

(1999) 05 DEL CK 0086
In the Delhi High Court
Case No : L.P.A. No. 173 of 1999

Vijay Darda

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 79 DLT 309

Hon'ble Judges : Devinder Gupta, Acting C.J.; Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : Shanti Bhushan, Rakesh Tikku and Bal Kishan, for the Appellant;
Arun Jaitley, Senior Advocate and NIT is Dikshit, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, A.C.J.

1. The Estate Officer on 10.2.1999 passed an order directing the appellant to vacate Bungalow No. 12, Teen Murti Lane, New Delhi within 15 days of publication of the order. Appeal of the appellant filed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was dismissed on 10.3.1999 by Shri S.N. Aggarwal, Additional District Judge, Delhi, exercising powers of Appellate Authority under the Act. The appellant challenged both the orders by filing a petition under Article 227 read with Article 226 of the Constitution of India, which was registered as C.M.(Main) 181/99. On the miscellaneous application (CM.819/99) learned Single Judge passed an ex parte order staying the operation of the order of eviction. After hearing learned Counsel for the parties, Single Judge by the impugned order passed on 22.4.1999 vacated the earlier order of stay but directed that the impugned order dated 10.2.1999 passed by the Estate Officer shall not be enforced for one week. Appeal is against the said order.

2. At the stage of admission, we heard Mr. Shanti Bhushan, learned Senior

Advocate appearing for the appellant as also Mr. Arun Jaitley, learned Senior Advocate appearing for respondent No. 2. Certain salient facts highlighted during arguments may be noticed:

3. The appellant is a Sitting Member of Rajya Sabha. On 10.7.1998 he applied for allotment of accommodation, indicating his first preference for Bungalow No. 10, Gurudwara Rakabganj Road. On 13.7.1998 he was allotted said Bungalow No. 10, Gurudwara Rakabganj Road, New Delhi on vacation of the said accommodation by its earlier occupant. Under of para 9(a) of the Accommodation Circular letter, the appellant was asked to communicate his acceptance to Rajya Sabha Secretariat within 5 days of the issue of the said allotment letter, failing which it was informed that allotment will be deemed to have been refused. The appellant conveyed his acceptance for the allotment through letter dated 16.7.1998.

4. On 9.7.1998 Shri Kapil Sibbal, another Sitting Member of Rajya Sabha also applied for accommodation. On 24.7.1998 Bungalow No. 12, Teen Murti Lane (on vacation) was allotted to him. Similarly, he was asked to communicate his acceptance within 5 days. On 25.7.1998 Shri Kapil Sibbal communicated his acceptance.

5. On 27.7.1998 the appellant wrote to the then Chairman, House Committee, Rajya Sabha, which Committee is responsible for allotment of accommodation to Members of Rajya Sabha that he was in urgent need of accommodation and prayed that in place of 10, Gurudwara Rakabganj Road, Bungalow No. 12, Teen Murti Lane be allotted to him.

6. It is the case of the appellant that on 28.7.1998, considering his urgent need, Bungalow No. 12, Teen Murti Lane, New Delhi was allotted to him on vacation by its occupant and simultaneously on the same day Shri Kapil Sibbal was informed that in lieu of Bungalow No. 12, Teen Murti Lane, he has been allotted Bungalow No. 10, Gurudwara Rakabganj Road, subject to vacation.

7. The stand of respondent No. 2 in the reply, filed before learned Single Judge is that the then Chairman, House Committee of Rajya Sabha, Mr. Alladi P. Rajkumar was given to understand by the appellant that Shri Sibbal would have no objection to allotment of Bungalow No. 10, Gurudwara Rakabganj Road in lieu of 12, Teen Murti Lane and on this impression that the appellant might have consulted Shri Kapil Sibbal and obtained his consent to alternative allotment, without cancelling the allotment of Shri Sibbal for 12, Teen Murti Lane, the aforesaid order was passed on 28.7.1998 allotting 12, Teen Murti Lane to the appellant and 10, Gurudwara rakabganj Road to Shri Kapil Sibbal.

8. It appears that on 29.7.1998 Shri Kapil Sibbal met and later addressed a letter to Mr. Alladi P. Rajkumar, the then Chairman, House Committee, Rajya Sabha categorically stating that he never consented to alternative accommodation, nor he had been consulted in the said matter. In the letter it was also stated that on receipt of allotment letter dated 24.7.1998 he had visited

Bungalow No. 12, Teen Murti Lane, which earlier had been allotted to one Shri R.P. Modi, who had ceased to be a Member of Parliament and found one Shri Kamal Morarka, who was not a Member of Parliament, residing in the said bungalow for petty long time. Shri Sibbal informed the Chairman that the allotment to the appellant of 12, Teen Murti Lane after the same had already been allotted to him (Shri Sibbal), of which he had also conveyed his acceptance on 25.7.1998 was non-est. After he was apprised by Shri Sibbal of the true state of affairs through letter dated 3.8.1998, Shri Alladi P. Rajkumar requested the appellant to arrange to hand over vacant possession of 12, Teen Murti Lane at the earliest, failing which he would be left with no alternative but to place the matter before the House Committee. The appellant was informed that allotment of 12, Teen Murti Lane had first been made to Shri Sibbal and it was only because the appellant had conveyed the so called consent of Shri Sibbal to exchange the bungalow, that the allotment was changed. In the said letter, it was also pointed out by the Chairman that Shri Kamal Morarka was still occupying 12, Teen Murti Lane.

9. The appellant on 21.8.1998 sent his reply to the letter dated 3.8.1998 stating that he had rightly been allotted accommodation on 28.7.1998, which had already been occupied by him on the same day. Allotment was made to him considering his request for urgency. He also informed the Chairman that he never gave any impression that any understanding had been reached between him and Shri Sibbal. In view of this reply Shri Sibbal in his letter dated 22.8.1998 requested the Chairman that the entire matter be placed before the House Committee for Resolution. In this backdrop on 6.12.1998 the House Committee in its meeting considered the cases of the appellant and Shri Sibbal in detail and decided that the allotment of Bungalow No. 12, Teen Murti Lane to the appellant be cancelled and he be given 15 days time to vacate the bungalow, failing which eviction proceedings be initiated against him. House Committee also took a decision that allotment of Bungalow No. 10, Gurudwara Rakabganj Road in the name of Shri Sibbal be withdrawn.

10. The decision of the House Committee was conveyed to the appellant on 3.11.1998. As no reply was received from the appellant, respondent No. 2 took a decision and on 26.11.1998 informed the appellant that allotment of Bungalow No. 12, Teen Murti Lane had been cancelled with effect from 26.11.1998 and calling upon him to vacate and hand over the vacant possession immediately. As there was no response, respondent No. 2 approached Estate Officer-cum-Deputy Director of Estates (Litigation), Directorate of Estates, Nirman Bhawan, New Delhi praying for initiation of eviction proceedings on the ground that the appellant after 26.11.1998 was in unauthorised occupation. The Estate Officer passed the aforementioned eviction order. The appellant's appeal was dismissed.

11. Learned Counsel for the appellant contended that House Committee cancelled the appellant's valid allotment made on 28.7.1998 in violation of the principles of natural justice. No show cause notice was issued. No opportunity for

hearing was afforded. Till cancellation, no alternative accommodation was offered to the appellant, though he was still a Sitting Member of Rajya Sabha. The petition was still pending before the learned Single Judge. There were questions of fact to be gone into in the petition, which had been preferred by the petitioner that whether or not any impression had been given by the appellant to the then Chairman that Shri Sibbal will have no objection for the change in allotment. The allotment in favor of the appellant by order dated 13.7.1998 and in favor of Shri Kapil Sibbal by order dated 24.7.1998 was only tentative. It was subject to vacation of the accommodation. The allotment made on 28.7.1998 in favor of the appellant was valid. He had taken possession on 28.7.1998. Therefore, the learned Single Judge was not justified in vacating the earlier order of stay granted on 15.3.1999. If there was no merit in the contention as raised in the petition, then appropriate order could have been passed in the main petition. However, while keeping the main petition for hearing and vacating the interim stay order granted earlier, the learned Single Judge did not appreciate the immense hardship and irretrievable loss which would be caused to the appellant and as against this there would have been no loss and/or irretrievable injustice being caused to the respondents if interim order was to be extended.

12. We have given due consideration to the submissions made by learned Counsel for the appellant and are of the view that the appeal has no force and deserves dismissal.

13. No doubt that the vacation of stay is likely to have the effect of making the petition preferred by the appellant against the orders of Estate Officer and of the Appellate Authority as infructuous but that alone cannot be a ground to continue with the stay order. In order that stay might continue, it was necessary for learned Single Judge to consider the primary and basic requirement of there being a good prima facie case. Learned Single Judge observed that the ex parte ad interim order of stay deserved vacation in view of the order of cancellation passed by the House Committee of Rajya Sabha. Obviously, the appellant cannot claim any right in the accommodation except on the basis of some authority. House Committee, being the sole authority for making allotments, it necessarily has to be taken as the authority empowered to cancel the allotment. The appellant was duly apprised by the Chairman of the House Committee through letter dated 3.8.1998 of the true state of affairs in which the Chairman passed the order changing allotments. His attention was drawn to the impression, which the Chairman gathered. The appellant on 21.8.1998 sent his reply to the letter dated 3.8.1998.

14. In the affidavit of respondent No. 2, it is stated that from the letter dated 3.8.1998 it appears that the appellant had conveyed to the then Chairman that Shri Sibbal would have no objection to the allotment of Bungalow No. 10, Gurudwara Rakabganj Road in lieu of Bungalow No. 12, Teen Murti Lane. Therefore, the Chairman of his own without cancelling allotment of Shri Sibbal, made a fresh allotment of Bungalow No. 12, Teen Murti to the appellant and of

10, Gurudwara Rakabganj Road to Shri Sibbal and on the very next day Shri Kapil Sibbal met the Chairman and informed that he had never given any consent. Therefore, the matter obviously had to go to the House Committee, which took into consideration the appellant's version as also the version of Shri Kapil Sibbal. Considering the facts that allotment had already been made respectively in favor of the appellant and Shri Kapil Sibbal on 13.7.1998 and 24.7.1998 of Bungalow No. 10, Gurudwara Rakabganj Road and 12, Teen Murti Lane, it passed a resolution on 28.7.1998 cancelling the subsequent allotment of 12, Teen Murti Lane in favor of the appellant and of 10, Gurudwara Rakabganj Road in favor of Shri Kapil Sibbal.

15. Prima facie we are of the view that the resolution of the House Committee is not bad, as contended by learned Counsel for the appellant on the alleged violation of the principles of natural justice. The appellant was duly informed by letter dated 3.8.1998 of the version of the then Chairman of the House Committee about his impression, which he gathered on the appellant's request for change of allotment and the version of Shri Kapil Sibbal. The appellant had due opportunity to rebut the same, which opportunity he availed by sending a detailed reply. All papers were laid before the House Committee, which on detailed deliberation passed resolution. The contention of learned Counsel for the appellant that first allotment was only a proposal and not a firm allotment, prima facie cannot be accepted, especially when the appellant as well as Shri Kapil Sibbal had conveyed their acceptance. Consequently, learned Single Judge was right in vacating the *ex parte* stay when he found that in the absence of a valid authorisation, there was no prima facie case.

16. For the above reasons, we are of the view that there is absolutely no case for interference. Dismissed.