

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8031 of 2015

Samrat Choudhary @ Rakesh Kumar S/o Shakuni Choudhary, Resident of Qr. No.43, Hardinge Road, P.S.- Sachivalaya District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. The Land Estate Officer, Building Construction Department, Bihar, Patna.
4. The Competent Authority, Building Construction Department, Bihar, Patna.
5. The Executive Engineer, Building Construction Department, Patliputra Division, Patna.
6. The District Magistrate, Patna.
7. The Additional District Magistrate, Law and Order, Patna.
8. The Secretary, Bihar Legislative Council, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s :	Mr. Basant Kumar Choudhary Mr. Mukesh Kant
For the State	Mr. Lalit Kishore, Sr. Advocate & PAAG Mr. S.A. ALAM
For the Council	Mr. Kaushal Kumar Jha
For the Intervenor	Mr. Tuhin Shankar

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
CAV JUDGMENT

Date: 18. 05-2016

The writ application assails the order contained memo no. 3238(bh) dated 25.03.2015 issued by the Estate Officer, Building Construction Department asking the petitioner to vacate Quarter No.43, Hardinge Road in the New Capital Area, Patna which was allotted to him as a Member of the Bihar Legislative Assembly. Later, he became a Minister of the State Government and continued in the same accommodation. By the impugned notice, he has been asked to vacate the same.

Heard Mr. Basant Kumar Choudhary, Sr. Counsel in support of the



writ application, Mr. Lalit Kishore for the State as well as Mr. K. K. Jha for the respondent-Bihar Legislative Council. I have also heard Mr. Tuhin Shankar in support of I.A. No. 2273 of 2016 for his impleadment to oppose the writ application. The applicant of I.A. No. 2273 of 2016 is the new allottee of the Quarter in question vide order dated 11.12.2015 (Annexure-1/1 to I.A. No. 2273 of 2016) pursuant to the recommendation of the House Allotment Committee as the intervenor respondent is presently a Minister of the State Government holding the charge of the Department of Industries and Science & Technology.

The counsel for the petitioner has urged that although the petitioner neither hold the post of the Cabinet Minister in the Government nor continues as member of the Bihar Legislative Council as an order disqualifying him to hold the said position is passed, yet he is entitled to continue in the said government accommodation as 03 categories of the Quarters falling under the Central Pool, Legislative Assembly Pool and Legislative Council Pool are interchangeable. Be it noted that the petitioner in the meanwhile was elected as the Member of Legislative Council but now is disqualified. The respondents have realized the market rent of the quarter in question for the period 19.06.2013 to 29.02.2016 as is evident from Annexure-5 which is the pay bill indicating the recovery of the market rent of the quarter from the writ petitioner. He would further argue that interchange of the pool of the government quarters is a common phenomenon. Several instances have been cited in this regard. The respondents have not strictly observed the rules/regulations framed for allotment of government quarters/accommodation under diverse pools. Some of the erstwhile Ministers who have been divested of the Ministership continue in the accommodation allotted to them as Ministers. A departure in the case of the petitioner shall be a wholly arbitrary exercise of power.



The counsel for the State as well as the council for the intervenor respondent have submitted that the Quarter No.43, Hardinge Road, Patna falls in the Central Pool and is a suitable accommodation for the Ministers in the government. The petitioner is no longer a Minister. His removal from Ministership is not under challenge. He has also now been declared disqualified to hold the post of MLC. No vested legal right, therefore, flows in favour of the writ petitioner to continue in the government accommodation in question and to maintain the writ petition. The writ jurisdiction can be invoked for enforcement of an established legal right and not first to investigate or fish out the legal right and then to enforce it. True it is that in some cases, considering the status as well as the current position held by a person, government accommodations have been provided or allowed to be retained but there are diverse reasons therefor. Article 14 of the Constitution of India cannot be invoked in negative terms as requested by the petitioner.

In the counter affidavit of the respondent State, it is stated that the residential quarter in question is marked for the Ministers. The prayer of the petitioner to direct the House Allotment Committee to allot him E category quarter from the Legislative Council Pool is also not sustainable. Once the petitioner ceases to be a Minister in Government, he is obliged to vacate the government accommodation within one month as per the Bihar Central Pool Regulation 1986 which the petitioner did not do and hence no relief can be granted. It does not behove the petitioner to claim such relief having held high position in the government. It has also been brought to the notice of the Court that similar prayer was refused by the Delhi High Court in the case of Adhir Ranjan Choudahry vs. the Union of India.

To put the record straight, it is noted that subsequent to filing of the



writ petition, the petitioner was declared disqualified to hold his coveted post of MLC which the petitioner assailed in CWJC No. 2830 of 2016. In the said writ application, a prayer was also made to restrain the respondents from taking steps to vacate his government accommodation (I.A. No. 1551 of 2016) which was pressed and the said application stood disposed of with liberty to file a separate application as proposed by the petitioner. No writ petition was thereafter filed and the petitioner continued in the said accommodation by virtue of interim order passed on 13.07.2015 in the present case wherein besides challenging the legality of the notice issued by the Estate Officer, a further prayer is made to command the Chairman of the Legislative Council to allot E category quarter to the petitioner. As on today, the petitioner is not even a Member of the Legislative Council.

The sheet anchor of the case of the petitioner is that although the allotment of government accommodation is governed by the Rule/Regulation framed in this regard for diverse pools, but the same had never been strictly adhered to by the respondents. There are several instances of departure to the Rule/Regulation. The same departure should also be made in the case of the petitioner. There is a basic folly in the said contention. The Rule of equality enshrined in the Constitution is not a negative connotation. Does the petitioner mean to say that you have committed mistakes in the case of others so you are obliged to repeat the mistake in my case and if not so done then such right shall be enforced by invocation of writ jurisdiction? The law in this regard is well crystallized. The Court would not cite the case law(s) and embellish the order. The contention of the respondents is also to the same effect. The Court, at this juncture, would also notice the submission of the respondents including the Bihar Legislative council that allotment of

government accommodation is not a vested legal right as the Rule provides that in case of non allotment of government quarter/accommodation a Member of the House is entitled to draw House Rent Allowance (HRA) which is again a handsome amount.

In the light of discussions made above, the Court is unable to find any vested legal right in the petitioner to hold the government accommodation in question which in case of non grant can be enforced by invocation of extraordinary equitable and discretionary writ jurisdiction of the Court.

Consequently, no merit is found in the writ petition which is dismissed. Pending Interlocutory Application(s) are also disposed of.

No order as to cost(s).

(Kishore Kumar Mandal, J)

HR/-

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