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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.11491/2009

AVTAR KRISHAN BALI

Through Mr. B.L. Wali, Adv.

..... Petitioner

versus

ESTATE OFFICER DIRECTORATE OF ESTATES,
NIRMAN BHAWAN.....

..... Respondents

Through Mr. Ashok Singh, Adv. for UOI.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

ORDER
24.12.2010

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1. The writ petitioner has assailed the action of the respondents in cancelling the allotment of the Quarter no.K-4/12, Sector II, DIZ Area, Gole Market, New Delhi – 110 001 which was allotted to her husband Late Shri Avtar Krishan Bali. The cancellation was effected on the ground that Shri Avtar Krishan Bali had superannuated from service on the 30th June, 2006. The petitioner has also challenged the action of the respondents in treating her husband and his family as unauthorised occupants of the said flat and initiating proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which had culminated in the passing of an order of eviction dated 18th June, 2007 by the Estate Officer. A challenge is also laid to the appellate order dated 25th August, 2009 passed by the learned District Judge – IV in P.P.A. No.14/08/07 upholding the said order of eviction dated 18th June, 2007.

2. It is noteworthy that there is no challenge to the averments made in

the writ petition and no counter affidavit has been filed in the instant matter. Repeated opportunities were given for this purpose. Costs for grant of opportunity to file the counter affidavit were imposed. Neither counter affidavit has been filed nor costs stand paid till date.

3. It is undisputed that the petitioner along with several other similarly placed persons, was compelled to leave the Kashmir valley on account of the extreme violence faced by their community. Shri Avtar Krishan Bali was employed with the Intelligence Bureau, Ministry of Home Affairs and was forced to leave the Kashmir valley in the year 1990 because of extreme violence faced by the community especially those serving in organisations as the Intelligence Bureau and threat to their lives and their family. It has been stated that after Late Shri Avtar Krishan Bali and his family (including his wife Phoola Bali) were compelled to so leave their house in Kashmir; their movable goods were looted by the miscreants in the year 1995 and the only residential house of the petitioner stands burnt.

4. Shri Avtar Krishan Bali and now his widow Smt. Phoola Bali have premised the present challenge on the ground that impact of the impugned orders is that the petitioner will be rendered homeless for the failure of the respondents to discharge their constitutional mandate and obligations. The respondents have been unable to protect the life and property of the petitioners. It is urged that in this background, the action of the respondents and the afore-noticed orders impact the basic human and guaranteed fundamental rights of the petitioner. The petitioner has sought

enforcement of his right to shelter which is an integral part of his right to life.

5. Sh. Avtar Kishan Bali made a representation dated 22nd February, 2007 bringing out the extreme facts and circumstances being faced by the petitioner and requesting permission to retain the government accommodation on license fee being paid to him for a further period and/or till arrangement was made by the respondent for their rehabilitation and houses are rebuilt and normalcy returns to the Kashmir valley. He requested for time to continue to occupy the premises till he was able to return to the dignity without any threat to the life. Instead of favourably considering the representation, the respondents without application of mind and arbitrarily issued a notice dated 24th April, 2007 to him. On 15th May, 2007, Sh. Bali appeared before the respondents and requested for permission to retain the accommodation on humanitarian conditions. On 18th June, 2007, Sh. Bali informed the respondent no. 1 that Bhushan Lal Pandit who had retired from the Border Security Force, R.K. Puram on 31st May, 2006 and was similarly situated as the petitioner had been permitted to retain the government accommodation by the respondent no. 2 and that he may also be allowed to retain the government accommodation. It was pointed out that the petitioner's representation to the concerned ministry was still pending. Despite these facts, the order of eviction was passed under the Public Premises Act which was recieved by him on 25th June,

2007.

6. My attention is drawn also to representations dated 19th June, 2007 and 25th June, 2007 by the petitioner seeking favourable consideration of the request to continue to occupy the premises on grounds of security and humanitarian grounds.

The respondents failed to consider these requests of the petitioner.

7. It is noteworthy that this writ petition was one amongst a bunch of similar writ petitions which had been heard and reserved for judgment at the time when Shri Avtar Krishan Bali, the petitioner had unfortunately expired. So far as the other cases in the said petitions are concerned, the same stand allowed by a detailed judgment dated 30th November, 2010 passed in WP (C) No.15239/2004 P.K. Koul & Ors. Vs. Estate Officer & Anr.

8. The petitions before the court included a writ petition by Smt. Phoola Raina, the widow of Late Shri T.N. Raina a government employee being WP (C) No.15698/2004 which was also allowed by the judgment dated 30th November, 2011. So far as the claimed rights or the violations urged by Smt. Phoola Rani, widow of Shri Avtar Krishan Bali, petitioner herein and Smt. Phoola Raina (petitioner in WP (C) No.15698/2004) are concerned, the respondents are unable to point out any distinction. It is undisputed that so far as the threat to life of Smt. Phola Rani is concerned, that subsists even today. The respondents do not state that she can safely return to any residence in the Kashmir valley. It is also not averred that this petitioner owns any property into which she could shift. It is not even suggested that

there is any difference in the constitutional rights or entitlement to the rules or benefits under any scheme between Late Shri Avtar Krishan Bali's widow Smt. Phoola Devi and the other petitioners. Not a single circumstance which could disentitle this petitioner to grant of relief against the threatened eviction and violation of her constitutional rights has been placed or made out in the case.

9. The respondents do not dispute that Smt. Phoola Bali was a dependent of the allottee Shri Avtar Krishan Bali and that she is also an Internally Displaced Person (IDP). It is also not the respondent's case that she is a person of means who is living in Delhi in circumstances which are different from those of the others from her home State. There is no material to show that this petitioner has any alternative shelter under the schemes and policy of the respondents or has been adequately compensated. It is evident that till such time that the respondents are able to meaningfully and reasonably rehabilitate this petitioner, her forcible eviction under the shield of statutory process is also without any doubt constitutionally impermissible.

10. Several cases filed by similarly placed persons displaced from Kashmir asserting similar rights have been placed before this court. The SLP (C) No.7639/1999 entitled **Shri J.L Koul & Anr. Vs. State of Jammu & Kashmir & Ors.** was so filed in 1997 and a rehabilitation scheme was placed by the Government of India before the court for the first time in 2006 which proceedings culminated in the judgment dated 3rd December, 2008

after twelve years. Adjudication was necessitated on similar issues in **132 (2006) DLT 672 P.K. Handoo vs. Estate Officer & Anr.** decided on 2nd August, 2006 in WP (C) No.11742/2005; **M.K. Koul Vs. UOI & Ors.** decided on 11th April, 2008 in WP (C) No.1065/2007. I find that the Central Administrative Tribunal had passed a detailed judgment on 30th December, 2002 in OA No. 2378/2002 entitled **Tej Kishan vs. UOI. & Ors.** In all these cases by final adjudications, the similarly situated petitioners have been permitted to continue with occupation of the quarter concerned. Despite the proceedings and judgments in the abovenoticed matters, the respondents have still proceeded against the petitioner in the manner noticed above.

11. The judgment in Tej Krishan (supra) as well as P.K. Koul (supra) notes that the respondents have admittedly made discretionary allotments in favour of persons who are not Government servants. It is not explained as to why such discretion could not be exercised in favour of this petitioner. Certainly permitting such a dependant of the deceased allottee to continue to occupy the accommodation under occupation till alternate shelter was made available would not violate any rule as well. The same would clearly be in consonance with the constitutional mandate and the principles which emerge from the several judgments noticed above. It is clearly evident that such a dependant would be permitted to continue to occupy the allotted accommodation till such time that the respondents meaningfully resettle and rehabilitate the IDPs or they acquire their own alternatives or if the respondents are able to show that they have the means to make alternate

meaningful and reasonable arrangements.

12. In view of the above discussion, absent any alternative; the admitted failure of the respondents to protect the constitutional rights of the petitioner and the threats which subsist in case they were compelled to return to their State; given the arbitrary and wrongful failure to exercise the discretion under the SR-317 B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 in favour of the petitioners; the drastic violation of the fundamental and basic human rights of the petitioner which results upon such implementation of the statutory provisions; keeping in view the schemes of rehabilitation and resettlement of Kashmiri migrants of the respondents as well as the several judicial precedents and administrative orders in respect of similarly placed persons, the action of the respondents in treating the petitioner as unauthorised occupants and proceeding against them under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was completely misdirected and unwarranted.

13. It is evident that the learned appellate court in the appeal also adopted a hyper technical approach ignoring the serious violation of constitutional rights which has resulted to the petitioner and the drastic consequences of rendering them homeless which results on implementation of the eviction order. The constitutional rights of the litigant are not only well established but are without any limitations. The orders do not indicate that the several important questions raised by the petitioners were deemed

to deserve an adjudication including the manner in which superior courts²⁷ had dealt with similarly situated displaced persons. The learned courts paid no attention to the declared policy of resettlement and rehabilitation of Government or the constitutional rights and guarantees which all courts are bound to enforce.

14. The action of the respondents in denying favourable consideration of the request to continue to occupy the quarters suffers from the vice of discrimination and arbitrariness. The decision to treat the petitioners as unauthorized occupant and proceed against him under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 as well as the impugned orders are in violation of the constitutional guarantees and basic human rights of the petitioner, and do not show application of mind to relevant material or consideration thereof. The impugned decision to cancel the allotments, the action under the Public Premises Act;; and the impugned orders of the Estate Officer and the appellate orders are constitutionally and legally not sustainable.

15. Detailed reasons have been recorded in the P.K. Koul (supra) judgment as to why similar impugned action and the orders deserve to be set aside and quashed. For the reasons which have been recorded in the said judgment dated 30th November, 2010, it has to be held that the action and the impugned orders of the respondents cannot be sustained and have to be set aside and quashed.

16. Instead of facilitating the resettlement and rehabilitation of the

petitioners who is any internally displaced person as per the declared policy, 28
she and family have arbitrarily been exposed to the additional trauma of the
threat of forcible evictions and the uncertainty and insecurity of seeking the
adjudication by pursuing litigation. In these circumstances, the petitioners
are entitled to exemplary costs from the respondents inasmuch as the
threat of forcible eviction by the process resorted to by the respondents
impacts the fundamental rights of the petitioners.

17. In this background, while allowing the writ petition and having regard
to the number of the petitions which have been unnecessarily generated
and the lack of material with regard to the persons responsible for the
unfortunate decision making, only the litigation costs of the present case is
being awarded.

18. It is essential to make it clear that it is only in the peculiar fact
situation of the present cases and the extreme hardship of the petitioners
involving violation of the fundamental rights and human rights of the
citizens of India that such continued occupation of the public premises by
the petitioners has to be permitted. No inference can be laid that any
person having a property of its own or not having suffered the violations
aforenoticed can or has been permitted to continue to indefinitely occupy
the public premises. Therefore, the principles laid down in this judgment
would bind only a fact situation as in the present case or similar
circumstances when the State has been unable to protect the fundamental
and basic human rights of its citizens compelling them to be displaced from

the place of their residence and is not in a position to ensure their safety or security in case they return to the place of their residence. 28

Result

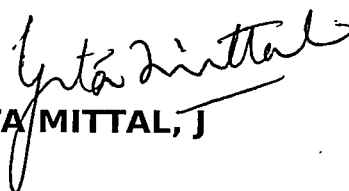
19. In view of the above, it is directed as follows:-

- (i) The impugned order dated 25th August, 2009 cancelling the allotment of the Quarter no.K-4/12, Sector II, DIZ Area, Gole Market, New Delhi – 110 001; the order of eviction dated 18th June, 2007 passed in the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act and the appellate order dated 25th August, 2009 are hereby set aside and quashed.
- (ii) A direction is issued to the respondents to make all endeavours to adequately, effectively and reasonably rehabilitate and resettle the petitioner, making provisions for appropriate accommodations for them.
- (iii) Till such time, the respondents are able to provide alternative accommodation to the petitioner and his/or her family anywhere in Delhi, the petitioner shall be allowed to retain and occupy the allotted accommodation being the Quarter no.K-4/12, Sector II, DIZ Area, Gole Market, New Delhi – 110 001 subject to payment of normal licence fees.
- (iv) The petitioner shall be entitled to costs of Rs.25,000/- which shall be paid within a period of three months from the date of passing this order.

This writ petition is allowed in the above terms.

Dasti.

December 24, 2010
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GITA MITTAL, J