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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 9917/2018 & CM No.38657/2018 (for stay)
NEWHILLA K MARAK Petitioner

Through: Mr. Anand Mishra, Adv.

Versus

UNION OF INDIA & ORS Respondents

Through: Mr. Ripu Daman Bhardwaj & Mr.
T.P. Singh, Advs. for R-1&2.

Mr. Ranjan Mukherjee & Ms.
Aprajita Mukherjee, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.09.2018

1. This petition under Article 226 of the Constitution of India seeks (i) a mandamus to the respondent no.3 Resident Commissioner, Government of Meghalaya to allow the petitioner to stay in Quarter No.1, Grade-III, Meghalaya House, 9 APJ Abdul Kalam Road, New Delhi till her retirement from her service with the respondent no.3 and to allot the same in the name of the petitioner; and, (ii) quashing of the show cause notice dated 13th January, 2017 asking the petitioner to show cause why the order of eviction should not be made against her.

2. The petition came up first before this Court on 19th September, 2018 when the counsel for the respondents no.1&2 Union of India (UOI) and the Estate Officer (Litigation), Directorate of Estate, Ministry of Urban Development and the counsel for the respondent no.3 appeared on advance notice. However the counsel for the petitioner, on that date, after some arguments sought adjournment and the hearing was adjourned to today.

3. The counsel for the petitioner and the counsel for the respondent no.3 have been heard.

4. The admitted position is that (i) the husband of the petitioner was also in the employment of respondent no.3 on the post of Upper Division Assistant-cum-Accountant and was allotted the aforesaid quarter being the holder of Grade-III post; (ii) the petitioner is also employed with the respondent no.3 on the post of a Cleaner and was residing along with her husband and children in the quarter aforesaid; (iii) the husband of the petitioner died on 1st January, 2005; (iv) the petitioner along with her children however continued to reside in the same quarter; (v) the respondent no.3 allotted quarter No.17 to the petitioner as per the Grade-IV post held by the petitioner; the petitioner however did not shift into the same and was subsequently allotted quarter No.1 but again as per Grade-IV post; the petitioner continued to represent to the respondent no.3 for permission to continue residing in the same Grade-III quarter; (vi) the petitioner, on 1st May, 2015 instituted a suit against the respondent no.3 to restrain the respondent no.3 from evicting the petitioner from the quarter in her occupation and for mandatory injunction for a direction to the respondent no.3 to allot the quarter earlier allotted in the name of her husband, in the name of the petitioner; (vii) owing to the pendency of the said suit, the petitioner continued in occupation of the premises; (viii) the following issues were framed in the suit:

- (i) Whether the plaintiff is entitled to retain the quarter no.1, Meghalaya House, 9 Aurangzeb Road, New Delhi? OPP.
- (ii) Whether the defendant's letter directing the plaintiff to vacate the quarter in question is illegal and invalid? OPP.

(iii) Whether the plaintiff is entitled to permanent and mandatory injunction as prayed for? OPP.

(iv) Relief.”

and, (ix) the said suit being Suit No.56537/2016 of the Court of Additional Senior Civil Judge, New Delhi was dismissed vide judgment dated 30th July, 2018 holding (a) that the petitioner was not entitled to retain the Grade-III quarter in her occupation; and, (b) that the Civil Court had no jurisdiction to entertain the suit, vide Section 14 of the Meghalaya Public Premises (Eviction of Unauthorised Occupants) Act, 1980.

5. Thereafter this petition has been preferred, taking advantage of the finding of the Civil Court of the suit being not maintainable, though the Civil Court in its judgment has also threshed out the issue of entitlement of the petitioner to retain the quarter and pressing which entitlement, this petition also has been filed.

6. The counsel for the petitioner, on being asked to show the entitlement of the petitioner to retain the said quarter, has drawn attention to page 58 of the paper book being a document titled “Press Brief Note” with the subject “New Plinth Area norms - for General Pool Residential Accommodation (GPRA) to be constructed for Central Government Employees and its applicability to all Government Departments”. It is argued that the petitioner, as per the said Press Brief Note and her Grade Pay / Fixed Pay is entitled to a quarter having Unit Area of 40.80 sq. mtrs. and the quarter in occupation of the petitioner has Unit Area of 33 sq. mts. On enquiry as to how the said Press Brief Note for General Pool Residential Accommodation

constructed for Central Government Employees applies to the petitioner who is an employee of the Government of the State of Meghalaya, the counsel states that the respondent no.3 in its written statement in the Civil Suit admitted the said position. However, the counsel for the petitioner has neither filed the said written statement along with the paper book nor is carrying the same with himself. Without showing the admission, the petitioner cannot avail any benefit therefrom. I am even otherwise of the view that an admission, even if made by the signatory of the written statement, will not bind or stop the respondent no.3 from contending otherwise. There can be no estoppel against statute which includes statutory rules. Without the petitioner showing the rule of the Government of the State of Meghalaya adopting the Press Brief Note aforesaid, the petitioner cannot be entitled to any benefit thereof.

7. I may add that even if the said Press Brief Note were to apply, the same clearly is with respect to “to be constructed” accommodation and not for existing accommodation. The Press Brief Note as filed does not indicate the date thereof and it is not the case of the petitioner that the accommodation in occupation of the petitioner was constructed after the Press Brief Note”.

8. The counsel for the respondent no.3 also draws attention to the judgment of dismissal of Civil Suit filed by the petitioner recording that the petitioner, prior to the institution of the suit, had sought six months time to vacate the quarter but had not vacated the same.

9. No merit is thus found in the contention of the counsel for the petitioner on the basis of the Press Brief Note aforesaid.

10. The only other argument of the counsel for the petitioner is that others similarly placed as the petitioner, have been permitted to occupy similar quarters as in occupation of the petitioner. However, no particulars in that regard are stated and vague arguments addressed and on the basis whereof, petition cannot be entertained. Be that as it may, the counsel for the respondent no.3 categorically denies that anybody who is similarly placed as the petitioner has been allotted the quarter. Even otherwise, even if any other employee is occupying the quarter in excess of their entitlement, the same would not entitle the petitioner to retain the quarter as there is no concept of negative equality under Article 14 of the Constitution of India. Reference in this regard can be made to the dicta of the Supreme Court in *State of UP Vs. Rajkumar Sharma* (2006) 3 SCC 330 and *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59. For the petitioner to succeed, she was required to show service rule under which she is entitled to continue in the subject quarter and which the petitioner has failed to show.

11. The petitioner has already over stayed for 13 years in the accommodation beyond her entitlement and cannot be granted any further time which would be to the prejudice of others who are entitled to the quarter in occupation of the petitioner and who are unable to avail thereof for the reason of the petitioner unauthorizedly continuing to be in occupation thereof.

12. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2018/‘gsr’..

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