

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

+ **W.P.(C) No.5871/2014**

% **13<sup>th</sup> January, 2015**

RAVI SHANTI BHUSHAN .....Petitioner

Through: Petitioner in person.

VERSUS

DIRECTORATE OF ESTATES & ANR. .... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for  
UOI.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. The petitioner, an employee of the Supreme Court, is presently living in government accommodation allotted to him in Mohammedpur, Moti Bagh, New Delhi. Petitioner is allotted Type-I category accommodation. Petitioner prays that since the accommodation at Mohammedpur has been declared to be dangerous and has to be vacated, petitioner should now be granted a fresh accommodation of Type-III category to which the petitioner is entitled to. Petitioner places reliance upon a memo of the government dated 5.9.2005 read with the Office Memorandum (O.M.) dated 15.9.2014. The sum and substance of the claim

of the petitioner is that though he has got Type-I category accommodation, he should now be granted Type-III accommodation and which accommodation of Type-III should be granted as out of turn allotment by overlooking those persons who have been standing prior in queue than the petitioner for Type-III category accommodation.

2. The question is that whether the petitioner is entitled to out of turn allotment to Type-III category accommodation though he is presently having only Type-I category accommodation.

3. The memo dated 5.9.2005 relied upon by the petitioner for out of turn allotment and O.M. dated 15.9.2014 read as under:-

**“Memo dated 5.9.2005**

**(x) Allocation of Vacancies of General Pool residences**

**Order of Preference:**

(a) Officers whose houses have been declared dangerous should get first priority and alternative accommodation should be provided to them in the same area as far as possible, failing which in adjoining/nearby localities.

(b) Officers occupying quarters required to be vacated for redevelopment or other public purposes in the same area, failing which in adjoining/nearby localities.

(c) After meeting the requirements of (a) and (b) above, the remaining vacancies should be allotted alternatively to officers on the change list and to officers sanctioned out of turn and ad hoc allotments/change.

**Office Memorandum**

**OFFICE MEMORANDUM**

**Sub: Guidelines for allotment of alternate general pool residential accommodation in the Automated System of Allotment on declaration of a house unsafe/dangerous or re-**

**development of government colonies or GPRA required for any other public purpose.**

The undersigned is directed to refer the subject mentioned above and to say that henceforth allotments of alternate general pool residential accommodation to allottees on declaration of a house unsafe/dangerous or re-development of government colonies or GPRA required for any other public purpose shall be done through Automated System of Allotment [ASA] with effect from 16.9.2014.

2. It has been decided with the approval of the competent authority that in case of complete government colonies declared unsafe/dangerous, the allottees of such colonies shall be placed enbloc over the unified (change/initial) waiting list for same type of accommodation and the allottees may make preferences of houses in the ASA for allotment.

3. In cases where individual houses in Government colony are declared as unsafe/dangerous the alternate allotment of accommodation to be made on priority on the following basis:

a) Vacancies in the same locality or nearby locality to be identified for priority allotment where such occupants would be given priority in the same type of accommodation over unified (change/initial) waiting list.

b) The allottee of ground floor accommodation may apply for ground floor and above and the allottee of first floor above may apply for first floor and above and allotment will be made accordingly.

c) Equal number of identified vacancies will be placed for allotment in ASA in relation to number of such unsafe/dangerous houses.

4. The request of allottee, whose residential accommodation declared as unsafe/dangerous by the concerned maintenance agency shall be entered into 'Unsafe/Accommodation Register' of ASA by the concerned Allotment Section.

5. It has been further decided that where a house declared as unsafe/dangerous for living, the declaration will be by an officer not below the rank of an Executive Engineer, CPWD and he should satisfy himself before issue of certificate of declaration. The unsafe/dangerous house(s) may be reported to NIC, Directorate of Estates online by CPWD on such declaration.

6. It has also been decided that where an entire government residential colony is declared unsafe/dangerous for living by CPWD or required to be vacated for redevelopment, a certificate of declaration from DG, CPWD will only be accepted along with the work plan to make the colony habitable within a period of 3 years in consultation with Works Division of Ministry of Urban Development.

7. This OM supersedes the instructions of the Directorate of Estates O.M. No.12035(1)/91-Pol.II dated 21.2.1991 and O.M. No.12035/16/2005-Pol.II dated 5.9.2005.”

4. I do not find anything in this memo dated 5.9.2005 and O.M. dated 15.9.2014 which allows a person to get out of turn accommodation of a higher category although the government is ready to give the petitioner same category accommodation from which the petitioner will be shifted on account of the said accommodation having been declared as dangerous. Surely, petitioner cannot break the queue with respect to the list created for Type-III category employees and when the petitioner will be entitled to Type-III category accommodation as per the seniority list created, the petitioner will be given Type-III category accommodation in accordance with the rules.

5. Petitioner, who appears in person, argues that government itself has violated its O.M. by giving out of turn allotment but the argument is misconceived because Article 14 of the Constitution of India is a positive concept and assuming there are any other alleged violations by the

government (and which of course have not been clearly established before this Court) the same cannot give any legal right to the petitioner merely because allegedly there may have been alleged illegal out of turn allotments.

6. Dismissed.

**JANUARY 13, 2015**  
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**VALMIKI J. MEHTA, J**