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

Date of decision: 31.05.2016

+ LPA 328/2016 & C.M.No.20046/2016

VIDUSHI CHATURVEDI

..... Appellant

Through: Mr.Jayant Tripathi, Adv. with
Mr.Harsimrat Randhawa, Ms.Surabhi, Advocates

Versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents

Through: Mr.Anil Grover, Standing Counsel
with Ms.Kanika Singh, Ms.Noopur Singhal, Adv.
for R-1/NDMC.

Mr.Vivek Goyal, CGSC with Ms.Aneeta Goyal,
Adv. for R-4/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

Ms. G. Rohini, Chief Justice

CM No.20048/2016 (delay in filing)

Heard both parties.

In view of the facts and circumstances explained in the application,
the delay is condoned.

The application is disposed of.

LPA No.328/2016

1. The petitioner in W.P.(C) No.930/2016 is the appellant before us.
2. The said writ petition was disposed of by the learned Single Judge by order dated 09.02.2016 which is under challenge in the present appeal.

3. We have heard the learned counsel for both the parties.
4. The appellant/writ petitioner has been in possession of the Quarter No. V-3A, Satya Sadan, Chanakya Puri, New Delhi which is a NDMC Department Pool Type-V House. Aggrieved by the proceedings initiated under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, she filed W.P.(C) No.930/2016. In the meanwhile, by order dated 02.02.2016 passed by the Estate Officer, NDMC, the appellant/writ petitioner was directed to vacate the premises by 18.02.2016. A penalty at the rate of Rs.58,000/- per month towards damages was also imposed.
5. On 03.02.2016, when the writ petition was listed before the learned Single Judge, it was represented on behalf of the appellant/writ petitioner that she would vacate the premises in question on or before 31.05.2016. To enable the counsel for the respondents to take instructions, the writ petition was adjourned to 09.02.2016. On 09.02.2016, it was represented by the counsel for NDMC that the offer of the writ petitioner was acceptable. Accordingly, the learned Single Judge disposed of the writ petition by the following order dated 09.02.2016:

"Today, learned counsel for respondent no.1 submits that offer of petitioner is acceptable to the respondent no.1. Accordingly, petitioner is granted time to vacate the premises in question by 31st May, 2016. Let petitioner file an undertaking in the Registry, within one week, categorically stating therein that she will vacate the premises in question on or before 31st May, 2016. Learned counsel for the respondent no.1 submits that subject to petitioner furnishing aforesaid

undertaking within one week, proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 will not be pursued. Learned counsel for the respondent no.1 further submits that penal rent will also not be charged from the petitioner till 31st May, 2016.

Writ petition is disposed of in the above terms. However, it is noted that this order will not be treated as a precedent in other proceedings. Miscellaneous application is disposed of as infructuous."

6. On 16.05.2016, the present appeal came to be filed against the above order contending:

(i) that by order dated 18.04.2016 the appellant/writ petitioner was transferred and posted to Shillong, Meghalaya vide proceedings of the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India and she assumed charge on 29.04.2016 and that as per O.M. No.12035/31/96-POL-II dated 07.09.1998 she is entitled to retain the premises in question on payment of normal licence fees;

(ii) that she made a request to NDMC to permit her to retain the accommodation by letter dated 03.05.2016 in terms of O.M. dated 07.09.1998. She also filed an application before the Directorate of Estates on 04.05.2016 requesting that she may be allowed to retain the accommodation. However, they failed to respond;

(iii) that the respondents had concealed the order of eviction dated 02.02.2016 from the appellant and the same had resulted in the order

under appeal recording her undertaking that she would vacate the premises on or before 31.05.2016;

(iv) that the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were initiated against her to pressurize her and she was compelled to agree to vacate the premises by 31.05.2016;

(v) that she is entitled to retain the quarter on par with the other Officers under the Interpool Exchange Policy and the action of the respondents in denying her the benefits of Interpool Exchange Policy is arbitrary and illegal.

7. We heard the learned counsel for the appellant and the learned counsel for the respondent No.1/NDMC on 24.05.2016. Having regard to the fact that the order under appeal was a consent order based on the undertaking of the appellant/writ petitioner by virtue of which she was allowed to retain the quarter till 31.05.2016 and respondent No.1/NDMC had also agreed not to charge the penal rent, though we were not inclined to entertain the appeal, the matter was adjourned to enable the learned counsel for the Union of India to get instructions regarding the request of the appellant/writ petitioner for allotment of an alternative accommodation in view of her posting to a North-Eastern State.

8. When the matter was taken up on 30.05.2016, it was brought to our notice by the learned counsel for the respondents that the appellant's request for allotment of alternative accommodation has not been accepted since she is not a General Pool allottee and to that effect an order has already been passed on 27.05.2016 by the Directorate of Estates. The said order has been produced before this court and a copy of the same has been supplied to the

learned counsel for the appellant.

9. However, it is contended by the learned counsel for the appellant that the stand taken by the respondents that the appellant is not entitled for an alternative accommodation on the ground that she is not a General Pool allottee is unsustainable. It is also contended that as is evident from the Office Memorandum dated 19.09.2014, the Officers of All India Services and Central Government Officers who are on deputation/transfer to other departments of GOI which have departmental pools shall be eligible to apply for Interpool Exchange of Accommodation and that there is no reason to deny the said benefit to the appellant. The learned counsel has also referred to the instance of one Nikhil Kumar, a 2002 batch IAS Officer who was allowed to retain NDMC quarter pursuant to the Interpool Exchange Policy.

10. We are not impressed with the submissions of the learned counsel appearing for the Appellant.

11. As per the eviction order dated 02.02.2016 passed by the Estate Officer, NDMC though the appellant was to vacate the premises in question by 18.02.2016, by virtue of the order under appeal dated 09.02.2016 the appellant was allowed to remain in premises till 31.05.2016 and it was also agreed by NDMC to waive the penal rent. It was a consent order and the appellant had voluntarily given an undertaking to that effect which was taken on record by the learned Single Judge by order dated 01.03.2016 in CM No.7738/2016. Therefore, it is not open to the appellant/writ petitioner to turn around and to contend that the said order is unsustainable. The contentions based on the Interpool Exchange Policy are also untenable and cannot be allowed to be raised at this stage in view of the consent order passed in the writ petition.

12. However, it appears to us that it is always open to the appellant to challenge the order of the Directorate of Estates dated 27.05.2016 which is based on subsequent events i.e. her transfer and posting to Shillong vide proceedings dated 18.04.2016. Though various contentions have been advanced on behalf of the appellant assailing the correctness of the said order, we decline to enter into the said issue since the said order dated 27.05.2016 gives rise to a new cause of action.

13. So far as the order under appeal is concerned, for the reasons stated supra, the same warrants no interference on any ground whatsoever. Accordingly, the appeal is dismissed and the appellant is bound by the undertaking given in the writ petition to vacate the premises on or before 31.05.2016.

14. However, the appellant is at liberty to challenge the order dated 27.05.2016 of the Directorate of Estates, if so advised, by availing the appropriate remedy available under law.

CHIEF JUSTICE

JAYANT NATH, J

MAY 31, 2016

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