

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

% **Date of decision: 21st July, 2015**

+ **W.P.(C)6875/2015, CMs No.12580/2015 (for stay) & 12581/2015 (for exemption)**

RAVINDER KUMAR WALI **Petitioner**

Through: Mr. Rajinder Wali, Advocate.

Versus

UNION OF INDIA & ORS. **Respondent**

Through: Mr. Akshay Makhija, CGSC with Mr.,
Rohitendra Deb, Mr. Sanjugeeta Moktan and Ms.
Mahima Behl, Advocates for respondents 1 to 3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, having suffered an order of his eviction from Quarter No.C-17, Panchwati, Palam, Delhi Cant under the Public Premises (Eviction of Unauthorized Occupants) Act 1971, has filed this petition under Article 226 of the Constitution of India for retaining the said accommodation and impugning the order of his eviction.

2. It is the case of the petitioner:-

(i) that he is a permanent resident of State of Jammu and Kashmir at Srinagar;

(ii) that he, on 28th September, 1983 joined the service in the office of the Controller General of Defence Accounts under the Ministry of

Defence, and was from 1983 to 1985 posted at District Udhampur in Jammu and Kashmir and thereafter, from March 1985 to February 1989 in Leh, also in Jammu and Kashmir;

(iii) that though thereafter from 1989 till 1992 he was posted in Srinagar, but owing to the uncontrolled violence in the Kashmir Valley from 1989-1990 onwards and mass exodus of Kashmiri Pandits therefrom and due to threat to his life and liberty, was forced to migrate outside the state along with his family and was posted in Delhi since October, 1992;

(iv) that upon his posting in Delhi, he was allotted the aforesaid residential accommodation from Defence Accounts Department Pool and has continued in occupation thereof till date;

(v) that his wife got seriously unwell and the petitioner vide letter dated 8th April, 2013, opted for Voluntary Retirement to look after his ailing wife;

(vi) that the application of the petitioner for voluntary retirement was accepted vide letter dated 16th July, 2013;

(vii) that however, upon the health of his wife improving, the petitioner on 16th November, 2013, applied for re-instatement and

regularisation of his services and sought withdrawal of the application earlier made for voluntary retirement;

(viii) no decision on the aforesaid application was communicated to the petitioner; however, in the interregnum, the Estate Officer commenced proceedings and has vide letter dated 27th October, 2014 asked the petitioner to vacate the premises;

(ix) the petitioner again called upon the respondents to consider his application for reinstatement; however the respondents vide letter dated 15th May, 2015 informed the petitioner that his request could not be acceded to;

(x) that the petitioner has made a representation to the Defence Minister and the Prime Minister for sympathetic consideration and is making endeavours for being so reinstated.

3. Accordingly, the reliefs aforesaid have been claimed, to retain the aforesaid accommodation, either till the time that the petitioner is able to return to his home-town or any suitable accommodation is provided to him in Delhi.

4. Learned counsel for the petitioner being conscious that the aforesaid facts do not disclose any right in the petitioner to the reliefs claimed, has

rested his case entirely on dicta of a Single Judge of this Court in judgment dated 30th November, 2010 in WP(C) No. 15239/2004 titled ***P.K. Koul Vs. Estate Officer*** and other connected petitions. It is generally argued that the petitioners therein also being Kashmiri Pandits in occupation of government accommodation, had been allowed vide the said judgment to retain the said accommodation.

5. I have heard the learned counsel for the petitioner at length. The judgment aforesaid of the learned Single Judge relied upon by the petitioner was the subject matter of appeal in ***Union of India Vs. Vijay Mam*** 2012 SCC Online Delhi 3218 decided by a Division Bench of which the undersigned was a member vide judgment dated 1st June, 2012. I am told that Special Leave Petition against the judgment of the Division Bench of this Court is also pending consideration before the Supreme Court.

6. Be that as it may, in my opinion, the judgment of the learned Single Judge in ***P.K. Koul*** (supra), on which the claim of the petitioner is based and which was reaffirmed with certain modifications by the Division Bench, has no application to the matter in controversy and the petitioner cannot claim to be similarly placed as the petitioners in that case. The petitioners before this Court in ***P.K. Koul*** (supra) though undoubtedly Kashmiri Pandits but were

representing the Central Government in the Kashmir Valley in Intelligence Agencies, Paramilitary and Defence Services, Government Media and had become prime targets for the militants to the extent that list of persons who had to be targeted were published and circulated in the localities; family members and friends of such persons had also been killed and their properties destroyed for the message to permeate. It was as a result thereof that the said persons were evacuated from the Kashmir Valley on emergency basis to protect their lives and were posted in Delhi and since they did not have any accommodation in Delhi, were provided government accommodation on priority basis. However, after the said persons reached the age of superannuation, they were required to vacate the government accommodation and which lead the aforesaid petitions being filed. What lead the Single Judge and the Division Bench to allow the said persons to retain the said accommodation was the threat to the said persons and their family members attributable to the service which they were rendering for the government and which had resulted in their evacuation from the Kashmir Valley.

7. It is not the case of the petitioner that owing to any duty performed by him for the Ministry of Defence, he or his family members had become a

target for the militants or that it was for this reason that he was transferred to Delhi. Though, undoubtedly a bare plea is made in this regard, but it cannot also be lost sight of that the petitioner was an employee of the Central Government and his job was transferable and merely because he was transferred out of Srinagar, to Delhi, it cannot be inferred that there was any threat to him or his family or any need for evacuating them from the Kashmir Valley. There is absolutely nothing before this Court to show that the petitioner or his family are under any threat. The perception of threat has to be objective and by the authorities concerned and not subjective. Reference if any required can be made to *Parveen Kumar Beniwal Vs. Govt. of NCT of Delhi* MANU/DE/1304/2015 (DB) and *Shiv S. Sharma Vs. Union of India* MANU/DE/1024/2010.

8. There is another relevant factor which distinguishes the petitioner from the petitioners before this court in *P.K. Koul* (supra) and the group of petitions decided therewith. While all those persons had been required to vacate the government accommodation on reaching the age of superannuation, the petitioner herein, of his own volition, nearly two years back sought voluntary retirement from the Ministry of Defence. The petitioner being in occupation of official accommodation at the time of

making his application for voluntary retirement, ought to have known that in consequence thereof he would be required to vacate the said accommodation. The petitioner still went ahead and made application for his re-instatement only after receiving notices of cancellation of allotment and being asked to vacate. Merely because the petitioner may have applied for reinstatement (and which request inspite of the petitioner not showing any rule whereunder such a request can be made) and which request also has already been rejected by the appropriate authority, the petitioner could not have expected to continue in occupation of the government accommodation.

9. The petitioner has already overstayed in the official accommodation for more than two years. It cannot also be lost sight of that the government accommodation available is far less than the number of government servants posted at Delhi. The same results in long delays in allotment of accommodation, with the government employees being compelled to wait for long before they get accommodation. If persons, who have ceased to be government servants are permitted to so retain government accommodation on specious grounds, a day would come when there would be no accommodation left for the incumbents with all the accommodation available being in occupation of persons, who though at one time were

government employees, have ceased to be so.

10. It is also relevant to notice that the circumstances, in which *P.K. Koul* (supra) was considered, have substantially changed over a period of time. What may have been true about the militancy situation in Kashmir 10 years ago, cannot be said to prevail today. Thus, decisions of the courts influenced by a state of affairs prevailing at that time cannot be made precedent, when there has been a substantial change. The militancy in the Kashmir Valley is today not such, as the situation was 10 or more years ago. The petitioner for this reason also cannot be held to be entitled to get the benefit of the judgement in *P.K. Koul* (supra).

11. No other ground has been urged.

12. There is no merit in the petition. The same is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2015

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(corrected and released on 29th July, 2015)