

IN THE HIGH COURT OF JUDICATURE AT PATNA**Letters Patent Appeal No.1278 of 2016****In****Civil Writ Jurisdiction Case No. 2830 of 2016**

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Samrat Chaudhary @ Rakesh Kumar, son of Shakuni Chaudhary, resident
of 43, Harding Road, P.S. Shachiwalaya, Patna

.... Appellant

Versus

1. The Bihar Legislative Council, Patna through the Chairman, Bihar
Legislative Council, Patna

2. The Chairman, Bihar Legislative Council, Patna

3. The Acting Secretary, Bihar Legislative Council, Patna

4. Sri Sanjay Kumar Singh, son of Not Known to the appellant, Chief Whip,
Ruling Party, Bihar Legislative Council, Patna.... Respondents

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Appearance :

For the Appellant/s : Mr. Rajiv Kumar Verma, Sr. Advocate
Mr. Sanjay Kumar, Advocate

For the Legislative Council: Mr. Y.V. Giri, Senior Advocate,
Mr. Kaushal Kumar Jha. Advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**

and

**HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH)**

2 07-06-2016 The present Letters Patent Appeal is preferred against the

order, dated 25.5.2016 passed by learned Single Judge in C.W.J.C.
No.2830 of 2016, whereby the prayer of the writ petitioner-
appellant to restrain the respondent authorities from evicting him
from official quarter during the pendency of the writ application
was rejected.

Before, we consider the rival submissions of the parties, it
would be relevant to notice the facts of the case in brief. The writ
petitioner-appellant initially was a M.L.A. and thereafter he



became a Minister and subsequently he was elected as M.L.C. as well. In his capacity as M.L.A./Minister he was allotted a government accommodation at Quarter No.43, Hardinge Road in the New Capital Area, Patna. Over the period, the writ petitioner-appellant ceased to be a M.L.A./ Minister and he was even disqualified as M.L.C. Since the writ petitioner ceased to be M.L.A./M.L.C. or Minister, the Building Construction Department, Government of Bihar asked him to vacate the premises.

Being aggrieved, the writ petitioner filed a separate writ application, bearing C.W.J.C. No.1274 of 2016 against the order asking him to vacate the premises. Against the order of disqualification, the writ petitioner also preferred C.W.J.C. No. 2830 of 2016 from which the present appeal arises. The prayer of the writ petitioner-appellant to restrain the respondent authorities from evicting him from his official quarter was rejected by the learned Single Judge vide order, dated 18.5.2016 passed in C.W.J.C. No.8031 of 2015. An appeal preferred against order of learned Single Judge was also rejected vide order, dated 6.6.2016 passed in L.P.A. No.1274 of 2016.

The second writ application bearing C.W.J.C. No.2830 of 2016 has been filed against the order of disqualification. The writ



petitioner also prayed for interim relief with respect to his eviction from his official quarter by I.A. No.1551 of 2016. The learned Single Judge vide order, dated 25.5.2016 declined to interfere with the order observing that so long as the order of termination of Membership of the Legislative Council is not set aside or stayed by the Court, the petitioner cannot claim any right of official quarter or bungalow, which was done as a Member of Legislative Council, not in his private capacity. The Court, however, observed that if the petitioner succeeds, he can be restored back or at least directed for a suitable accommodation to be allotted befitting his status.

We find that the relief sought for in L.P.A. No.1274 of 2016 arising from C.W.J.C. No.8031 of 2015 and the relief sought for in this appeal arising out of order, dated 25.5.2016 passed in C.W.J.C. No.2830 of 2016 are substantially the same.

We have already held in other appeal, being L.P.A. No.1274 of 2016 that a person who has been allotted government accommodation in his capacity as M.L.A./M.L.C. or a Minister does not have vested right to hold on to it, once he ceases to be so. In the instant case, the issue is similar and we have no reason to take a different or contrary view.

Mr. Rajiv Kumar Verma, learned Senior Counsel appearing

for the appellant submits that in the case of another disqualified M.L.A./M.L.C., the Hon'ble Apex Court has passed an interim order staying the eviction till the disposal of disqualification matter.

On the other hand, Mr. Y.V. Giri, learned Senior Council appearing on behalf of the Bihar Legislative Council submits that the appellant cannot take advantage of the said order of the Hon'ble Apex Court, as in the said case, the State Government gave assurance not to evict till the pendency of the substantive case. He submits that in the instant case, the State Government is not even a party and on this count alone the instant appeal is fit to be rejected on ground of non-joinder of appropriate party.

We find force in the submission of the learned counsel for the Council that the State Government, which was made a party before the Hon'ble Apex Court gave an assurance not to evict the allottee of that case till the disposal of the substantive case.

In the instant case, the State Government is neither a party nor any such assurance has come in the instant case. As such, the writ petitioner-appellant in absence of State being a party cannot claim parity and seek similar observations as rendered in S.L.Pkj. (C) No.11567 of 2016.

In the result, we do not find any merit in this appeal. It is,

accordingly, rejected reiterating the observation of the learned Single Judge passed under order in appeal that if the petitioner succeeds, he can be restored back or at least directed for a suitable accommodation to be allotted befitting his status.

(Samarendra Pratap Singh, J)

(Ahsanuddin Amanullah, J)

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