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

+ W.P.(C) 3424/2015 & CM No. 6126/2015

KIRPAWATI & ANR.

..... Petitioners

Through: Mr Rajeev Saxena and Mr Hardik
Bedi, Advocates.

versus

ADMINISTRATIVE OFFICER (ESTATE)
& ORS.

..... Respondents

Through: Mr Devesh Singh, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.08.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 31.07.2014 passed by respondent no.1, cancelling the allotment of quarter no.265/96, Type-II, Mir Dard Lane, Delhi, which was earlier regularized in favour of petitioner no.2 by an order dated 26.05.2014.
2. Petitioner no.1 was in employment of Maulana Azad Medical College and by virtue of her employment, was allotted residential accommodation - being a quarter no.265/96, Type-II, Mir Dard Lane, Delhi (hereafter 'the flat'). It is stated that petitioner no.1 met with an accident on 11.12.2013 resulting in fracture of L2/L3 portion of her backbone; which has let her in a situation where it is difficult for her to climb stairs.
3. Since petitioner no.1 was to retire from her services on 31.05.2014, she applied for regularization of the flat in favour of her son (petitioner no.2)

who was living with her and is in employment of respondent no.2. Petitioner no.1's representation was accepted and by an order dated 26.05.2014, the flat was regularized in favour of petitioner no.2. The electricity meter was also transferred in the name of petitioner no.2.

4. However, thereafter, by an order dated 31.07.2014, respondent no.1 cancelled its earlier order of regularization for the reason that petitioner no.2 was not entitled to Type-II accommodation and, therefore, the allotment of the flat in question could not be regularized in his name.

5. It is the petitioners' case that the aforesaid order is illegal as the petitioners were not granted any opportunity to be heard and the principles of natural justice were not followed. The petitioners also made a plea for a compassionate treatment on the ground that petitioner no.1 is not in a position to climb stairs and her husband (father of petitioner no.2) also suffers from heart ailment. The said representation has not been accepted and this led the petitioners to file the present petition.

6. The respondents have already provided an extension of overstay in the flat for a period of eight months, as is available under the relevant rules, on payment of licence fee of ₹7,938/- and have, thereafter, imposed damages at the rate of ₹13,671/- per month for the subsequent period.

7. There may be some merit in the petitioners' plea for a compassionate treatment. However, the same has to be considered by the respondents in the light of such requirement of other employees and this Court is not inclined to interfere with such discretion.

8. Concededly, petitioner no.2 was not entitled to Type-II accommodation at the relevant time (although the learned counsel for the petitioners states that petitioner no. 2 is now entitled to Type-II category of accommodation) and, therefore, the flat in question could not be regularized in his name. Thus, this Court finds no infirmity with the decision of the respondents in cancelling the allotment of the flat in favour of petitioner no.2 although the said petitioner ought to have been given a hearing before the order of cancellation was passed.

9. The learned counsel for the respondents has fairly stated that the predicament of the petitioners would be taken into consideration and the petitioners would be allotted a ground floor flat in the category that petitioner no.2 is entitled to, that is, Type-I, as and when the same is available. In view of the said statement, no further orders are required to be passed in this regard. However, the learned counsel for the petitioners states that petitioner no.2 is now entitled to Type-II accommodation. Needless to mention that if it is correct that petitioner no. 2 is now entitled to Type-II accommodation, the respondents would consider regularisation of the flat in question in favour of petitioner no.2.

10. Insofar as the payment of market rent is concerned, this Court is of the view that there are certain mitigating factors that need to be considered. First of all, it is not disputed that petitioner no.2 is entitled to Type-I accommodation. Thus, although the petitioner no.2 is in unauthorized occupation of the flat in question but this also needs to be counterbalanced by the fact that he is undisputedly, entitled to another accommodation and thus charging the whole market rent for the flat in question (instead of

differential in the market rent of Type -I and Type-II) may not be entirely fair. Secondly, petitioner no.2 has not drawn any HRA, which he would be entitled to if he had not taken any government accommodation.

11. The petitioners have continued to occupy the flat in terms of the orders by this Court passed on 10.04.2015.

12. Keeping the aforesaid in view, this Court is of the view that ends of justice would be met if petitioner no.2 is not charged the licence fee at market rate for the period for which he has been in occupation of the flat under protection of the interim orders passed by this Court on 10.04.2015. Accordingly, the respondents shall modify the demand for licence fee.

13. The petitioners shall vacate the flat within a period of eight weeks from today and shift to Type-I flat which is currently available, as the Court is informed. This is in case if petitioner no.2 is not entitled to Type-II accommodation. The respondents are bound down to the statement made by their counsel that the respondents shall allot a ground floor accommodation of the category that petitioner no.2 is entitled to, as and when the same is available.

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

VIBHU BAKHRU, J

AUGUST 04, 2017
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