

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

% *Date of decision: 27th November, 2018*

+ LPA 653/2018, CAV 1083/2018, CM Nos. 49045-49048/2018

NEWHILLA K MARAK Appellant

Through: Mr. Avijit Bhattacharjee, Adv. with
Mr. Ajoy Kr. Ghosh, Ms. Upma
Shrivastava & Mr. Abhay Kant
Mishra, Advs.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Vinod Diwakar, CGSC for R-1 &
R-2
Ms. Aprajita mukherjee, Adv. for R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CAV 1083/2018

Learned counsel for the caveator has put in appearance.

Caveat stands discharged.

CM No. 49047/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM No. 49045/2018 (delay of 18 days in filing the appeal)

For the reasons stated in the application, the delay of 18 days in filing the appeal stands condoned. Application stands disposed of.

LPA 653/2018

1. The challenge in the appeal is to the order dated September 25, 2018 whereby the learned Single Judge has dismissed the writ petition

filed by the appellant. The prayer in the writ petition before the learned Single Judge was for a direction against the Resident Commissioner, Government of Meghalaya to allow the appellant to stay in Qtr. 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 allot the same in the name of the appellant. A further relief was prayed for, for quashing of the show cause notice dated January 13, 2017 asking the appellant to show cause why order of eviction should not be made against her.

2. The facts as noted from the record are, the husband of the appellant was also in the employment of respondent No.3 on the post of UDA (Assistant)-cum-Accountant and was allotted the aforesaid quarter being the holder of Grade-III post. The appellant is employed with the respondent No.3 on the post of Cleaner and was residing with her husband and children in the said quarter. The husband of the appellant died on January 01, 2005. The appellant along with her children, however continued to reside in the same quarter. The respondent No.3 allotted Qtr. No. 17 to the appellant as per Grade-IV post held by her. The appellant did not shift into the same and was subsequently allotted Qtr. No.1 but again as per Grade-IV post. The appellant continued to

represent to the respondent No.3 for permission to continue residing in the same Grade-III quarter.

3. On May 01, 2015, she filed a suit against the respondent No.3 to restrain the respondent No.3 from evicting her from the quarter in her occupation and for mandatory injunction and for a direction to the respondent No.3 to allot the quarter earlier allotted in the name of her husband, in her favour. The suit was dismissed vide judgment dated July 30, 2018 holding that the appellant was not entitled to retain the Grade-III quarter in her occupation and that the Civil Court had no jurisdiction to entertain the suit in view of Section 14 of the Meghalaya Public Premises (Eviction of Unauthorized Occupants) Act, 1980. It is in this background, the writ petition was filed before the learned Single Judge.

4. The case of the appellant before the learned Single Judge was that she was entitled to retain the said quarter. She relied upon a Press Brief Note with the subject “New Plinth Area Norms-for General Pool Residential Accommodation (GPRA) to be constructed for Central Govt. Employees and its applicability to all Govt. Departments”, to contend that as per the Press Brief Note and her Grade Pay / Fixed Pay, she is entitled to a quarter having unit area of 40.80 sq. mtrs and the quarter in occupation of the appellant has unit area of 33 sq. mtrs. The

learned counsel for the appellant had relied upon a written statement filed by the respondent No.3 to contend that the respondent no.3 admitted that the Press Brief Note shall be applicable to the employees in the Meghalaya Government. But he could not file the said written statement before the learned Single Judge. As such, the learned Single Judge did not take any cognizance of such a statement. Even otherwise, the learned Single Judge was of the view that the Press Brief Note was with respect to 'to be constructed accommodation' and not for existing accommodation.

5. The other argument advanced by the learned counsel for the appellant was that similarly placed persons were permitted to occupy similar quarters, which is in occupation of the appellant. The appellant did not give any particulars in support of the said contention. The said plea was also rejected.

6. Learned counsel for the appellant submits that the Qtr. No. 1, Grade-III, Meghalaya House, 9, Dr. APJ Abdul Kalam Road, New Delhi allotted to her husband, is a Type-I quarter, which was much below his entitlement but he accepted the same because of his poor leg condition and inability to travel long distance. He also states that since the appellant is also entitled to a Type-I quarter, she should be allowed to

continue in the same Type-I quarter allotted to her husband. He has drawn our attention to page 104 of the paper book in this regard.

7. We are unable to agree with the said submission made by the learned counsel for the appellant for the simple reason that in the communication dated April 20, 2015 of the Public Information Officer (page 98 of the paper book), the following has been stated:-

“Note- Please see page 4 (highlighted) description of quarter No. 1/Grade III defined as Type II quarter in Meghalaya House, 9, Dr. APJ Abdul Kalam road, New Delhi.”

8. The aforesaid position is also reflected from page 102 (Sr. No.46 related to the appellant) of the paper book, which we reproduce as under:-

Sl. No.	Employee Name	Designation	Grade	Basic Pay of Employee Last drawn on February 2015	Rule applicable for allotment of staff Quarters at Meghalaya House, New Delhi	Entitled for Quarter Type	Quarter allotted	Type of Quarter Allotted	Date of Allotment	Details of the allotted Quarter	Current License fee of the allotted Quarter	Initial License fee	License fee deducted at present	Date of deduction at present rate of license fee
	XXXXX			XXXX			XXXXX			XXXX				
46.	Smt. Nehwillla K. Marak	Cleaner	IV	8280 + GP 1800	-do-	Type -I	Yes	Type-I	18.07. 2013	-do- Presently occupying	220	110	220	01.01.20 15 Vide office order RCE.4

										<i>Qtr. No. 1, Type II</i>				<i>PT.(II)/10 /224 dated 11.11.20 14</i>
	XXXXX			XXXX			XXXXX			XXXX				

9. The aforesaid clearly demonstrates that the quarter No.1, Grade-III Meghalaya House was declared as Type-II. In other words, the husband of the appellant was allotted Type-II quarter, which is not the entitlement of the appellant. Her entitlement is Type-I.

10. On a specific query, whether he has placed on record the allotment letter of the quarter being No. 1, Grade-III, Meghalaya House, 9, Dr. APJ Abdul Kalam Road, New Delhi, made to the husband of the appellant, the answer was in the negative.

11. Noting the aforesaid position and the fact that the learned counsel for the respondent No.3 has stated that the appellant has been allotted Qtr. No. 17 as per her entitlement / eligibility within the Meghalaya House itself and she shall not be shifted out, we are of the view the final conclusion of the learned Single Judge in the impugned order dismissing the writ petition is justified.

12. In view of the above, we do not see any merit in the appeal. The same is dismissed. No costs.

CM No. 49046/2018(for permission to file additional documents) & CM No. 49048/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 27, 2018/ak

