

(2019) 01 PAT CK 0003

In the Patna High Court

Case No : Letters Patent Appeal No. 1543 of 2018, Civil Writ Jurisdiction Case No. 9017 of 2018

Tejashwi Prasad Yadav

APPELLANT

Vs

State of Bihar And Ors

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Bihar Ministers' Salaries and Allowances Act, 1953 — Section 2A
Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956 — Section 2A, 14(2)
Bihar Government Premises Allotment Administration Pool Rules, 1996 — Rule 2(Ka), 3(ka), 4, 7(Kha)11
Constitution of India, 1950 — Article 164, 226

Citation : (2019) 1 PLJR 508

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Abhinav Srivastava, Raushan, Lalit Kishore, Bishwa Bibhuti Kumar Singh, Kumar Ravish, Kashyap Kaushal

Final Decision : Dismissed

Judgement

1. This appeal against the judgment of a learned Single Judge dated 6th of October, 2018 raises a question more of propriety than of legality involving the retention of a bungalow by an elected representative of the people, presently occupying the status of the leader of opposition in the Bihar Legislative Assembly.

2. This Court is called upon to pronounce upon an issue which is more of a crisis of identity than of any ideology involving protection of rights. The issue appears to be more of accommodating diverse ambitions of occupancy of Bungalows in this great march of democracy. The contestants in this case have set up their competing claims which is founded more on convenience and expediency and in reality not for any laudable public purpose or for upholding majesty or rule of law. If one examines the issue on plain common sense then the issue is what is sauce for the goose is sauce for the gander. The facts of the case remind us of

the Latin maxim enunciated by the Roman thinker, Tacitus, "Rebus cunctis inest quidam velut orbis", which means in all things there is a kind of law of cycles. This legal maxim can be best illustrated by understanding the movement of a pendulum of a clock that always swings back. It further reminds us of what Benjamin Disraeli said in his speech in the House of Commons on 24th January, 1860 "how much easier it is to be critical than to be correct". The rival claims in this dispute do not even seem to be a matter serious enough verifiable in law yet the ambitions resulting in a contest have been given a legal framework which we are obligated to answer. The appellant and the Respondent No. 5 are contesting for a sanctuary with Government facilities which they know would not be a matter of permanent occupancy, yet the Court has to discharge its obligations under the law.

3. The appellant upon being elected as a Member of the Legislative Assembly in the 2015 Assembly Elections came to be part of a coalition government that was formed immediately thereafter and the appellant was inducted as a Deputy Chief Minister in the newly formed Government. Vide office order dated 11th of December, 2015 issued by the Estate Officer, Bungalow No. 5, Deshratna Marg, Patna was allotted to the appellant as his official quarter on the basis of a decision taken by the Gazetted House Allotment Committee under the Bihar Government Premises Allotment Administration Pool Rules, 1996 on 5th of December, 2015.

4. The coalition Government in which the appellant was a Deputy Chief Minister was dissolved on 26th July, 2017 and a new Government was formed.

5. The appellant came to be elected as the leader of the opposition after the formation of the new Government in which the Respondent No. 5 came to be inducted as a Deputy Chief Minister. The Respondent No. 5 was till then the leader of the opposition and was occupying Bungalow No. 1, Polo Road, Patna. Thus, the position occupied by the appellant came to be occupied by the Respondent No. 5 and vice versa with the change of Government.

6. The allotment of a house was initially governed by the provisions of Section 2A of the of The Bihar Ministers' Salaries and Allowances Act, 1953 which provides for under:-

"2A. Residence of Ministers-(i) Each Minister shall be entitled, without payment of rent, to the use of a furnished residence throughout his term of office and for a period of one month immediately thereafter at Patna or at such other place as the State Government may, from time to time, for the purposes of this Act, declare to be the headquarters of the Government for such period as may be specified in such declaration.

(ii) No charge shall fall on the Minister personal in respect of the maintenance of such residence.

(iii) The expenditure on furnishing and maintenance of the residence provided

under this section shall be on such scale and subject to such monetary limits as the State Government may, by rules, determine.

Explanation- For the purposes of this section, the expression "residence" includes the staff quarters and other building attached with it and the garden thereof and 'maintenance of residence' includes payment of local and other taxes and even supply of water and electricity."

7. The power of allotment then was referable to The Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956 where Section 2A of the said Act provides as under:-

"2A. Creation of pools and allotments of quarters.-(1) The State Government may by notification create one or more pools and allocate Government premises (residences/quarters) to such pool or pools out of Government premises (residences/quarters) and may also transfer Government premises (residences/quarters) from one pool to another pool.

(2) The State Government may allot Government premises (residences/quarters) to persons who are under the control of the executive power of the State Government or entitled for a residence/quarter under any other law."

(3) The State Government may allot Government Premises to various Departments/Authorities/Boards/Commissions/ Statutory Bodies for their official use for the period, the order is in force."

8. The aforesaid Section 2A of the 1953 Act and Section 2A of the 1956 Act should be separately kept in mind as they are under different Acts. The 1953 Act now stands superseded by enactments referred to hereinafter.

9. For the purpose of allotment rules were framed under Section 14(2) of the aforesaid 1956 Act, namely, The Bihar Government Premises Allotment Administrative Pool Rules, 1996.

10. A fresh enactment was legislated, namely, The Bihar Ministers' (Salary and Allowances) Act, 2006 in supersession of the earlier legislations being Act No. 15 of 2006. In exercise of the powers of Section 4 of the said Act, rules were framed afresh on 23rd September, 2006 and Rule 7 (Kha) prescribes that a Minister shall be entitled to a furnished premises within the new capital area.

11. Then comes the provisions of the Bihar Legislative Assembly (Salary, Allowances and Pension of Members) Act, 2006, Act No. 16 of 2006. This Act defines a Minister as contemplated under Article 164 of the Constitution of India and also defines the Leader of the Opposition duly recognized as such in the Legislative Assembly. Section 3 thereof provides for that facilities shall be available as prescribed under Rules and Section 4 provides for similar such provisions for the Leader of the Opposition.

12. Separate Rules framed under Act No. 16 of 2006 were also promulgated on 23rd September, 2006 by His Excellency the Governor in exercise of the powers

under Section 8 of the said Act. In the said Rules, Rule 2 (Ka) defines leader of the opposition and Rule 3(ka) provides for that the leaders of the opposition in both the Houses of Assembly shall be entitled to the same salary, allowances and other facilities as the Ministers of the Government. The aforesaid legal provisions being applicable have not been disputed at the Bar.

13. In the aforesaid backdrop of the law governing allotments, it appears that after the appellant ceased to be a Minister and became the leader of the opposition after 26th July, 2017 under a notification dated 18th August, 2017, an order was passed on 29th August, 2017, whereby the Bungalow occupied by the appellant, namely, Bungalow No. 5 Deshratna Marg, Patna came to be ear-marked and allotted to the Respondent No. 5 who had now become the Deputy Chief Minister. A corrigendum to this order was issued on 12th September, 2017 to the effect that the Bungalow was especially ear-marked for the Deputy Chief Minister/Senior most Minister of the Government. This was followed by a notice on 20th September, 2017 to the appellant to vacate the premises, whereupon the appellant appears to have represented the matter, but his requests were declined on the ground that the Bungalow had been ear-marked for the Deputy Chief Minister who was the Respondent No. 5 in order to facilitate the discharge of his obligations attached to the post.

14. The appellant, however, continued to occupy the Bungalow, whereupon the District Magistrate was called upon vide order dated 19th April, 2018 to evict the appellant from the premises in question.

15. There is also no dispute about the fact that the appellant has been allotted Bungalow No. 1, Polo Road, Patna which is being presently occupied by the Respondent No. 5. It is not in dispute that both the Bungalows are of the same category which a Minister or a leader of the opposition is entitled to occupy.

16. Assailing all the aforesaid orders issued against the appellant and calling upon him to vacate the premises, the writ petition giving rise to this appeal was filed contending that the appellant continues to enjoy the status of a Minister, being the leader of opposition, and as such he also is entitled to retain the same Bungalow, inasmuch as, his status according to the rules referred to hereinabove continues to be that of a Minister who is also entitled to the allotment of a Bungalow of the same category. It is, therefore, contended by the appellant that there was no rationale in calling upon the appellant to vacate the Bungalow which he is otherwise entitled to occupy being the leader of the opposition. It is urged that this has been done with a malicious intent and for serving no fruitful purpose. Even otherwise, in the absence of any rationality for swapping the Bungalows occupied by the appellant and the Respondent No. 5, the action is arbitrary and unreasonable.

17. The State contested the said claim and maintained that after the appellant ceased to be the Deputy Chief Minister on 26th July, 2017, he ceased to be a Minister and, therefore, had no entitlement to occupy the premises. No rules or

statutory provisions have been violated. Apart from this, even if he became the leader of opposition and was entitled to a Bungalow, the fresh allotment order in no way either reduces his position or diminishes his entitlement. The appellant has no indefeasible right to continue to occupy the Bungalow when he has been allotted a Bungalow of the same category to which a Minister is entitled and is presently occupied by the Respondent No. 5. The State maintained that in the absence of any such entitlement to retain the same premises and there being no infirmity in the action taken by the State Government in the matter of allotment, there was no material so as to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India as neither the fundamental rights nor the legal rights of the appellant were affected in any way.

18. The learned Single Judge after having assessed the law applicable on the issue came to the conclusion that the appellant could not maintain the petition as none of his rights were being violated nor the action of the Government could be said to be arbitrary or unreasonable. The writ petition was, accordingly, dismissed that has given rise to this appeal.

19. The matter was heard by us on 20th December, 2018 and the following order was passed calling upon the learned Advocate General to respond to the submissions raised on behalf of the appellant :-

"Heard Shri Abhinav Srivastava, learned counsel on behalf of the appellant.

The contentions which have been advanced by him are based on the facts narrated in the writ petition and the documents brought on record that are founded on the exercise undertaken by the Government on the strength of the Bihar Government Premises Allotment Administrative Rules, 1996.

It has been pointed out by the learned counsel that the dispute has arisen on account of the decision said to have been taken by the Premises Allotment Committee under its powers and functions under Rule 11 of the 1996 Rules. Even though the learned counsel contends that, as a matter of fact, no such decision was, in fact, taken in accordance with Rules nor could the committee have taken a decision to annul and modify the allotment already made to the petitioner in respect of the premises known as Bungalow No. 5, Deshratna Marg. The background in which this allotment was made is that after the last assembly elections, a Government was formed captioned as 'The Grand Alliance Government' in which the petitioner was inducted as a Minister and was designated as the Deputy Chief Minister with certain portfolios. As a consequence of his taking oath as a Minister, the petitioner became entitled to allotment of a premises keeping in view the provisions of the 2006 Act, namely, The Bihar Legislative Assembly (Members' Salary, Allowances and Pension) Act, 2006, read with the provisions of The Bihar Ministers (Salary and Allowances) Act, 2006 and the rules framed thereunder, whereby a Minister is entitled for the allocation of a Bungalow and the leader of the opposition is entitled for the same privilege. This allotment was made under the Office Memo. dated 11.12.2015 of the Public

Building Construction Department, of the Government of Bihar, copy whereof has been filed as Annexure-1 to the writ petition.

It appears that on account of certain political developments, the reigns of Government altered with the coming in of a new coalition Government of the National Democratic Alliance and, consequently, the petitioner's status came to be altered as he became the leader of the opposition on being elected and modified by the Speaker of the Assembly. It goes without saying that the leader of the opposition, undisputedly, is of the same rank for the purposes of such entitlement and privileges as are admissible to a Minister of the Government. The petitioner, therefore, continued to occupy the same premises even thereafter.

The dispute commenced when the impugned orders came to be passed on the basis of certain alleged decisions said to have been taken under the 1996 Rules by re-allotting the same premises to the respondent No. 5 who came to be designated as the Deputy Chief Minister with certain portfolios enjoying the same capacity as the petitioner when he was in power. It may not be unnecessary to further state that the Respondent No. 5 was the leader of the opposition prior to the formation of the present Government and was occupying Bungalow No. 1 Polo Road in Patna. Under the impugned arrangements, which have now been undertaken and were under challenge before the learned Single Judge, as well as before this Court in appeal, simply swapped the petitioner's residence with that of the Respondent No. 5, thereby allotting Bungalow No. 5 Deshratna Marg to the Respondent No. 5 and the Bungalow No. 1, Polo Marg to the petitioner. In order to justify the aforesaid inter-change of Bungalows, it is pointed out by the learned counsel that the reason given is about the proximity that is required between the residence of the Chief Minister and the Deputy Chief Minister, which according to the appellant does not fulfill any purpose with regard to either governance or otherwise in any public function and, therefore, such a reason was absolutely unnecessary to be invoked for the purpose of inter-change of these Bungalows. It is further submitted that not only this, in order to further justify the action, the respondents came up with an order of earmarking Bungalow No. 5, Deshratna Marg for the senior most Minister/Deputy Chief Minister. It is contended that even though there is no such constitutional description of Ministers in terms of Article 164 of the Constitution of India, yet neither seniority nor the status of the portfolio in any way can be a justification for earmarking the bungalows.

It is further submitted that there are no norms and guidelines fixed or even preferred for the purpose of earmarking and, therefore, the impugned actions taken cannot be justified even under the discretionary powers which are alleged to be exercised by the respondents in the matter of allotment. In essence, the argument is that the impugned actions are whimsical and capricious and appeared to be an outcome of malice and vendetta. It is urged that if the prescription of the rules requires an executive act to be performed in the manner as indicated in the Rules, then the respondents ought to have adhered to the

same and thereby could have exercised discretion only in accordance with law and not otherwise.

Learned counsel for the petitioner, to support his submissions in relation to the arguments advanced while criticizing the impugned actions, has relied on the judgements of the Apex Court in the case of Mahesh Chandra vs. Regional Manager, U.P. Financial Corporation And Ors., AIR 1993 SC 935, paragraph 15, Dipak Babaria vs. State of Gujarat, (2014) 3 SCC 502, and J. Jayalalithaa vs. State of Karnataka, (2014) 2 SCC 401. Certain passages of 'De Smith's Judicial Review' have also been cited at the bar to contend that the impugned actions ought to have been in exercise of judicious discretion and not a whimsical decision for no valid purpose. It is urged that the respondents, being public functionaries, are expected to act fairly and there being no element of any fulfilment or impediment in public policy, there was absolutely no occasion for this inter-change of bungalows giving rise to this dispute. Learned counsel, therefore, submits that the impugned orders ought to have been quashed but the learned Single Judge, without appreciating the aforesaid position of law in correct perspective, has dismissed the writ petition. Hence, this appeal.

The Court has also examined the provisions that deserve to be noted that are the provisions contained in the relevant Statute on the basis whereof the construction of the rules relating to the exercise of power has to be interpreted. For this, reference may be had to the provisions of Section 2A of the Bihar Government Premises (Rent Recovery and Eviction) Act, 1956, which is extracted hereinunder:

"[2A. Creation of pools and allotment of quarters. - (1) The State Government may by notification create one or more pools and allocate Government premises (residences/quarters) to such pool or pools out of Government premises (residences/quarters) and may also transfer Government premises (residences/quarters) from one pool to another pool.]"

"(2) The State Government may allot Government premises(residences/quarters) to persons who are under the control of the executive power of the State Government or entitled for a residence/quarter under/ any other law."

Subsection (2) of the aforesaid Section clearly lays down that the State Government may allot Government Premises (Residences/Quarters) to persons who are under the control of the executive power of the State Government or entitled for a residence/quarter under any other law.

The said Act under Section 14 makes a provision that the State Government may by notification make rules for carrying out the purposes of this Act. In exercise of the powers thereunder, the 1996 Rules, referred to hereinabove, have been framed. It is the argument of the learned counsel for the petitioner that under the said provisions, it is the aforesaid rules which are to be invoked, but in the present case the said rules, even if applicable, have been violated.

It is in this context that the allotment procedure has to be considered in the light of the 2006 Act and the Rules framed thereunder that are meant for allotment of premises, the entitlement whereof is being claimed by the petitioner not as a matter of routine, but as a matter of such entitlement which is authorized under law. It is in this context that it is urged that the issue is justiceable and on the grounds already taken and mentioned hereinabove the exercise of powers by the respondent authorities are unsustainable in law.

The respondents have come up with a counter affidavit as well as a supplementary counter affidavit. A mention has made by Shri Vishwa Vibhuti Kumar Singh, Assistant Counsel to the learned Advocate General that since the learned Advocate General is not available today on account of his personal reasons, therefore, the matter may be adjourned for 3rd of January, 2019. Accordingly, the learned Advocate General is requested to respond to the aforesaid submissions by the date fixed.

Put up on 3rd of January, 2019."

20. An affidavit has been filed on behalf of the State Government bringing on record the office order dated 17th May, 2011 and 22nd March, 2016 relating to such allotments to contend that this convention of ear-marking of Bungalows for Ministers was in vogue and on previous occasions such directions have been issued. In the counter affidavit that was filed before the learned Single Judge on behalf of the respondent-State as well as the supplementary counter affidavit it was impressed upon the Court that the ear-marking was to facilitate the proximity of the Deputy Chief Minister to the Chief Minister's Bungalow and that was for valid administrative reasons so that the Chief Minister and the Deputy Chief Minister reside in close quarters to enable them to discharge their functions.

21. The decision to ear-mark and to allot the premises to the Deputy Chief Minister/Senior Minister was taken earlier and was confirmed by the Committee functioning under the 1996 Rules on 12.09.2017.

22. This has been heavily contested by the appellant and Shri Abhinav Shrivastava, learned counsel has urged that neither was there any purpose for ear-marking the Bungalow for a Deputy Chief Minister nor was there any rationale behind this new plea of proximity to be maintained between the Bungalows of the Chief Minister and the Deputy Chief Minister. According to him, this has got nothing to do with the smooth administration of the Government and the discharge of functions by these Constitutional authorities. The resolution dated 12.09.2017 is an eyewash and has been manipulated. He submits that under Article 164 of the Constitution of India there is no post like a Deputy Chief Minister or a senior Minister which phrases have been used for the purpose of ear-marking of the Bungalow in question. It is the contention of Shri Shrivastava that all this was manipulated in the manner as has been explained in the writ petition as also in the affidavit filed in support of this appeal. He, therefore, submits that the learned Single Judge did not appreciate the criticism of the

manner in which the power came to be exercised by the Government mala fide against the appellant in correct perspective. The submission is that in the absence of any reasonableness in the action of the Government, the impugned orders directed against the appellant deserved to be set aside but the learned Single Judge has declined to exercise discretion which deserves to be reversed.

23. On the other hand, Shri Lalit Kishore, learned Advocate General has urged that keeping in view the past practice of ear-marking Bungalows while making allotments it cannot be said that the Government has for the first time mala fide passed orders against the appellant. His contention is that looking to the office memorandum dated 22nd March, 2016 it is more than obvious that the previous Government, of which the appellant was the Deputy Chief Minister, has itself exercised the privilege of ear-marking Bungalows and even to an extent of allotting Bungalows to former Chief Ministers for their life time. In this background, it is not open to the appellant to raise any plea about the exercise of authority by the Government and the concerned department to ear-mark a Bungalow. He, therefore, contends that the learned Single Judge was fully justified in accepting the stand of the State and in view of all the submissions aforesaid, this appeal also deserves to be dismissed.

24. Having gone through the pleadings, the rules and the submissions advanced, we are convinced that neither the appellant nor the Respondent No. 5 are in any way concerned with any public interest in the matter. They appear to be contesting their competing claims as if a vested right exists to occupy a particular premises, the choice whereof is dependent upon the exercise of powers by those who are in authority. It is evident that both the Bungalows namely 5, Deshratna Marg, Patna and 1, Polo Road, Patna are of the same category to which the appellant and the Respondent No. 5 are entitled for allotment and occupation, as per the rules reliance whereon has been placed by the respective parties. The question is of bona fide exercise of powers by the competent authority. There is no room for doubt that the power ultimately rests with the Government to make an allotment. The status and the authority of the person entitled to occupy a Bungalow is well defined in the rules. The question is that with the change of this position of authority from Deputy Chief Minister to the leader of the opposition and vice versa, can result in re-allotment or re-allocation of Bungalows or not.

25. The allotment has to be to the Minister or the leader of the opposition. There was a change of Government which is undisputed. This was not a case where the Legislative Assembly was reconstituted afresh but the fact remains that with the same constitution of the Assembly, there was a change in Government and which coincidentally resulted in the change of office of the appellant and the Respondent No. 5 in the same capacities. The appellant was a Minister of the earlier Government that had exercised its authority in ear-marking and allotting Bungalows. It is obvious that there was a change in the constitution of the Government and its Ministries and this, therefore, did bring about a situation

where the subsequent Government cannot be said to be denuded of its authority to allot Bungalows to its newly inducted Ministers or to the newly elected leader of the opposition. If the ultimate power vests in the State Government, which is also evident from Section 2A of the 1956 Act, then the concerned Committee had the authority to make allotments or alter the same under the directions of the newly formed Government.

26. The question then crops up as to whether the power exercised was mala fide, capricious or arbitrary? It is here that we have not been able to find any material which can be termed as a malicious exercise of power resulting in arbitrariness and to that extent we entirely agree and adopt the reasoning given by the learned Single Judge.

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 re-allot 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.