finest moments," stated Douglas, J. in *United States v. Wunderuck*, "when it has freed man from the unlimited discretion of some ruler.... Where discretion, is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes*, "means sound discretion guided by law. It must be governed by Rule, not by humour: it must not be arbitrary, vague, and fanciful."

37. In the case of *Zenit Mataplast Private Limited Vs. State of Maharashtra and Ors.*, reported in (2009) 10 SCC 388, the Hon'ble Supreme Court has held as under:-

27. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principle and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken

without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law (vide S.G.Jaisinghani Vs. Union of India & ors., AIR 1967 SC 1427; Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, AIR 1988 SC 157).

28. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1] the Apex Court held as under: (SCC pp. 98-99 & 105, paras 101, 105 & 129) "101. ... The State is to deny no one equality before the law. ***

105. ... Economic growth and social equity are the two pillars of our Constitution which are linked to the rights of an individual (right to equal opportunity), rather than in the abstract.

129. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review."

38. In view of the aforesaid ratio laid down by the Hon'ble Supreme Court, it may be observed that the standard and fairness is dependent upon certainty in the State action so that a class of persons should reasonably anticipate the proposed action, which is possible only when there is a fixed rule/regulation/guideline, and in absence of which there is a chance of arbitrariness and discrimination. Allotment of government accommodation is one of the statutory benefits given to the people's representative, which is perpetual in nature and as such framing of rule/regulation/guideline for fair and impartial implementation of the same is a sine qua non in just exercise of such power, any deviation therefrom would be subject to judicial review. Distribution of largesse must not be within the whims of any political entity and/or the authority, rather the State action should support transparent, sound, palpable and well defined policy.

39. The State Government is, thus, directed to frame a uniform rule/regulation/guideline within a reasonable period laying down the yardstick for deciding the entitlement of the Ministers/MLAs for a particular grade/type of earmarked government accommodation so as to have certainty and clarity in the State action and to avoid any possibility of biasness/favouritism in the matter of such allotment.

40. The writ petitions are, accordingly, dismissed with the aforesaid observations and directions.

41. The Registry of this Court is directed to serve a copy of this order to the learned Advocate General for its onwards communication to the Chief Secretary,

Government of Jharkhand for compliance.