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

+ **WRIT PETITION (CIVIL) No. 9542/2015**

Date of decision: 2nd March, 2016

UNION OF INDIA

..... Petitioner

Through Mr. J.S. Bhasin, Ms. Rashmi Priya, Mr. Nishant Shokeen & Mr. Indrajeet Singh, Advocates.

Versus

MOHINDER SINGH & ORS.

..... Respondents

Through Mr. S. Pattajoshi, Sr. Advocate with Mr. S.Shantanu, Mr. Pratap Shanker & Ms. A. Shivani, Advocates for respondent Nos. 2 to 4, 8, 9, 11, 12 and 14 to 21.

Mr. Deepak Chandra, Advocate for respondent Nos. 6, 7, 10 and 13.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

Union of India by this writ petition impugns order dated 21st May, 2015 passed by the Central Administrative Tribunal, Principal Bench in OA No. 3145/2014, which was filed by 24 applicants, who are the respondents before us.

2. The respondents are in occupation of government flats in Mohammedpur, which were declared as dangerous for habitation way back in the year 2009. Photographs placed on record indicate that the said flats

are crumbling and can fall at any time. It is accepted and admitted position that the said flats are not fit for habitation and are dangerous.

3. The question raised relates to alternative accommodation, which should be provided to the occupants of the flats at Mohammedpur. There were about 359 allottees in occupation of about as many flats at Mohammedpur. About 200 allottees have already accepted alternative accommodation and at present about 137 allottees are in occupation of the said flats.

4. The plea and contention of the respondents is that they are in occupation of Type-I flats at Mohammedpur, whereas they are entitled to Type-II and Type-III accommodation. They should be shifted and allotted Type-II and Type-III accommodation as was offered to occupants of Kidwai Ngar, Aliganj, etc. It is submitted that the said occupants were given alternative accommodation as per entitlement of Type-II and Type-III flats. Reliance is placed upon letters written by the petitioner in the year 2014, in which the respondents were promised that they would be allotted Type-II or Type-III accommodation as per their entitlement, though they were in occupation of Type-I quarters.

5. The petitioners, on the other hand, submit that an exception was made in the case of Kidwai Nagar as the said flats though not dangerous, had to be demolished under the re-development scheme. On the question of Aliganj, our attention is drawn to note dated 18th April, 2012. It does

appear that the said quarters had been declared as dangerous by the CPWD.

6. Learned counsel for the petitioner has submitted that there is an Office Memorandum No. 12035/16/2005-Pol.II dated 5th September, 2005, which reads as under:-

“Memo dated 5.9.2005

(X) Allocation of Vacancies of General Pool residences

Order of Preference:

- (a) Officers whose houses have been declared dangerous should get first priority and alternative accommodation should be provided to them in the same area as far as possible, failing which in adjoining/nearby localities.
- (b) Officers occupying quarters required to be vacated for redevelopment or other public purposes in the same area, failing which in adjoining/nearby localities.
- (c) After meeting the requirements of (a) and (b) above, the remaining vacancies should be allotted alternatively to officers on the change list and to officers sanctioned out of turn and ad hoc allotments/change.”

Thereafter, another Office Memorandum dated 15th September, 2014 was issued superseding the earlier OM dated 5th September, 2005. OM dated 15th September, 2014 reads as under:-

“Office Memorandum

Sub: Guidelines for allotment of alternate general pool residential accommodation in the Automated System of Allotment on declaration of a house unsafe/dangerous or re-development of government colonies or GPRA required for any other public purpose.

The undersigned is directed to refer the subject mentioned above and to say that henceforth allotments of alternate general pool residential accommodation to allottees on declaration of a house unsafe/dangerous or re-development of government colonies or GPRA required for any other public

purpose shall be done through Automated System of Allotment [ASA] with effect from 16.9.2014.

2. It has been decided with the approval of the competent authority that in case of complete government colonies declared unsafe/dangerous, the allottees of such colonies shall be placed en bloc over the unified (change/initial) waiting list for same type of accommodation and the allottees may make preferences of houses in the ASA for allotment.

3. In cases where individual houses in Government colony are declared as unsafe/dangerous the alternate allotment of accommodation to be made on priority on the following basis:

a) Vacancies in the same locality or nearby locality to be indentified for priority allotment where such occupants would be given priority in the same type of accommodation over unified (change/initial) waiting list.

b) The allottee of ground floor accommodation may apply for ground floor and above and the allottee of first floor above may apply for first floor and above and allotment will be made accordingly.

c) Equal number of identified vacancies will be placed for allotment in ASA in relation to number of such unsafe/dangerous houses.

4) The request of allottee, whose residential accommodation declared as unsafe/dangerous by the concerned maintenance agency shall be entered into 'Unsafe/Accommodation Register' of ASA by the concerned Allotment Section.

5. It has been further decided that where a house declared as unsafe/dangerous for living, the declaration will be by an officer not below the rank of an Executive Engineer, CPWD and he should satisfy himself before issue of certificate of declaration. The unsafe/dangerous house(s) may be reported to NIC, Directorate of Estates online by CPWD on such

declaration.

6. It has also been decided that where an entire government residential colony is declared unsafe/dangerous for living by CPWD or required to be vacated for redevelopment, a certificate of declaration from DG, CPWD will only be accepted along with the work plan to make the colony habitable within a period of 3 years in consultation with Works Division of Ministry of Urban Development.

7. This OM supersedes the instructions of the Directorate of Estates O.M. No. 12035(1)91-Pol.II dated 21.2.1991 and O.M. No. 12035/16/2005-Pol.II dated 5.9.2005.”

7. One important difference between the two OM, is that under OM dated 5th September, 2005 alternative accommodation had to be allotted by a manual process, i.e., by the officers themselves, whereas as per the OM dated 15th September, 2014 alternative accommodation is allotted under the “automated system of allotment”, which reduces chances and possibility of foul play and ensures transparency and objectivity.

8. We perceive and believe that there have been instances where there have been aberration and the criteria and rule incorporated in the OM dated 5th September, 2005 have not been followed. However, this will not give any positive rights to the respondents to claim equal benefit in illegality. The rules of allotment once framed should be followed and applied uniformly without any discrimination. If we keep the said principle and objective in mind, then we will have to hold that the respondents herein would not be entitled to any special treatment beyond what is granted and

observed in the OM dated 5th September, 2005 and the OM dated 15th September, 2014. The result would be that the respondents would be entitled to alternative accommodation in the nearby areas, i.e., adjoining or nearby localities. They will be also given first priority in terms of the aforesaid OMs. In other words, the occupants of dangerous houses/flats would be given allotment of alternative accommodation as indicated in paragraph (a) of OM dated 5th September, 2005 as superseded in OM dated 15th September, 2014, which states that allottees of unsafe/dangerous flats shall be en bloc placed over the unified (change/initial) waiting list for the same type of accommodation. Resultantly, the respondents would be entitled to preferential or priority allotment of the flats/quarters for the same type accommodation. Further, their seniority for allotment of higher category type of flat would not be affected and they would continue at the same seniority as before. Thus it would not effect their chance to get a higher accommodation.

9. It is the government's prerogative, and function to enact and draw rules and policy. This promotes transparency and objectivity, checks discrimination and partiality. Rules create obligation of obedience and right to command obedience, which are enforceable. Violation of rules and directive is corrected and remedied, and should not be extended by a court edict to others. The Constitution confers and accords the executive an extensive and wide discretion, to frame rules and policy. Policy may

change and need not be static, for exigencies and experience do matter. Correction and emendation, which is not arbitrary and discriminatory or violative of constitutional rights, should not be interfered with and struck down. The Courts in policy matters interfere when Article-14, fundamental or constitutional rights and mandate is violated and not otherwise. The aforesaid policy/rule incorporated in OM dated 15th Sept., 2014 is just and fair. The claim of the respondents if accepted would be inequitable and unreasonable to other government employees waiting for the government accommodation. Many of them, without any accommodation would be denied Type II or Type III flats/quarters, even when they are entitled to Type IV or Type V accommodation. When there is a shortage of Type II or Type III accommodation, any decision or policy must take into consideration interest of all government employees. An equitable and just rule should be followed and not disobeyed.

10. The petitioners are bound and must adhere to and follow the said policy. Any violation would be viewed seriously and would result in violation of the Court directions.

11. It will be open to the respondents and other occupants to make a representation if they notice a case where any favour has been shown and any employee has been given allotment contrary to the aforesaid policy, except where allotments have been made under the CCA quota. If any such complaint or representation is made, the same must be verified and

answered. Learned counsel for the respondents states that one said list has been filed and is available on the present paper book. The said list will be examined by the petitioners and appropriate action will be taken as per law and the counsel for the respondents will be informed.

12. We are informed that the next round of bidding under the “automated system of allotment” will commence on 16th March, 2016 and will end on 26th March, 2016. The respondents must bid in the said “automated system of allotment” during this period and on failure the petitioners would take immediate action as per law. The Respondents will be considered on priority basis in terms of OM dated 15th Sept., 2014. It may be open to the petitioners to examine and stipulate that the errant occupants who do not bid may lose their entitlement to priority under the OM dt. 15th September, 2014.

13. Learned counsel for the petitioners, on instructions, states that the new flats will be made available to the allottees by 15th April, 2016 and three weeks’ time would be given to the respondents/occupants to shift to the new accommodation.

14. Accordingly, we would allow the present writ petition and the directions given in paragraph 4 of the impugned order dated 21st May, 2015 are set aside. With the aforesaid directions and observations, we dispose of the present writ petition. No Costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 02, 2016
VKR