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

+ **W.P.(C) 1723/2017 & CM No.7705/2017**

HARISH CHANDRA & ORS

..... Petitioners

Through: Mr Kamal Kant Jha, Advocate.

versus

LT. GOVERNOR & ORS

..... Respondents

Through: Mr Pankaj Sinha, Advocate for
GNCTD.

Insp. Ashok Giri, PS Mandir Marg.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.07.2017

VIBHU BAKHRU, J

1. The petitioners are inmates of the hostel attached to Andh Mahavidyalaya, Panchkuian Road - which is a residential middle school for the visually impaired - and have filed the present petition impugning the eviction notice dated 24.09.2016 (hereafter 'the impugned notice') issued by the Principal, Andh Mahavidyalaya, Panchkuian Road, New Delhi, whereby the petitioners were called upon to vacate the hostel within a period of six months from the date of the impugned notice.

2. The aforesaid impugned notice was issued pursuant to the order passed by a coordinate bench of this Court on 07.05.2010 in **W.P. (C) 3444/2008** titled '*Lalit & Others v. Govt. of NCT & Anr.*'.

3. The petitioners claim that they were admitted to Andh Mahavidyalaya, Panchkuian Road, New Delhi (hereafter ‘the School’) in their childhood and are presently pursuing their further studies and preparing for competitive examinations. The School is a middle school, that is, only up to class VIII. Although, the petitioners are no longer students of the School, they continue to reside in the hostel attached to that school.

4. The petitioners claim that the impugned notice has been issued to victimise them for raising their voice and demanding better facilities and articles of basic needs. It is further claimed that the impugned notice had been issued on the basis that the hostel attached to the School is meant for students up to class VIII only. However, the same is erroneous. The petitioners claim that till 1976-1977 only students up to class X were residing at the hostel but thereafter this condition was waived and all blind persons, irrespective of their age and educational standards were allowed to reside at the hostel.

5. Mr Kamal Kant Jha, learned counsel appearing for the petitioners has also referred to an order dated 31.07.2001 passed by this Court in ***W.P. (C) 1610/1996*** titled ‘***Smt Darshan Khattar & Others v. Lt. Governor, Govt. NCT of Delhi & Others***’, wherein this Court had observed as under:-

“It is not denied that amongst the objects of the petitioner society are the objects to provide work, training to adult blinds and to help the poor and needy blinds from the donations. In the hostel besides the students of the school other persons are also staying. Some of these persons are poor and some are employed in technical institutions. Certain blind persons to whom the work is provided by the society are also staying in the hostel. Since it is one of the aims and objects of the society to provide

work to the trained adult blinds and to help the poor and needy blinds, hostel accommodation has been provided to such persons. It is thus clear that the hostel is not meant exclusively for the students of the school. I am, therefore, unable to agree with the petitioner that hostel is a part and parcel of the school.”

He, thus, submitted that the petitioners would also have the right to stay in the hostel. He further submitted that in addition to the School (Andh Mahavidyalaya being run at Panchkuian Road), there is another school for the visually impaired, located at Hari Nagar Ghantaghar, which has been handed over to Sarvodaya School. He submitted that the said school should also be upgraded for higher studies to accommodate blind students like the petitioners. He stated that there is no justification for handing over the school, which was for blind students to Sarvodaya School.

6. The Blind Social Welfare Society was incorporated in the year 1950 and was running the School. The School is a residential school and the hostel is attached to the School. The administrator in exercise of its powers under Section 20 of the Delhi Education Act, 1973 directed that the management of the School be taken over and the School be managed through the Directorate of Education who would nominate and authorize an officer to run the School.

7. The petitioners state that eighteen of the petitioners are within the age group of 21 to 30 years; nine of the petitioners are within the age group of 30 to 40 years; ten are in the age group of 41 to 45 years; and five are in the age group of 46 to 58 years. Admittedly, none of the petitioners are studying at the School.

8. A petition had earlier been moved by 12 inmates of the hostel attached to the School, *inter alia*, seeking a direction to the respondents to not to dispossess them or to compel them to leave the hostel. The said petition - ***Lalit & Others v. Govt. of NCT & Anr.*** (*supra*) - was disposed of by a coordinate bench of this Court by an order dated 07.05.2010. This Court had examined the contentions and held that the primary purpose of having a hostel attached to the School was to ensure that visually challenged students are provided shelter during their education at the School and thus the policy of restricting the hostel facility to children, who have not yet completed Class VIII is a reasonable one. The relevant extract of the said decision is set out below:

“17. In the facts of the present case, the Andh Mahavidyalay is a state-run educational institution which also provides shelter to a doubly disadvantaged child, up to the age of fourteen. Such child combines in herself or himself a bundle of inviolable rights: as a person, as a young person, a disabled young person, a disabled young person whose right to education is guaranteed. In the context of a young person receiving education in a state-run institution as a resident scholar, the right to shelter and decent living is an inalienable facet of the right to education itself. Then we have other survival rights of such child including the right to health which is an integral part of the right to life under Article 21 of the Constitution. Therefore, when the State takes over the running of an educational institution that caters to the needs of the disabled children its constitutional and statutory obligations are manifold. It has to account for the ‘cascading effect’ of multiple disadvantages that such children bear the burden of.

18. Viewed in the above background, it is clear that primary purpose of having a hostel attached to the Andh

Mahavidhyalya was to ensure that visually challenged young students, up to Class VIII, are provided shelter during their stint at the school. The policy of restricting the hostel facility to children who have not yet completed Class VIII is a reasonable one considering the limited scope of availability of the fundamental right to education to the age group of six to fourteen. At a practical level also, it is understandable given the shortage of space in the hostel attached to the Andh Mahavidyalaya. If inmates, are permitted to stay on in the hostel long after completing Class VIII, then it restricts the right of access to the institution by other deserving young visually challenged students who are in need of education and shelter. There is limitation as to resources and all the visually challenged persons at present at the Andh Mahavidhyalya, irrespective of their age, cannot possibly expect to be allowed to live there irrespective of their age. The primary purpose should be to cater to the needs of young children studying up to Class VIII. If this primary object is not kept in view, then it may result in an unfair denial of the right to education of other deserving young students who are visually challenged.

19. The present case highlights the competing demands by two groups of disabled inmates of an hostel attached to an educational institution: one comprising the young children studying up to class VIII and the other comprising the older inmates who have completed Class VIII, some of them many years ago, and are still staying in the hostel for the simple reason that they have not yet been evicted. It is not possible to agree with the submissions on behalf of the five inmates who are facing eviction that only because there are others of the same age group or older who are staying on in Andh Mahavidyalaya they should also be permitted to stay on. It is not desirable to have different age groups of inmates living under the same roof in a cramped space. This will not be healthy for either the body or the mind. If there are other older inmates, they too will have to make way for the younger and more deserving lot of students in need of shelter during their studying years. That cannot justify the petitioners

who have been asked to be evicted staying on indefinitely.

20. In the circumstances, it is held that Petitioner Nos. 1,5,6,9 and 11, who have been asked to be evicted by the order of the Authorised Officer of the Andh Mahavidyalya dated 29th April 2008, cannot continue to stay in the hostel. They should now make alternative arrangements and move on. Given the fact that there has been an interim order in their favour for two years, this Court directs that the above five Petitioners should vacate the rooms under their occupation in the hostel attached to the Andh Mahavidhyalya on or before 1st July 2010 and hand over peaceful possession of the same to the Authorised Officer. If they fail to do so, it would be open to the Authorised Officer to take appropriate measures in accordance with law to evict them. Since this Court has held that the aforementioned five petitioners are liable to evicted, it is not considered necessary to examine if they are even otherwise liable to be evicted on account of their alleged conduct.”

9. In view of the above, this Court is unable to accept the contention that the petitioners have a right to continue to occupy the hostel in question. This Court is also conscious of the fact that if alternate accommodation is not found for the petitioners, it would cause them immense suffering. However, given the limited resources, it would be necessary to accommodate blind students who are studying at the School in the hostel and the petitioners cannot be permitted to occupy the hostel indefinitely.

10. The contention that the hostel was run by a society and was not attached to the School was not accepted by this Court in ***Lalit & Others v. Govt. of NCT & Anr.*** (*supra*). The reliance placed by the learned counsel on the order passed by this Court on 31.07.2001 in ***Smt Darshan Khattar &***

Others v. Lt. Governor, Govt. NCT of Delhi & Others (*supra*) is of little assistance. The said petition was filed by employees working at the hostel as they were aggrieved for not being treated at par with employees of the School. In that context, a coordinate bench of this Court had held that only the School had been taken over and not the hostel attached to it. Accordingly, the petition was dismissed by the order dated 31.07.2001. This was carried in appeal before a Division Bench of this Court in **LPA 551/2001** captioned as '*Smt. Darshan Khattar & Ors. v. Lt. Governor, Govt. of NCT of Delhi & Ors*' which was allowed, *inter alia*, on the ground that the hostel was a part of the School. The relevant extract of the said decision is quoted below:-

“....Secondly, the hostel functions as an integral part of the school. School students reside in the hostel. We fail to understand as to how the blind students who undergo education in the school will be able to educate themselves in the absence of the hostel facilities. The hostel of the school though being conceptually separate but functionally, is one integrated entity along with the school. This fact was recognised by the Administrator of Delhi when he visited the school in the year 1984. The Administrator passed the order directing the Director of Education to take over the management of the school, himself noting, that the Director of Education was mis-interpreting his order directing the taking over of the school.

The order dated 13.1.1984 passed by the Lt. Governor of Delhi reads as under:-

“I visited the Andh Maha Vidyalaya, Punchkuin Road today, I went around the school as well as the hostel.

In the year 1980 the school was taken over by the

Delhi Administration on account of mismanagement by the Society and an authorised officer, Shri Chauhan, was also appointed.

I find that due to some mis-interpretation, the hostel was not taken over. This mistake needs to be corrected. Hostel is a part of the school and should be considered as taken over. The authorised officer should be responsible for the management of the school as well as the hostel.”

The Director of Education created the post of Hotel(sic) Superintendent/ Warden in the regular pay scale applicable to the said post in the Government run schools and the person appointed as the Hostel Superintendent/Warden started managing the hostel. The Director of Education is thus in control of the hostel.”

11. In view of the above, it is not open for the petitioners to contend that the hostel is not a part of the School.

12. Although, this Court is of the view that the petitioners have no right to stay in the hostel, it is also necessary to observe that the respondents should spare no effort to ensure that an alternative accommodation is found for the petitioners and insofar as possible, they are relocated in other institutions.

13. Since it is expected that this may take some time, it is directed that no coercive steps to evict the petitioners would be taken for a period of four months from today. It is expected that within this period, the respondents would be able to find some alternate accommodation where the petitioners could be relocated. Having stated the above, it is also clarified that irrespective of whether the respondents are able to locate an alternate accommodation or not, the petitioners would not be permitted to stay at the

hostel beyond the period of four months from today.

14. The petition and the pending application are dismissed with the aforesaid observations.

15. Order *dasti*.

VIBHU BAKHRU, J

JULY 14, 2017

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