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

+ LPA 468/2016

AIR CMDE RNAJAN MUKHERJEE Appellant
Through Mr. Anshuj Dhingra and Mr.
Gaurav Gupta, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY (DDA) Respondent
Through Mr. Dhanesh Relan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **26.08.2016**

On 24th August, 2016, we had asked the learned counsel for the respondent-DDA to obtain instructions on the suggestions given.

2. Learned counsel for the respondent-DDA had filed before us a copy of the office order dated 24th August, 2016, approving the noting made by the Deputy Director (SQ), DDA. As per the noting, the petitioner would be accommodated in Type-V quarter at Old Rajinder Nagar up to 15th October, 2016.

3. The Ministry of Urban Development, Central Public Works

Department has issued letter (Technical Occupation Report) dated 24th August, 2016 allotting the appellant Quarter No.77, Chanakya Puri. This house is not immediately inhabitable and would be made habitable within 45 days. The petitioner, who is present in the Court, in the morning had stated that the shifting to Old Rajinder Nagar would create difficulty and problem as he would have to first move to Old Rajinder Nagar and then within a short period to Chanakya Puri. In these circumstances, we had asked the learned counsel for the respondent-DDA to obtain instructions and had passed over the matter to be taken at 2.15 p.m.

4. Learned counsel for the respondent-DDA has obtained instructions. The Vice Chairman, DDA has agreed that the appellant can retain the staff quarter at 7/4, Bhagwan Das Road for storing household goods but not for residing therein till 21st September, 2016. This is subject to the appellant furnishing an undertaking to the Court to vacate the premises and handover the vacant physical possession by 21st September, 2016. Lastly, the appellant would withdraw all litigations initiated by him against the DDA by 31st August, 2016.

5. Learned counsel for the appellant objects to the condition that the appellant can only store household goods in the house and not reside as unacceptable and unfair for this would put the appellant to unnecessary inconvenience and harassment. Stipulation for furnishing of the undertaking to the Court that the appellant would vacate the premises and handover vacant physical possession by 21st September, 2016, it is stated, is acceptable. Regarding withdrawal of all pending litigations, it is pointed out that the respondent-DDA has initiated proceedings for recovery of damages under Section 7(3) of the Public Premises (Eviction of Unauthorized Occupants), Act, 1971. The appellant states that he was entitled to occupy the flat at Bhagwan Dass Road under the Interpool Policy, and this question is raised in the writ petitions filed by him. Withdrawing the said writ petitions would cause prejudice. Contention of the respondent-DDA is that the said policy is not applicable to the appellant and in any case and even otherwise cannot be a ground not to pay penal charges or damages.

6. Having considered the aforesaid conditions and the contentions raised, we are not inclined to again adjourn the appeal.

The area of dispute is narrow and limited. Having considered different aspects, we would dispose of the appeal on the following terms:-

- (i) The appellant will be allowed to use the ground floor of the flat/quarter at 7/4, Bhagwan Dass Road till 21st September, 2016. The belongings of the appellant on the first floor will be removed by the appellant, if required, after de-sealing of the said portion and brought to the ground floor. After removal of the belongings by the appellant, the first floor will be re-sealed and possession will remain with the DDA.
- (ii) The appellant within two days will file an undertaking in the Court that he would on or before 21st September, 2016 vacate the ground floor of the accommodation and remove his belongings. The undertaking will state that the appellant will not seek extension of time and if the accommodation at Chankaya Puri is not ready, he will make alternative arrangements. The date, 21st September, 2016 is firm, sacrosanct and non-extendable.
- (iii) The appellant has agreed to withdraw W.P.(C) Nos.4179/2016 and 7213/2016 without prejudice to his right to

contest and challenge the proceedings initiated by the DDA under Section 7(3) of the Public Premises (Eviction of Unauthorized Occupants), Act, 1971. Withdrawal of the said proceedings would not reflect or adversely impact the contention of the appellant that in view of the Inter Pool Policy, damages are not payable. Withdrawal of the writ petitions will not be construed as an adverse circumstance against the appellant. It is obvious that the DDA will be entitled to contest the said plea and contention of the appellant.

(iv) The appellant will make an *ad-hoc* deposit of Rs.7,500/- with the DDA on or before 31st August, 2016 as he would be using the ground floor at 7/4, Bhagwan Dass Raod, New Delhi. This payment will be subject to the findings and decision of the proceedings under Section 7(3) of the Public Premises (Eviction of Unauthorized Occupants), Act, 1971. This *ad-hoc* sum as indicated would not be construed as expression of opinion or adversely or favourably affect the case and contentions of the parties.

7. Effect of the aforesaid order is that the appellant would only

use and occupy the ground floor of the accommodation at Bhagwan Dass Road till 21st September, 2016 and not the first floor, which will continue to remain in occupation and possession of the DDA.

8. For the purpose of de-sealing of the property, the appellant and officers of the respondent shall visit the property on 27th August, 2016 at 10.30 a.m. and the first floor would be de-sealed and goods would be removed to the ground floor and thereafter the first floor would be re-sealed.

Dasti under the signature of the Court Master.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

AUGUST 26, 2016

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