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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 530/2015

KUMARI SELJA

....APPELLANT

Through : Mr.Kapil Sibal, Sr.Advocate Mr.A.S.Chandhiok, Sr.Advocate, Mr.Virender Ganda, Sr.Advocate instructed by Mr.Devdutt, Mr.Javedur Rehman, Ms.Sweta Kakkad, Ms.Yamini Khurana, Mr.Gautam Talukdar, Mr.Rajesh Imandar and Mr.Chaitanya Kaushik, Advocates

Versus

UNION OF INDIA AND ORS.

.....RESPONDENTS

Through : Mr.Sanjay Jain, Senior Advocate instructed by Mr.Jasmeet Singh, Advocates for UOI Ms.Zubeda Begum, Advocate with Ms.Sana Ansari, Ms.Vanessa Singh, and Mr.K.P.Singh, Advocates for Rajya Sabha

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LPA 531/2015

AMBIKA SONI

....APPELLANT

Through: Mr. Kapil Sibal, Sr. Advocate, Mr. A.S. Chandhiok, Sr. Advocate, Mr.Virender Ganda, Sr.Advocate instructed by Mr.Devdutt, Mr.Javedur Rehman, Ms.Sweta Kakkad, Ms.Yamini Khurana, Mr.Gautam Talukdar, Mr.Rajesh Imandar and Mr.Chaitanya Kaushik, Advocates

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CORAM :-

HON'BLE MR JUSTICE PRADEEP NANDRAJOG

HON'BLE MR JUSTICE RAJIV SHAKDHER

ORDER

07.09.2015

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LPA 530/2015 & CM No.14262/2015
LPA 531/2015 & CM No.14265/2015

1. These appeals have been preferred against a common judgment dated 30.07.2015 rendered by a Single Judge of this court. By virtue of the impugned judgment, the writ petitions filed by the appellants were dismissed. The appellants were further mulct with costs of Rs.25,000/- each. These costs were directed to be paid to the Directorate of Estates (in short the D.O.E.); a department which functions under the Ministry of Urban Development, Government of India (in short the M.U.D). A time frame of three months was given for this purpose.

1.1 Before we proceed further, we may indicate that we will be, for the sake of convenience, referring to the appellants, in the two cases, before us, by their names, wherever there is a reference to them, in their individual capacity. Collectively, we would continue to refer to them as the appellants.

2. We may note, at the very outset, while in the appeals filed, a complete reversal of the judgment of the Single Judge is sought, in the arguments advanced before us by Mr. Kapil Sibal, the learned senior counsel, the scope of the appeals has been confined to the observations made in paragraphs 39, 40 and 42. Mr. Kapil Sibal has, in no uncertain terms, indicated to us that the appellants would be willing to shift to a Type VII accommodation, to which they are entitled to, any which ways, even according to respondents 1 to 3, having regard to the fact that they enjoyed the status of former Union Cabinet Ministers and, presently, are Members of the Rajya Sabha.

3. Therefore, the entire thrust of Mr. Kapil Sibal's submissions was, that the observations made by the learned Single Judge were unnecessary and uncalled for. It was contended that the appellants had been in public life for several decades without having suffered a blemish. It was emphasized that the remarks made in the judgment were stigmatic.

3.1 Besides the aforesaid aspect, Mr. Kapil Sibal has also indicated that in so far as Kumari Selja was concerned, she would shift to the V.P. House (which is a guest house) by 15.09.2015, to await allotment of the house, located at 12, Safdarjung Lane; which is a Type VII accommodation and is likely to fall vacant in March, 2016. It was further conveyed that Kumari Selja, in the interregnum, would also be willing to be housed in any suitable Type VII accommodation provided, it is a single storey structure. The reason, Kumari Selja seeks a single storey structure, we were told, is, on account of security concerns.

3.2 In so far as Ms. Ambika Soni is concerned, Mr. Kapil Sibal informed us that she would shift from her present accommodation, that is, 22, Akbar Road, New Delhi, to Bungalow No.84, Lodhi Estate, New Delhi, which has been allotted to her, within next six (6) weeks provided, the new accommodation is made habitable. Mr. Kapil Sibal had concerns about the present state of the new accommodation allotted to Ms Ambika Soni.

3.3 On the other hand, Mr. Sanjay Jain, the learned ASG, who appears for respondent No.1 and 3, has opposed the prayer made on behalf of the appellants to expunge the observations made in the aforementioned paragraphs of the judgment. In support of his submissions, the learned counsel has relied upon the following judgments : ***P.K. Dave Vs. Peoples***

Union of Civil Liberties (Delhi) and Ors., AIR 1996 SC 2166 and State of Uttar Pradesh Vs. Mohd. Niam, AIR 1964 SC 703.

4. We have heard the learned counsels for the parties and perused the record. The principal issue, which was raised, by the appellants, before the learned Single Judge was : whether the D.O.E. had the authority and / or jurisdiction to seek vacation of the Type-VIII accommodation, allotted in favour of the appellants, by the Rajya Sabha Secretariat (i.e. respondent no.4)?

4.1 In support of this plea it was contended that since the allotment, in favour of the appellants, had been made by the House Committee of the Rajya Sabha, the cancellation of allotment could be made only with the consent of the House Committee. Reliance was placed on the relevant rules concerning the constitution of the House Committee and the manner in which it is required to function. The appellants had sought to contend before the learned Single Judge that allotment of a house, by the House Committee, was a perquisite given to a person who was a Member of the Rajya Sabha. It was, inter alia, also sought to be contended that the action of the D.O.E., in seeking vacation of the subject bungalows, without the consent of the Rajya Sabha Secretariat, amounted to a breach of privilege of the House. Assertions were also made to the effect that respondent no.1 to 3 have followed a policy of pick and choose.

4.2 An attendant issue, which arose for the consideration before the learned Single Judge concerned the entitlement of the appellants to a Type VIII bungalow; having enjoyed the status of a Union Cabinet Minister in the Govt. of India. To buttress this plea, the appellants had relied upon clause 4.18 of the Handbook for Members of Rajya Sabha.

5. The learned Single Judge, upon examining the issues raised before him, ruled that, merely because the D.O.E. had placed the subject bungalows in the Rajya Sabha pool for allotment by respondent no.4, could not take away the rights of D.O.E., which is otherwise, vested with the power to take requisite action with regard to Government bungalows. According to the learned Single Judge, the appellants did not have rights higher than those of a licensee, and therefore, the D.O.E. as the licensor had the authority to terminate the license. The learned single Judge thus, in effect, sustained the action of the D.O.E.

5.1 In so far as the other issue with regard to the appellants' claim for entitlement of Type VIII accommodation is concerned, the learned Single Judge rejected the same, as well. In reaching this conclusion, the learned Single Judge relied upon the guidelines referred to in the handbook of Members of the Rajya Sabha, under paragraphs 4.18.

5.2 The conclusion reached by the learned Single Judge was that, the appellants, who are presently Members of the Rajya Sabha and had held position of former Union Cabinet Ministers, were therefore, entitled to only Type VII accommodation. According to the learned Single Judge, a Type VIII accommodation was available only to those former Union Cabinet Ministers who, had also held, at some point in time, the position of either a Speaker of the Lok Sabha or, had been appointed in the past as a Governor of the State or, had been a former Chief Minister of a State. In so far as those Members of Rajya Sabha, such as the appellants, who had only held, in the past, the position of a Union Cabinet Minister, were according to the learned Single Judge, entitled to Type VII accommodation.

6. These two aspects, according to us, were the central issues, which the learned Single Judge, was called upon to deal with.

6.1 Pertinently, the learned Single Judge did note that the allotments of the subject bungalows were made just prior to the general elections. In Kumari Selja's case, the Rajya Sabha Secretariat (i.e. respondent no.4) had allotted Bungalow no.7, situate at Moti Lal Nehru Marg, New Delhi, on 11.04.2014, whereas in the case of Ms. Ambika Soni, the allotment was made on 04.03.2014.

6.2 The question, therefore is: was the learned Single Judge, right, in effect, observing that the allotments ought to have awaited the conclusion of the general elections, which were held between 07.04.2014 and 12.05.2014. We are of the view that as a matter of propriety, the appellants ought to have held their hands till the declaration of the results.

6.3 The connected issue, however, is and one which goes to the heart of grievance raised before us: as to whether, the observations made in paragraph 39 of the impugned judgement, broadly, to the effect, that since, there was a possibility of the political party to which the appellants belonged, ceasing to be the ruling party, the appellants, wrongfully got allotted to themselves the subject bungalows via the M.U.D. only to obviate the possibility of being left without bungalows or, even the observations made in paragraph 42 of the impugned judgement, that it did not behove the appellants who, are representatives of the people to contend that they were not bound by the norms, rules and regulations, framed by them – were at all relevant in the context of issues raised in the writ petition.

6.4 In our view, these observations, were not, perhaps necessary, in order to reach a decision qua the central issues raised in the petition. The decision on the issues raised could have been made without recourse to the said observations.

6.5 This is specially so, as even according to the learned Single Judge, there were no pleas of malafides raised by the respondents, in their pleadings, qua the allotments of subject bungalows in favour of the appellants.

6.6 Furthermore, there was, even according to the learned Single Judge, some amount of ambiguity in the guidelines formulated by the Rajya Sabha Secretariat for allotment of bungalows to their Members; especially in the case of those Members who had held, the position of Union Cabinet Ministers. The guidelines required interpretation; an exercise which was carried out by the learned Single Judge on account of their obvious ambiguity.

6.7 The judgments cited by Mr. Sanjay Jain, to our minds, do not, in any manner, impinge upon the power of the court to expunge observations if, they are not central to the issue(s) at hand. The Supreme Court has advised courts to exercise sobriety and to, refrain from usage of harsh words and intemperate language. Judges have been called upon to exercise self restraint as that is an intrinsic part of their judicial training and discipline. In this behalf, reference may also be had to the judgement of the Supreme Court in the case of *A.M. Mathur vs Pramod Kumar Gupta & Ors. (1990) 2 SCC 533* at pages: 536 (para 4), 538-539 (para 13 & 14).

6.8 Accordingly, the observations made in paragraphs 39 and 42 of the impugned judgment, which have been collated in Annexure 1, at page 61 of the paper book filed in LPA No.530/2015, are expunged. In so far as observations made in para 40 are concerned, these, appear to be a result of counsel for the appellants treading on to an area which was not necessary. Therefore, in our view, no expunction of observations made in paragraph 40 is called for.

7. Which brings us to the other issue, with regard to the assurance given by the appellants that they would vacate the subject bungalows. Accordingly, as indicated to us by Mr. Kapil Sibal, Kumari Selja would vacate Bungalow No.7, situate at Moti Lal Nehru Marg, New Delhi, which is, presently, in her occupation, by 15.09.2015. The respondents would allot to Kumari Selja, the bungalow located at 12, Safdarjung Lane, New Delhi (which is a Type VII bungalow), upon it being vacated by the present incumbent. In case, in the interregnum, other bungalows of Type VI and VII category, fall vacant, the same will be offered to Kumari Selja including the bungalows located at 1, Canning Lane, New Delhi and 10 Rajendra Prasad Road. Pending allotment of a bungalow, Kumari Selja will move into V.P. House, as contended by her counsel.

8. In so far as Ms. Ambika Soni is concerned, she would vacate her present accommodation i.e. 22, Akbar Road, New Delhi, on or before 10.10.2015. Respondents No.1 to 3, in the meanwhile, will ensure that the new accommodation allotted to her, which is located at Bungalow No.84, Lodhi Estate, New Delhi, is made habitable.

9. The appeals and the pending applications are disposed of, in the aforesaid terms. Since, the appeals have been partially allowed, the direction issued in the impugned judgment for payment of costs, is also set aside.

PRADEEP NANDRAJOG, J.

RAJIV SHAKDHER, J.

SEPTEMBER 07, 2015

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