

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.11.2014

+ **W.P.(C) 7831/2010 & CM No.20246/2010**

RATTAN LAL RAINA

..... Petitioner

versus

**INDIA METEOROLOGICAL DEPARTMENT
AND ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr B. L. Wali.

For the Respondents : Mr Amit Mahajan, CGSC with Ms K. Barua.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 03.11.2010 communicating the decision of the respondents to decline the petitioner's request to retain the residential accommodation being Qr. No. D-23, Type IV, C.A.D. Colony, Jor Bagh, New Delhi (hereafter referred to as 'said premises'), for a further period till the situation improves in his native place (i.e. Kashmir) enabling his safe return or till he is able to make an alternate arrangement. The petitioner claims to belong to a minority community from the State of Jammu & Kashmir and a victim of terrorism and strife in that State. It is the petitioner's case that his ancestral residential house in Srinagar was destroyed in 1991 and, therefore, he would be entitled to reparation and provision of a residential accommodation by the Government. It was

submitted that on account of the failure of the State to protect his property and maintain law and order in the State of Jammu & Kashmir, the petitioner would be entitled to retain the residential accommodation which was provided to him as an employee of the respondents.

2. The controversy to be addressed is, whether the petitioner has a vested right to continue to retain and occupy the said premises for an indefinite period of time?

3. Briefly stated, the relevant facts for considering the controversy are as under:-

3.1 The petitioner joined the services of the Metrological Department (Government of India) on 04.02.1974 as a temporary senior observer. His initial posting was at Srinagar, Kashmir. He was, subsequently, promoted to the post of Scientific Assistant in 1983 and continued to serve at that post in Srinagar till March 1990.

3.2 Thereafter, the petitioner was posted at Chandigarh in March 1992. It is stated that the petitioner had to leave Kashmir Valley on account of the terrorist activities in that region. The petitioner was, thereafter, posted at Delhi and in August 1992 was allotted the said premises for his residential purpose. The petitioner continued to be stationed at New Delhi till his superannuation from services on 31.03.2010.

3.3 While stationed at Delhi, the petitioner was promoted as a Professional Assistant on 02.01.1997 and, thereafter, as Assistant Meteorologist, Grade-I on 22.12.2005.

3.4 After his retirement from services, the petitioner requested, by a letter dated 22.07.2010, that he be permitted to retain the said premises till 30.11.2010 on account of his ill health. This request was acceded by the respondent and by an Office Memorandum dated 02.08.2010, the petitioner was permitted to retain the said premises on medical grounds, for eight months, that is, till 30.11.2010. However, the petitioner was also advised that no further extension would be granted.

3.5 The petitioner, thereafter, sent a letter dated 22.10.2010 requesting that he be permitted to retain the said premises for a further period till the situation improves in his native place for his safe return or till he is able to make an alternate arrangement. The respondents rejected the said request by the impugned order.

3.6 By an order dated 23.11.2010, this Court directed that *status quo*, as to the possession of the said premises, be maintained subject to the petitioner paying the normal license fees. The said *ad interim* order was extended from time to time. By an order dated 14.08.2013, this court directed the petitioner to file an affidavit disclosing his immovable properties, if any, owned by him or his wife as on 01.01.2009 and any transactions entered into by them with respect to those properties. In compliance with the said order, the petitioner filed an affidavit affirmed on 09.10.2013.

3.7 The said affidavit indicated that the petitioner had purchased a plot of land measuring approximately 1900 sq. ft. (7 marlas) in Jammu in the year 1997. Thereafter, in the year 1994, the petitioner acquired another plot of

land measuring 90 sq. meters. bearing no. 869, Sector – 45, Faridabad for a sum of ₹2,78,000/-. The above said properties were, thereafter, sold by the petitioner in the year 2006. On 30.10.2006, the petitioner and his wife jointly acquired another property (being a residential flat) at Vashi, Navi Mumbai for a sum of ₹14,50,000/-. This property too was sold by the petitioner and his wife on 11.09.2008 for a consideration of ₹32,00,000/-. Around the same time, the petitioner purchased an apartment in Faridabad for a stated consideration of ₹23,00,000/-. This apartment was also, subsequently, sold by the petitioner. The petitioner states that the said property was sold due to financial constraints/family problems.

4. The learned counsel for the petitioner contended that the petitioner is a migrant from Kashmir. He has further drawn the attention of this Court to a certificate issued by the Fire Service Department, Srinagar which indicates that on 01.11.1991, the residential house, which was partly owned by the petitioner, was damaged by fire and the cause of the fire was being investigated. He submitted that the petitioner has no other residential accommodation and, therefore, would be rendered homeless if evicted from the said premises. He further contended that the petitioner has a fundamental right of shelter under Article 21 of the Constitution of India and that the Government has an obligation to provide shelter to the petitioner and his family members in view of the fact that the petitioner cannot go back to the Kashmir Valley on account of on going militancy in the region.

5. The learned counsel for the petitioner relied heavily on the decision of this Court in **P.K. Koul v. Estate Officer and Anr.: W.P.(C) 15239/2004**

and other connected matters, decided on 30.11.2010, in support of his contention that the petitioner was entitled to retain the said premises and that the respondents had an obligation to provide shelter to the petitioner. The learned counsel also referred to the decision of the Supreme Court in **J.L. Koul & Ors. v. State of J & K & Ors.: (2010) 1 SCC 371.**

6. The learned counsel for the respondents, on the other hand, submitted that the decision of the Supreme Court in the case of **J.L. Koul** (*supra*) was only applicable to the 31 oustees who were appellants in that case. He further contended that even in that case, the right to retain accommodation was not for an indefinite period but was only limited till an appropriate scheme for their rehabilitation was framed.

7. In my view, the judgments of this Court in **P.K. Koul** (*supra*) and **Union of India & Ors. v. Vijay Mam: LPA 332/2011 and other connected matters, decided on 01.06.2012**, have to be read in context of the facts in those cases and the principles of law that were applied for providing sustenance to the said decisions. As noted by the Division Bench in **Vijay Mam** (*supra*), the single judge of this Court in **P.K. Koul** (*supra*) had examined the matter from various angles including fundamental rights guaranteed under Article 19(1)(e) and Article 21 of the Constitution of India; the international conventions and norms as well as the report of the UN Committee on economic, social and cultural rights wherein the Indian Government was called upon to address the issue of rising homelessness; “*Guiding Principles on Internal Displacement*” presented to UNCHR by the Secretary General of UN in 1998; Protection of Human Rights Act,

1993 and the decision of the Supreme Court in *J.L. Koul (supra)* and adopted an approach to do substantial justice.

8. However, none of the principles that were applied in the said decision would entitle the petitioner to indefinitely extend his occupation of the said premises as provided to him by the Central Government. The Constitutional guarantees under Article 21 of the Constitution of India formed the bedrock of the decision of this Court in those cases. The right to live with dignity has been read into Article 21 of the Constitution of India. This Court noted that it would encompass provision of basic needs such as shelter and food. This Court also referred to “*Guiding Principles on Internal Displacement*” presented to UNCHR by Secretary General of United Nations in 1998 which provided that all Internally Displaced Persons (IDPs) would have the right to adequate standard of living. “Principle 18” of the said report which was relied upon by this court in *P. K. Koul (supra)* is quoted below:-

“Principle 18

1. All internally displaced persons have the right to an adequate standard of living;

2. At the minimum, regardless of the *circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:*

(a) Essential food and potable water;

(b) ***Basic shelter and housing;***

(c) Appropriate clothing; and

(d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.”

9. The perspective that this Court came to bear on the matter was one of broad justice - in what this Court termed as “exceptional circumstances”- by ignoring technicalities of law and adopting a humanitarian approach. This was made amply clear by the Division Bench of this Court in *Vijay Mam (supra)* in the following words:-

- “16. No doubt the matter raises certain fundamental issues. It is a mix of constitutional rights of the respondents on the one hand and the right of the Government to claim back the possession of the accommodation after their retirement. It is also necessary to make a preliminary remark that the issue has arisen in exceptional circumstances and exceptional circumstances call for exceptional remedies. The underlined objective has to be to dispense justice, of course, justice in accordance with law, but at the same time justice pragmatic with mercy and compassion, wherever it is possible within the parameters of law and without doing violence to the legal principles.
17. The simplistic overtures, as perceived by the appellants taking it to be simple cases under PP Act, has to be denounced. The Court cannot countenance trivialization of the issue as sought to be projected. This matter definitely has strong hue of human rights. The approach of learned Single Judge in examining the matter from that angle is definitely reasonable, just and proper. The said approach is adopted with the purpose of doing justice in the broader sense of the matter keeping aside narrow and pedantic approach. Situations may arise when, to do complete justice in the matter, courts have to ignore the technicalities of law.

18. We have already noted above the circumstances in which services of the respondents were transferred from the Government establishments situated in Srinagar to New Delhi with primary objective of saving their lives. Most of these respondents have lost their residences in Srinagar. All of them have lost their hopes of returning back in near future. In a case like this, as stated in detail at a later stage, it becomes the duty of the State to take care of their residential needs by providing adequate shelter. Correspondingly, it becomes the right of the respondents to claim that shelter. Throwing out these respondents from the Government accommodation they are occupying without providing alternate shelter would amount to gross violation of their fundamental rights under Article 14 and 21 of the Constitution. The entire matter, therefore, has to be dealt with by adopting an approach which is justice oriented.”

10. It is relevant that even in *Vijay Mam (supra)*, this Court did not contemplate for the allottees to indefinitely occupy government accommodation but directed that the allottees not be evicted till an appropriate scheme could be framed by the Government. The Division Bench expressly clarified that “*after the scheme is framed, the cases of the respondents can be scrutinised in terms of that scheme and those not found eligible for rehabilitation in terms thereof can be ousted from the present accommodation*”.

11. The substratal principle followed by this Court, while considering the cases of ousted Kashmiri Pandits who occupied the government accommodation, was to ensure that they were not rendered homeless and their basic needs to live a life with dignity were addressed and an endeavour was made not to render those displaced persons homeless

without considering their rehabilitation. The reference to the “*Guiding Principles on Internal Displacement*” presented to UNCHR by Secretary General of United Nations in 1998 is important as it indicated the State’s obligation to provide an adequate standard of living for IDPs. A bare perusal of these principles clearly indicate that provisions for shelter and other basic needs to IDPs are meant as temporary measures to ensure their rehabilitation and not as an indefinite grant for all times to come, or as a penance by the Government for their failure to protect the property and securing the safety of the displaced persons. This Court considered the situation to be one where a humanitarian approach was necessary and drew sustenance by the Constitutional guarantees under Article 21 and 19(1)(e) of the Constitution of India.

12. In this context, the aforesaid judgments cannot be read as an authority for the proposition that all displaced persons who were employed in the government and were provided accommodation, acquired a vested right to continue to occupy the accommodation indefinitely as compensation by the State. Reading the aforesaid judgments to provide this right would be violation of the principles marshaled by the Court for ensuring aid on humanitarian grounds.

13. A bare perusal of the facts of the present case clearly indicate that the provisions of Article 21 or 19(1)(e) of the Constitution of India cannot be invoked by the petitioner to retain the accommodation provided by the Government. In the first instance, it is relevant to note that the petitioner was transferred from Srinagar to Chandigarh in March 1992 and thereafter posted at Delhi, in August 1992. The petitioner served in Delhi for almost

18 years, thereafter. This is a sufficiently long period for the petitioner to overcome the need for any immediate aid at the cost of the State. The purpose of providing shelter to displaced persons is only to assist them to overcome the initial trauma of being displaced and to pick up the strings of their life. The sustained and stable employment of 18 years outside the State of Jammu and Kashmir provided the petitioner adequate rehabilitation and thus disentitles him for any further humanitarian aid on account of displacement.

14. More importantly, the petitioner is not a destitute person as is sought to be argued on his behalf. The petitioner had sufficient means to purchase a plot of land in Jammu in the year 1997 and in Faridabad in the year 2004. Thus, within a period of 7 years from being displaced from the Kashmir Valley, the petitioner had acquired the means for his rehabilitation and was in a position to build his own shelter. Subsequently, the petitioner did better; he sold the properties acquired in 1997 and 2004 and along with his wife acquired a residential flat in Vashi, Navi Mumbai. This clearly indicates that the petitioner had the means for meeting his rudimentary needs, which were sought to be ensured by this court in **P.K. Koul** (*supra*), for the displaced persons by making good the Constitutional guarantees.

15. It has been stressed by the learned counsel for the petitioner that currently the petitioner does not own any residential property. However, this cannot be a reason to permit the petitioner to indefinitely occupy the government accommodation that was provided to him as a part of his remuneration package. The petitioner (jointly with his wife) had acquired a residential flat at Vashi, Navi Mumbai. He had sold the same for a

consideration of ₹32 lacs. The petitioner had also acquired/booked a residential apartment in Faridabad which is also stated to have been sold subsequently. In my view, the principle of ensuring that shelter is provided to displaced persons would have little application in the case of the petitioner who much after being displaced, demonstrably, had the ability to purchase property to provide for his residential needs. The fact that he has subsequently sold the same for other purposes or other exigencies would not entitle him for the relief of shelter on account of him being displaced in 1990.

16. It is relevant to note that in ***J.L. Koul*** (*supra*), there were 54 persons who had been provided government accommodation and 23 had voluntarily vacated the accommodation. The Supreme Court, thus, considered the immediate relief required by 31 persons and directed the State Government to frame a scheme. Similar directions were given by a Division Bench of this Court in ***Vijay Mam*** (*supra*) and the Court restrained the Government from evicting the allottees till such scheme was framed. The Court further expressly clarified that “*after the scheme is framed, the cases of the respondents can be scrutinised in terms of that scheme and those not found eligible for rehabilitation in terms thereof can be ousted from the present accommodation*”. This also clearly indicates that the judgment of this court in ***Vijay Mam*** (*supra*) does not support the proposition that the Government would be obliged to provide accommodation to those persons who had subsequent to their displacement, acquired the means to provide for themselves.

17. Notably, the petitioner had only requested that he be permitted to retain the premises for a period of eight months after his superannuation on account of his ill-health. The petitioner did not request, at the material time, for retaining the accommodation on account of his inability to return to Kashmir. The petitioner took this ground for the first time in his letter of 22.10.2010, undoubtedly, in view of the stay order granted by this Court and the Supreme Court; the petitioner made a reference to the said proceedings in his next letter of 30.11.2010. The petitioner has now retained the accommodation for over 4 ½ years after his superannuation. Thus, in any event, the petitioner has already received the benefit of subsidized shelter for a considerable period of time. As stated earlier, the same cannot be extended indefinitely.

18. Accordingly, the writ petition and pending application are dismissed. However, it is directed that the petitioner be permitted to continue to occupy the said premises for further period of six months in order to enable him to make alternate arrangements.

VIBHU BAKHRU, J

NOVEMBER 10, 2014
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