

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3772/2020 & CM APPL. 13502/2020**

Judgment reserved on : 10.07.2020
Date of decision: 14.07.2020

SH. Y.S DWIVEDI

.....Petitioner

Through: Mr.Dhruv Dwivedi, Advocate.

Versus

DIRECTORATE OF ESTATE & ANR.

.....Respondents

Through: Mr.Chetan Sharma, ASG, with Mr.
Anurag Ahluwalia, CGSC, Mr.
Abhigyan Siddhant & Mr. Amit
Gupta, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Mr.Y.S. Dwivedi who has retired from the post of Chief Engineer under the Military Engineer Services on 31.12.2019 at the age of 60 years seeks the issuance of a writ of mandamus to the respondent nos.1 and 2 i.e. Directorate of Estates through its Director

Estate, Nirman Bhawan, New Delhi and Union of India through the Secretary, Ministry of Housing and Urban Affairs respectively to allow the petitioner to retain the house bearing no. E-5/1, Sector -13, Block E, R.K Puram, Sector-13, New Delhi allotted to him on 14.06.2016 in accordance with the Central Government General Pool Residential Accommodation Rules, 2017 vide registration No.10123061 and AAN no. 244168 on prescribed license fee till the Covid-19 pandemic situation normalizes.

2. The petitioner submits that he is aggrieved by three notices issued by the respondent no.1 to him i.e.:-

- (i) notice dated **28.04.2020** issued by the respondent no.1 apprising him that his allotment of the Government Accommodation referred to hereinabove i.e. house ID No.334422, Type 6A at R.K.Puram, Sector-13, Block-E, Qtr.5-1 stood cancelled from 01.07.2020 after allowing the concessional period as per rules in force, as amended from time to time on payment of prescribed license fee for the required period of retention in view of his date of retirement being **31.12.2019** with it also being specified that no further

retention beyond the concessional period already granted should be allowed on any ground. Vide Clause 3 of the said notice, it was further specified that the petitioner was directed to hand over vacant possession of the quarter at Sl. No. 1 to the CPWD Enquiry Office including the portion occupied by his/her sharer, if any, on or before the date of cancellation of allotment failing which necessary action to evict him under the Public Premises (Eviction of Unauthorised occupants) Act, 1971 would be taken and that he was also liable to payment of penal damages;

- (ii) notice dated **05.06.2020** issued by the respondent no.1 which reads to the effect:-

***“No.12035/2/2020-Pol.II
Government of India
Ministry of Housing & Urban Affairs
Directorate of Estates***

***Nirman Bhavan, New Delhi
Dated: 5th June, 2020***

Subject: Vacation of houses on 30.6.2020 – retiring employees.

In view of the extra ordinary situation caused due to outbreak of Covid-19 Pandemic, and considering the hardships faced by the occupants in shifting and

vacation during lock down because of Covid-19, this Directorate, vide its O.M. dated 25.3.2020, granted suo-moto retention for the period from 17.3.2020 to 30.4.2020 to all allottees of General Pool Residential Accommodation (GPRA), which was further extended upto 30.6.2020 vide O.M. dated 5.5.2020.

2. In view of the relaxation in lock down vide Ministry of Home Affairs Order dated 30.05.2020, it has been clarified that relaxation granted earlier regarding retention of government accommodation will not be available beyond 30.6.2020.

3. It is further stated that the occupants who have superannuated and have exhausted 6 months retention upto June 30, 2020 shall not be allowed any further retention and are advised to make alternative arrangements well in advance for vacating / shifting their house.

4. Directorate of Estates is committed to well being of its occupants and advises them to comply with the guidelines issued by Ministry of Health & Family Welfare regarding social distancing and take necessary precautions while making arrangements for shifting / vacating their houses.”,

submitting to the effect that in the event of his not vacating the house by **30.06.2020**, he would be liable to pay penal damages i.e. 50 times of the license fee;

- (iii) notice dated **22.06.2020** issued by the respondent no.1 vide which the retention period of the accommodation of the allottees of General Pool Residential Accommodation

(GPRA) in view of Novel Coronavirus (COVID-19) was extended upto 15.07.2020 for all allottees on the same terms as earlier and all the concerned allottees having been advised to vacate the accommodation on or before 15.7.2020, else damage charges / market rent would be levied. The Office Memorandum dated 22.06.2020 reads to the effect:-

***“No . 12035 /2/2020-Pol-II
Government of India
Ministry of Housing and Urban Affairs
Directorate of Estates***

***Nirman Bhavan. New Delhi
Dated: 22nd June, 2020***

OFFICE MEMORANDUM

Subject: One-time relaxation to the allottees of General Pool Residential Accommodation (GPRA) in view of Novel Coronavirus (COVID-19) - extension of retention period.

In continuation of the Office Memorandum of even number dated 5.5.2020 and in partial modification of O.M. dated 1.6.2020 on the above subject and in view of various representations received regarding hardships faced by allottees in hiring alternate accommodation arranging labour for shifting due to increase in COVID-19 cases , in the suomoto extension of retention of Government accommodation granted vide OM dated 5-5-2020 for the period upto 30.6.2020, additional 15 days i.e. upto 15.7.2020 has been

allowed to all allottees on same terms and conditions as earlier.

2. Concerned allottees are advised to vacate the accommodation on or before 15.7.2020, else damage charges / market rent will be levied.”,

and thus in terms of Annexure-P-12, **Clause** of Memorandum dated 22.06.2020, the allotment of the petitioner has been cancelled w.e.f. 01.07.2020 vide notice dated 28.04.2020 issued by the respondent no.1, and in terms of the notice dated 22.06.2020 he has been asked to vacate the allotted accommodation on or before 15.07.2020 failing which damage charges/ market rent is liable to be levied and the petitioner is thus aggrieved by the said notice.

3. The petitioner has further submitted that he being well aware of these obligations after retirement and having planned to settle down in Lucknow, Uttar Pradesh post retirement had begun to develop his permanent house in Lucknow which is under construction but not yet in a habitable condition. The petitioner submits that he had expected to finish the construction of his house at Lucknow at the end of June, 2020 and had applied for the retention of the house for six months starting from 01.01.2020 and also paid the requisite amount (apparently of the licence fee) and that the respondent no.1 had

granted retention of the house till 30.06.2020 to the petitioner. The petitioner has further submitted that he had no intention to retain the house after June, 2020 but owing to the nationwide lockdown imposed by the Government of India (GoI) with effect from 25.03.2020 till 30.5.2020 to curb the outbreak of the highly contagious virus, namely Covid-19, the petitioner could not succeed with his plans of completion of construction of his house at Lucknow.

4. The petitioner further submits that due to the present pandemic of COVID-19, the movement of all citizens was restricted and the Government of India in consonance with the advisory of the WHO advised all the citizens to stay home to be safe and that thereafter, also a series of lockdowns were imposed by the Government till 30.05.2020 with some relaxations in green zones where cases of Covid-19 were nil or very less. The petitioner has further submitted that after the nationwide lockdown was imposed by the Central Government with effect from 25.03.2020, the respondent no. 1 was morally as well as legally bound to extend the retention period of all the officers who were due to vacate the allotted houses by March, 2020 till the lockdown was in effect and thus, the respondent no.1 vide

its order dated 25.03.2020 *suo moto* extended the retention of such allottees till 31.05.2020. The said Office Memorandum dated 25.03.2020 has been annexed by the petitioner to the present petition as Annexure- P-3 which accorded a one-time relaxation to the allottees of the General Pool Residential Accommodation (GPRA) in view of Novel Coronavirus (COVID-19). The said Office Memorandum dated 25.03.2020 reads to the effect:-

***“No.12035/2/2020-Pol.II
Government of India
Ministry of Housing and Urban Affairs
Directorate of Estates
Policy-II Section***

***Nirman Bhavan, New Delhi-110108
Dated, the 25th March, 2020***

OFFICE MEMORANDUM

Sub: One-time relaxation to the allottees of General Pool Residential Accommodation (GPRA) in view of Novel Coronavirus (COVID-19).

Ministry has been receiving calls from various allottees of Government accommodations, who were / are due to vacate their flats / houses and are not able to do so in the light of the advisories regarding social distancing issued by Ministry of Health and Family Welfare (MoH&FW) under the current global Coronavirus Pandemic (COVID-19). Further, Department of Personnel & Training (DoPT) has issued

Guidelines with do's & don'ts for government personnel vide their O.M. dated 17.03.2020 to contain the spread of this virus. Ministry of Home Affairs (MHA) vide its Order dated 24.03.2020 has issued directions for nation-wide complete lockdown to contain the fast spreading infection.

2. This extraordinary situation has been considered by the Ministry and it has been decided by the Competent Authority to allow suo-moto retention for the period from 17.03.2020 to 31.05.2020 for all such allottees under the Central Government General Pool Residential Accommodation (CGGPRA) Rules, 2017. This relaxation will be applicable to the following categories:

- i. Rule 24(2) – where two allottees, who are in occupation of separate accommodation allotted under these rules marry each other, and are directed to surrender one of the accommodation within one month of their marriage;*
- ii. Rule 40 – which provides for concessional period of retention of GPRA under different cases; and*
- iii. Rule 44 (7 & 8) – which provides for change of accommodation.*

2. The suo-moto retention period will be on the payment of licence fees as applicable to the allottee under these rules. No damage will be charged for this period.

3. These relaxations will be given to such allottees also where she/he has become unauthorized occupant of government accommodation before 17.03.2020. However, in such cases, after the retention period of 75 days i.e. upto 31.05.2020, the damage charges at telescopic rates, as was continuing prior to this period, will be resumed.

4. D.D.(Computers) will flash this message on the website for giving wide publicity.”

5. Vide Office Memorandum dated 05.05.2020, copy of which is annexed as Annexure P-4, the said suo moto extension of retention of quarters granted to allottees vide OM dated 25.03.2020 for the period from 17.03.2020 to 31.05.2020 was extended upto 30.06.2020 with all other terms and conditions of the OM dated 25.03.2020, remaining the same.

6. The petitioner thus, submits that the respondent no.1 amid the lockdown sent the impugned notice dated 28.04.2020 directing him to vacate the allotted house by the date 30.06.2020 and submits that when the respondent no.1 itself had extended the retention period for other allottees who were due to vacate in March 2020, and could not predict as to when the situation would normalize, the respondent no.1 ought not to have sent the impugned notice to the petitioner and ought to have taken a pragmatic decision in view of the pandemic especially as the respondent no.1 had suo moto granted the extension of retention of accommodation to allottees who were due to vacate the official accommodation in the month of March 2020 to May 2020, which

however was not made applicable to the petitioner who was due to vacate on 30.06.2020.

7. The petitioner submits that he had planned to finish construction of his house in Lucknow by the first week of June 2020 and had also alternatively planned to take a rental accommodation in Delhi if the construction did not finish in time and that due to the lockdown the petitioner was unable to go to Lucknow to get the construction finished and that in the State of Uttar Pradesh, a lockdown is still imposed in some regions and borders of Uttar Pradesh are also restricted for transit from Delhi and it was thus submitted by the petitioner that till 30.05.2020, the lockdown was in place with full restriction and it was not possible for the petitioner or for any person to plan the logistics and find a temporary home and shift a whole house hold from one place to another in view of the process of shifting being a threat to life itself involving man power and transportation which increases the chances of getting infected with Covid-19 even if all precautions as advised by the Government are taken. The petitioner has thus submitted that he has not been able to finish the construction as planned in Lucknow and has also not been in a position to search

for a rental accommodation in Delhi /Ghaziabad / Noida when the pandemic is at its peak level with no signs of dilution and most of the landlords are not taking any new tenants and are not even inclined to show the house to prospective tenants in view of the pandemic.

8. The petitioner further submits that he is a senior citizen and suffering from old age ailments and if evicted in these challenging times, he would invite a high risk of getting infected with the virus which is a threat to life and a violation of his fundamental right guaranteed under Article 21 of the Constitution of India and that whereas Article 21 of the Constitution of India protects the petitioner's life and personal liberty, however the respondent no.1 vide the impugned order dated 28.04.2020 has put the petitioner's life as well as the life of his family to threat of being infected with the virus during the course of shifting the house as it involves calling of labour and other man power and transportation even if the health advisory of social distancing and other measures are taken into account. The petitioner thus submits that the impugned order dated 28.04.2020 issued by the respondent no.1 calling upon to vacate the house at this point of time, threatens his life and that of his wife.

9. The petitioner submits that Delhi is the second worst hit state by Covid-19 cases after Maharashtra touching the highest spike every day with Delhi having crossed more than a lakh of cases now of persons affected by COVID-19. The petitioner further submits that Article 19(1)(e) of the Constitution of India protects his right to reside and settle anywhere in the country, and, the petitioner himself being a permanent resident of Lucknow and if the respondents forcefully evicted the petitioner from the allotted house, his right under Article 19(1)(e) of the Constitution of India would be violated, as the petitioner desires to settle down in Lucknow.

10. The petitioner submits that he is not going outside the house and has also told his domestic help to not to come to the house and has been ordering essentials online due to high risk of getting infected and he is diligently following the advisory dated 29.03.2020 of the Ministry of Health and Family for elderly persons, which categorically states that the elderly are at higher risk of getting infected with Covid-19 and should stay at home and avoid meeting persons specially those who are aged above 60 years.

11. The petitioner has placed on record as Annexure P-7, an advisory dated 13.04.2020 for protection of senior citizens aged above 60 years as issued by the Ministry of Social Justice and Empowerment, Department of Social Justice & Empowerment, Government of India as per which advisory, there are do's and don'ts that have been annexed. The said advisory reads to the effect:-

“Advisory for Senior Citizens during COVID-19

Based on the Census 2011 age-cohort data, it is projected that there would be approximately 16 Crore Senior citizens (aged above 60 yrs) in the Country.

Sr Citizens between age group 60-69 yrs	8.8cr
Sr Citizens between age group 70-79 yrs	6.4 cr
Assisted elders (above 80 years or people who require medical assistance)	2.8cr
Indigent elders (destitute who are homeless or deserted by the families)	0.18 cr

Senior citizens above the age of 60 years face an increased risk in COVID times. This is an advisory for Senior Citizens and their caregivers on how to protect them from increased health risk during this period.

For whom is this ?

- Aged 60 and above particularly those with following medical conditions
 - o Chronic (long-term) respiratory disease, such as asthma, chronic obstructive pulmonary disease (COPD), bronchiectasis, post tuberculous sequelae, interstitial lung disease

- o Chronic heart disease, such as heart failure
- o Chronic kidney disease
- o Chronic liver disease, such as alcoholic, and viral hepatitis
- o Chronic neurologic conditions, such as Parkinson's disease, stroke
- o Diabetes
- o Hypertension
- o Cancer

Advisory for Senior Citizens who are mobile:

Do's	Don'ts
• Stay within the house all the time • Avoid having visitors at home • If meeting is essential, maintain a distance of 1 meter • If living alone, one can consider depending on healthy neighbours for acquiring essentials for home • Avoid small and large gatherings at all cost • Remain actively mobile within the house • consider doing light exercise and yoga at home • Maintain hygiene by washing hands. Especially before having meals and after using the washroom. This can be done by washing hands with soap and water for at least 20 seconds • Clean frequently touched objects such as spectacles • Sneeze and cough into tissue paper/handkerchief. After coughing or sneezing dispose of the tissue paper in a closed bin/wash your handkerchief and hands	• Come in close contact with someone who is displaying symptoms of coronavirus disease (fever/ cough/ breathing difficulty). • Shake hands or hug your friends and near ones • Go to crowded places like parks, markets and religious places • Cough or sneeze into your bare hands • Touch your eyes, face and nose • self-medicate • Go to hospital for routine checkup or follow up. As far as possible make teleconsultation with your healthcare provider • Invite family members and friends at home

• Ensure proper nutrition through home cooked fresh hot meals, hydrate frequently and take fresh juices to boost immunity • Take your daily prescribed medicines regularly. • Monitor your health. If you develop fever, cough and/or breathing difficulty or any other health issue, immediately contact nearest health care facility and follow the medical advice • Talk to your family members (not staying with you), relatives, friends via call or video conferencing, take help from family members if needed	
• Due to Summer, avoid dehydration. Consume an adequate amount of water. (Caution for individuals with pre-existing Heart and Kidney disease)	

Advisory for caregivers of dependent senior citizens

Do's	Don'ts
• Wash your hands before helping the older individual • Cover nose and mouth adequately using a tissue or cloth while attending on the senior citizen • Clean the surfaces which are frequently used. These include a walking cane, walker, wheel-chair, bedpan etc • Assist the older individual and help her/him in washing hands • Ensure proper food and water intake by senior citizens	• Go near senior citizens if suffering from fever/cough/breathing difficulty • Keep senior citizens completely bed-bound • Touch the Senior Citizen without washing hands

• Monitor his/her health	
• Contact help-line if the older adult has the following symptoms: - o Fever, with or without body ache - o New-onset, continuous cough, shortness of breath - o Unusually poor appetite, inability to feed	

Advisory for senior citizens on mental well-being

Do's	Don'ts
• Communicate with relatives at home • Communicate with neighbours, provided social distancing is followed, and gathering of people is avoided • Provide a peaceful environment • Rediscover old hobbies like painting, listening to music, reading • Make sure to access and believe only the most reliable sources of information • Avoid tobacco, alcohol and other drugs to avoid loneliness or boredom • If you have an already existing mental illness, call helpline (08046110007)	• Isolate yourself • Confine oneself in a room • Follow any sensational news or social media posts. • Spread or share any unverified news or information further
• Contact helpline in case of - o Change in mental status, such as excessively drowsy during the day, not responding, speaking inappropriately - o New onset of inability to recognise relative which he/she could do before	

13. The petitioner submits that the respondents have not extended the retention period for the petitioner taking into account the relaxations of the lockdown restrictions vide order dated 30.05.2020 but submits that the respondents have failed to perceive that the MHA has not suggested anywhere to shift or vacate the house during the increasing number of Covid-19 cases in the capital. The petitioner reiterates that shifting during such times involves a high risk of catching the Covid-19 virus which puts his life into danger as well as of others who might come in contact with the petitioner.

14. The petitioner thus places reliance on the order dated 30.05.2020 bearing No. 40-3 /2020-DM-I(A) issued by the Ministry of Home Affairs, Government of India under Section 6(2)(i) of the Disaster Management Act, 2005, whereby the lockdown was extended in Containment Zones till 30.06.2020 with the reopening of prohibited activities in a phased manner in areas outside Containment Zones. The guidelines for phased reopening (Unlock-1) issued by the Ministry of Home Affairs vide aforementioned order dated 30.05.2020 are to the effect:-

“Guidelines for Phased Re-opening (Unlock 1)

[As per Ministry of Home Affairs (MHA) Order No. 40-3/2020-DM-I (A) dated 30th May , 2020)

1. Phased re-opening of areas outside the Containment Zones

In areas outside Containment Zones, all activities will be permitted, except the following, which will be allowed, with the stipulation of following Standard Operating Procedures (SOPs) to be prescribed by the Ministry of Health and Family Welfare (MoHFW), in a phased manner:

Phase I

The following activities will be allowed with effect from 8 June, 2020:

- (i) Religious places / places of worship for public.*
- (ii) Hotels , restaurants and other hospitality services.*
- (iii) Shopping malls.*

Ministry of Health & Family Welfare (MoHFW) will issue Standard Operating Procedures (SOPs) for the above activities, in consultation with the Central Ministries / Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID - 19.

Phase II

Schools, colleges, educational/ training / coaching institutions etc., will be opened after consultations with States and UTs. State Governments/ UT administrations may hold consultations at the institution level with parents and other stakeholders. Based on the feedback, a decision on the re-opening of these institutions will be taken in the month of July, 2020.

MoHFW will prepare SOP in this regard, in consultation with the Central Ministries / Departments concerned and other stakeholders, for ensuring social distancing and to contain the spread of COVID- 19.

Phase III

Based on the assessment of the situation, dates for re-starting the following activities will be decided:

- (i) International air travel of passengers , except as permitted by MHA.*
- (ii) Metro Rail.*
- (iii) Cinema halls, gymnasiums , swimming pools , entertainment parks , theatres, bars and auditoriums, assembly halls and similar places.*
- (iv) Social/ political / sports / entertainment / academic / cultural/ religious functions and other large congregations .*

2. National Directives for COVID-19 Management

National Directives for COVID-19 Management, as specified in Annexure I, shall continue to be followed throughout the country.

3. Night curfew

Movement of individuals shall remain strictly prohibited between 9.00 pm to 5.00 am throughout the country, except for essential activities. Local authorities shall issue orders, in the entire area of their jurisdiction, under appropriate provisions of law, such as under Section 144 of CrPC , and ensure strict compliance.

4. Lockdown limited to Containment Zones

- (i) Lockdown shall continue to remain in force in the Containment Zones till 30 June, 2020.*

(ii) Containment Zones will be demarcated by the District authorities after taking into consideration the guidelines of MoHFW.

(iii) In the Containment Zones, only essential activities shall be allowed. There shall be strict perimeter control to ensure that there is no movement of people in or out of these zones , except for medical emergencies and for maintaining supply of essential goods and services. In the Containment Zones, there shall be intensive contact tracing, house-to-house surveillance, and other clinical interventions, as required. Guidelines of MoHFW shall be taken into consideration for the above purpose.

(iv) States/ UTs may also identify Buffer Zones outside the Containment Zones, where new cases are more likely to occur. Within the buffer zones, restrictions as considered necessary may be put in place by the District authorities.

5. States/ UTs, based on their assessment of the situation, may prohibit certain activities outside the Containment zones, or impose such restrictions as deemed necessary.

6. Unrestricted movement of persons and goods

(i) There shall be no restriction on inter-State and intra-State movement of persons and goods. No separate permission/ approval/ e-permit will be required for such movements.

(ii) However, if a State/ UT, based on reasons of public health and its assessment of the situation, proposes to regulate movement of persons, it will give wide publicity in advance regarding the restrictions to be placed on such movement, and the related procedures to be followed.

(iii) Movement by passenger trains and Shramik special trains; domestic passenger air travel; movement of Indian Nationals stranded outside the country and of specified persons to travel abroad; evacuation of foreign nationals;

and sign-on and sign-off of Indian seafarers will continue to be regulated as per SOPs issued.

(iv) No State/ UT shall stop the movement of any type of goods/ cargo for cross landborder trade under Treaties with neighbouring countries.

7. Protection of vulnerable persons

Persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years are advised to stay at home, except for essential and health purposes.

8. Use of Aarogya Setu

(i) Aarogya Setu enables early identification of potential risk of infection, and thus acts as a shield for individuals and the community.

(ii) With a view to ensuring safety in offices and work places, employers on best effort basis should ensure that Aarogya Setu is installed by all employees having compatible mobile phones.

(iii) District authorities may advise individuals to install the Aarogya Setu application on compatible mobile phones and regularly update their health status on the app. This will facilitate timely provision of medical attention to those individuals who are at risk.

9. Strict_ enforcement of the guidelines

(i) State/ UT Governments shall not dilute these guidelines issued under the Disaster Management Act, 2005, in any manner.

(ii) All the District Magistrates shall strictly enforce the above measures.

10. Penal provisions

Any person violating these measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005 , besides legal action under Section 188 of the IPC, and other legal provisions as applicable. Extracts of these penal provisions are at Annexure II.”

15. The petitioner has further submitted that he had made a representation to the respondent no.1 on 08.05.2020 by sending a request for extension of the retention of the house stating the reason of high risk of catching COVID-19 during the shifting process as it involves going outside, labour involvement, packing of house furniture which requires outside help and other related work which requires close contact, like lifting up packed stuff and loading it etc. in which social distancing cannot be maintained at all times, and thus the petitioner submits that there is a risk of catching the virus which puts his life in threat as well as the life of the other persons who would be coming in close contact with each other and has further submitted that he would also have to visit the various offices like CPWD, IGL, Electricity Department, Cable connection, Telephone Dept, Broadband Office etc. for disconnection of services.

16. *Inter alia* the petitioner submits that there has been no response to the representation dated 08.05.2020 made by the petitioner to the

respondent no.1. The petitioner further submits that the respondents have been insensitive to the challenging times by issuance of the circular dated 05.06.2020. The petitioner has further submitted that he has filed another representation dated 14.06.2020 to the respondent no.1 seeking the extension of the retention period till the situation normalizes but no response had been received till date and rather another notice dated 22.06.2020 has been issued by the respondent no.1 by which suo moto another 15 days extension to retain the allotted house has been granted to all the persons who have since retired.

17. The petitioner reiterates that his right to life in terms of Article 21 of the Constitution of India is infringed by the act of the respondents seeking to evict the petitioner forcibly despite the risk of getting infected from COVID-19 during the shifting process and thus his right to live and liberty stands infringed. Likewise, the petitioner submits that the threat of imposition of 50 times of the license fee to the petitioner is such as to force him in the present situation to risk his life and liberty including that of his family if he is compelled to shift from the allotted accommodation which is also an infringement of his

fundamental right to live guaranteed by Article 21 of the Constitution of India, in as much as, the respondents have failed to consider the practical scenario of vacating the house in the present COVID-19 pandemic situation.

18. *Inter alia* the petitioner submits that the respondents would suffer no loss as the petitioner would be paying the normal rent as fixed and would be vacating the house as soon as the situation normalizes. The petitioner further submits that the conditions imposed vide the relaxation in the lockdown vide Clause 7 thereof in relation to vulnerable witnesses describes to the effect:-

“7. Protection of vulnerable persons

Persons above 65 years of age, person with co-morbidities, pregnant women, and children below the age of 10 years are advised to stay at home, except for essential and health purposes.”,

and the petitioner thus submits that the MHA nowhere indicates that persons like the petitioners who are retired officers of the Government of India need to be vacated in present challenging times and put their life in threat and that the reliance on the MHA order dated 30.05.2020 is completely misplaced and a direction to vacate the house is arbitrary and constitutionally illegal.

19. *Inter alia* the petitioner submits that the respondents have failed to consider that Schools, University, Metro and the Courts are closed till date only for the reasons to contain the spread of Covid-19 virus as it poses a threat to life of all the citizens and that all the institutions other than essentials required are closed to curtail such risk and to protect the citizens life as guaranteed under Article 21 of the Constitution of India.

20. *Inter alia* the petitioner submits that the respondent no.2 vide its **OM dated 11.05.2020 has stopped** all the rotational transfers of its officials till 30.04.2021 in view of the threat posed by the Covid-19 pandemic, but has deemed it fit on the contrary that the petitioner and the other retired officers carry out the shifting process during the pandemic situation and that the respondents cannot make pick and choose rules for different sections of people when it comes to a life threatening situation like at present and that the lives of serving as well as of the retired officers who have served the nation have equal importance and that the Constitution protects them equally.

21. *Inter alia* the petitioner submits that the Government of India and the Central Government have come forward to evacuate stranded

citizens outside the country and all measures are being taken to protect the migrant labourers to reach their destination safely, the MSME sector has been given economic aid and the work from home culture is being promoted by the Central Government and most of the IT Companies have permitted work from home for its employees till situation normalizes and the government has been constantly advising senior citizens to stay inside their home, but the Respondents in contrary to above safeguards have been directing the petitioner to vacate the allotted home, which would be fatal in such a pandemic situation and the petitioner thus submits that in the circumstances there is no other alternative but to seek the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for seeking the relief.

22. Through the written submissions that have been submitted on behalf of the petitioner, the submissions made in the petition are reiterated and the petitioner submits that the respondents are responsible for providing shelter to all the Government servants during their service to the government but that does not absolve them from their constitutional duty to protect the lives of the allottees

during a pandemic situation like the present and that the respondents are duty bound to protect the petitioner rather than directing him to vacate the house during a pandemic.

23. The petitioner has also submitted that the respondents in view of the lockdown imposed *suo moto* extended the retention period for the allottees who were due to vacate by 31.03.2020 and this *suo moto* retention has only benefitted the allottees who were due to vacate in March 2020 by three months i.e. an allottee who was due to vacate in March 2020 had already utilized his six months retention period starting from September 2019 till March 2020 for making his necessary arrangement after retirement and that too in a Covid-19 free environment but that the petitioner's valuable time from March 2020 till July 2020 has been spent inside his home in order to protect himself and his wife's life from Covid-19. *Inter alia* the petitioner submits that further retention time of allottees which started in September 2019 which was a Covid-19 free environment, by no stretch of argument can be compared to the present time of pandemic. **The petitioner has further submitted that he is aware that he cannot retain the house on account of the pandemic for very long**

but has only prayed for the time till the pandemic normalizes and seeks a period of 5-6 months so as to plan his next course of action.

24. The petitioner further submits that because of the uncertainty of the situation at present, it is not known whether the petitioner would be able to complete the construction of his house in time as planned owing to the new decisions (including lockdown) being taken periodically by the State of UP and if not, he would have to shift into a rental accommodation after the expiry of time so granted by this Hon'ble Court, but in order to attempt to try to complete the construction of his house while adhering to all the health precautions, the petitioner and his wife out of necessity in this extra ordinary situation of the pandemic want to retain the house and that the petitioner has cited the respondents having given extension to the allottees in Mumbai city till 31.08.2020 in view of the highly contagious nature of virus and in order to contain it and protect the life of citizens, the respondents have given the said extension.

25. The petitioner has further submitted that the respondents have been attempting to mislead the Court by putting forth the facts pertaining to housing demand, waiting list and vacation of the houses

by other allottees and submits that in fact, the figure of 1400 who have vacated the houses after 01.06.2020 cannot be presumed to include all those who were due to vacate on 30.06.2020 or are the ones who have superannuated.

26. The petitioner submits that his situation cannot be compared with other allottees as their situation may differ at many levels with the petitioner. Inter alia, it has been submitted on behalf of the petitioner that the respondent has submitted in para 15 of their affidavit admitting that in the cases of allottees who are found tested positive of COVID 19, they were granted extension which only means that the respondents are not willing to protect the life of allottees contracting the virus but only giving extension if an allottee contracts the virus, which is unconstitutional. The petitioner has further submitted that in view of the submissions made by the petitioner being uncontroverted and the evasive affidavit filed by the respondent, the petition is liable to be allowed and reliance is sought to be placed on behalf of the petitioner on the verdict of this Court in ***Grand Vasant Residents Wel. Ass. Vs. DDA and Ors. 209(2014)DLT110***, to contend that it was held therein that in cases where submissions made in the

petition are not denied specifically, the same are deemed to be admitted by the respondents.

27. The petitioner also seeks to place reliance on the verdict of this Court in *P.K. Koul Vs. Estate Officer and Ors; ILR (2010) Supp.(1) Delhi 657* submitting to the effect that vide this verdict this Court in its extraordinary jurisdiction in the extraordinary situation had let the petitioner thereof to retain the house till the time the respondent makes other arrangements for his stay in his home town and held the eviction orders to be in clear violation of Article 21 of the Constitution of India. The petitioner further submits that the WHO has acknowledged that the COVID-19 virus can be air borne and till date advised to stay at home to be safe and further in the light of every State Government taking a new decision everyday in view of the pandemic and the state of uncertainty clubbed with the threat of life makes the present situation extraordinary.

28. The petitioner further places reliance on the verdict of this Court in *Halliburton Offshore Services Inc. vs. Vedanta Limited and Ors. O.M.P. (I) (COMM) & IA 3697/2020 a verdict dated 20.04.2020*, wherein it has laid down that the lockdown due to

pandemic is in the nature of "*force majeure*" and the petitioner thus submits that in view of the pandemic every sector has been granted benefit by the Government but that the respondents have failed to extend any relief to the present petitioner in view of the pandemic and that the scope of *suo motu* extension granted by the respondent No.1 does not benefit the petitioner but only benefits the allottees those who were due to vacate in March, 2020. The petitioner further submits that he undertakes to vacate the premises within a period of five months assuming the situation normalizes by then in as much as he would find out ways to complete the house construction at Lucknow or find out a rented accommodation in the event of his being unable to construct his house at Lucknow.

29. The petitioner during the course of the proceedings on 10.7.2018, *inter alia*, placed reliance on the verdict of this Court in ***P.K.Handoo V. Estate Officer and Director, Directorate of Estates;*** in W.P.(C) 11742/2005 a verdict dated 2.8.2006 wherein the petitioner thereof a Kashmiri Pandit who retired on 31.7.2004 from the Intelligence Bureau, Government of India and had been allotted government accommodation D-45, Mandir Marg, Gole Market, New

Delhi against whom an eviction order was passed by the Estate Officer dated 30.6.2005, in view of the extraordinary circumstances, due to militancy in Kashmir the people of the minority Kashmiri Pandits were targeted, specially the said petitioner, who was the prime target working with the Intelligence Bureau, and in view of this verdict the petitioner thereof subject to payment of normal license fees or in the alternative providing of an alternative accommodation to that petitioner and his family members anywhere in Delhi till the pendency of the SLP(Civil) No. 7369/97 was allowed to retain the said official accommodation submitting thus to the effect that equal protection means the right to equal treatment in similar circumstances and that there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same and that it is settled law as laid down vide paragraph 11 of the said verdict that a judicial or quasi judicial decision cannot offend Article 14 of the Constitution of India.

30. Reliance was also placed on behalf of the petitioner on the article of WHO on the COVID 19 spread by tiny particles suspended in the air submitting to the effect that the gravity of the spreading of

COVID 19 as a pandemic and the necessity of maintaining social distancing during the present pandemic cannot be ignored.

31. Reliance was also placed on behalf of the petitioner on the cancelled ticket for the Kashi Vishwanath Express train for the date 10.7.2020 submitting to the effect that though there are trains running as per the list of place of arrival and departure timing filed by the petitioner which include:-

- the train no. 02229 Lucknow Mail Special running between Lucknow Junction and New Delhi, daily;
- Lucknow Mail Special 02230 running between New Delhi and Lucknow Junction, daily;
- Gomati Express Spl. bearing No. 02419 running between Lucknow and New Delhi, daily;
- Gomati Express Special bearing No. 02420 running between New Delhi and Lucknow daily;

and it was sought to be submitted on behalf of the petitioner that in view of the factum that the trains are being cancelled, it is difficult for the petitioner to transit between Delhi and Lucknow or through any other train that would be via Lucknow.

32. Similar oral submissions were addressed on behalf of the petitioner by the learned counsel Mr.Dhruv Dwivedi, Advocate.

33. The respondent No.1 through the short affidavit of Mr.G.P.Sarkar, Deputy Director, Directorate of Estates, Nirman Bhawan, New Delhi submitted to the effect that those of the contents of the writ petition had not been specifically admitted, would be deemed to have been denied. The respondent No.1 submitted further that the Directorate of Estates in the Ministry of Housing and Urban Affairs has the mandate to administer allotment of General Pool Residential Accommodation, i.e., (GPRA) at New Delhi and 39 other locations across the country for eligible officers working in the Central Government as per the Central Government Pool Residential Accommodation Rules, 2017 (CGPRA) and submitted that in addition to the allotment of houses, the Directorate of Estates has the responsibility to monitor the *bona fide* use of Government premises, eliminate misuse of public property as also the eviction of unauthorized occupants as per norms.

34. Reliance was sought to be placed on behalf of the respondent No.1 on the CGPRA Rules 2017 and it was further submitted that the

houses under the GPRA are limited in number and cater to a huge number of officials in the Central Government etc. thereby curbing unauthorized occupation, i.e., occupation beyond the permissible period which is a huge responsibility. Respondent No.1 has further submitted that delayed vacation and unauthorized occupation choke the housing pool and constrain availability of accommodation to the new incumbents in as much as there is always a long list of officials waiting to get Government Accommodation and thus it is essential to maintain circulation/supply for government employees by ensuring vacation/eviction of accommodations in time.

35. The respondent No.1 has further submitted that the Directorate of Estates has been managing this whole process of allotment, retention and vacation through automated systems of allotments with transparency and objectivity guided by the CGPRA Rules, 2017 and has always been very considerate for the well being of the residents.

36. The respondent No.1 further submits that due to the outbreak of COVID 19 pandemic, the Directorate of Estates has proactively granted *suo motu* retention to all its allottees initially for 75 days from 17.3.2020 to 31.5.2020 vide OM No. 12035/2/2020-Pol.II dated

25.3.2020 by relaxing the rules and further submitted that *suo motu* retention was granted to all allottees who were to vacate/shift accommodations during this period. It is further submitted by the respondent No.1 that this retention was also extended to the unauthorized occupants on 17.3.2020 or before and it was decided to charge normal license fee from them for this period. In as much as the Directorate of Estates acknowledged the challenges caused by the outbreak of COVID-19 pandemic and took cognizance of hardships faced by the allottees in vacating/shifting their houses after completion of their period of retention and promptly extended suo motu retention further upto 30.6.2020 across India when the lockdown was extended upto 31.5.2020 by the Ministry of Home Affairs (MHA) vide their order No. 40-3/2020-DM-I(A) dated 17.5.2020 and that the Directorate of Estates also issued its advisories to all its allottees to follow the precautions and prescriptions while shifting/vacating their houses as advised by the Ministry of Health and Family Welfare. The said order dated 17.05.2020 reads to the effect:-

***“No.40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs***

North Block, New Delhi-110001

Dated 17th May, 2020

ORDER

Whereas, the National Disaster Management Authority (NDMA) in exercise of their powers under section 6(2)(i) of the Disaster Management Act, 2005, vide their Orders dated 24.03.2020, 14.04.2020 and 01.05.2020 had directed the National Executive Committee (NEC) to take lockdown measures so as to contain the spread of COVID-19 in the country;

Whereas, Chairperson NEC, in exercise of the powers conferred under Section 10(2)(1) of the Disaster Management Act, 2005, has issued Orders of even number on lockdown measures dated 24.03.2020, 29.03.2020, 14.04.2020, 15.04.2020 and 01.05.2020;

Whereas, save as otherwise provided in the guidelines annexed to this Order, all Orders issued by NEC under Section 10(2)(1) of the Disaster Management Act, 2005, shall cease to have effect from 18.05.2020;

Whereas, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, NDMA has issued an Order number 1-29/2020 - PP dated 17.05.2020 directing the Chairperson, NEC that lockdown measures to contain the spread of COVID-19 be continued to be implemented in all parts of the Country, for a further period upto 31.05.2020;

Now therefore, under directions of the aforesaid Order of NDMA dated 17.05.2020, and in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, NEC, hereby issues

directions for strict implementation, to all the Ministries/ Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities that lockdown measures to contain the spread of COVID-19 will continue for a period of upto 31.05.2020, as per the guidelines annexed to the Order, which will come into effect from 18.05.2020.”

37. Inter alia, the respondent No.1 has submitted that the Ministry of Home Affairs vide its order dated 40-3/2020-DM-1(A) dated 30.05.2020 initiated phased re-opening after the lockdown (Unlock-1) and allowed interstate movement of goods and services except in the containment zones and it was further submitted that even after this the Directorate of Estates has been considerate to its allottees and granted further buffer of 15 days retention upto 15.07.2020 vide O.M. No. 12035/2/2020-Pol.II dated 22.06.2020 to provide breathing space to the allottees to make necessary arrangements for movement/shifting. The respondent No.1 has thus submitted that in total the allottees were granted 45 days post lockdown to make necessary preparations. It is further submitted that the MHA vide order No. 40-3/2020-DM-1(A) dated 29.6.2020 initiated the unlock phase-2. The contents of the OM No. 12035/2/2020-Pol.II dated 22.06.2020 are to the effect:-

“OFFICE MEMORANDUM

Subject: One-time relaxation to the allottees of General Pool Residential Accommodation (GPRA) in view of Novel Coronavirus (Covid-19)-extension of retention period.

In continuation of the Office Memorandum of even number dated 5.5.2020 and in partial modification of O.M. dated 1.6.2020 on the above subject and in view of various representations received regarding hardships faced by allottees in hiring alternate accommodation, arranging labour for shifting due to increase in COVID-19 cases, in the suo moto extension of retention of Government accommodation granted vide OM dated 5-5-2020 for the period upto 30.6.2020, additional 15 days i.e. upto 15.7.2020 has been allowed to all allottees on same terms and conditions as earlier.

2. Concerned allottees are advised to vacate the accommodation on or before 15.7.2020, else damage charges/market rent will be levied.”

38. *Inter alia*, the respondent No.1 has submitted that under the prevailing scenario, scale of spread of COVID-19 and paucity of transit accommodations, there is pressing demand for accommodations from the officers who have joined the Government of India in recent months and have been waiting for accommodations. *Inter alia*, the respondent No.1 has submitted that the petitioner is seeking retention of Type VI-A accommodation at R.K.Puram and as per the

Government Accommodation Management System (GAMS) more than 1000 officers in Delhi are waiting for the accommodation in the type VIA category alone, including many senior officers in the government. It is further submitted by the respondent No.1 that it would be very difficult for the Directorate of Estates to accommodate them if the present incumbents do not vacate.

39. Inter alia, the respondent No.1 has further submitted that 64 occupants in type VI A accommodations were to vacate, and 28 of them have already vacated during this period and it has further been submitted that the petitioner is residing in Sector-13, R.K.Puram, New Delhi which is not in a containment zone and the petitioner thus has got enough time to make the arrangements for shifting and he was conveyed accordingly. *Inter alia*, it has been submitted on behalf of the respondent No.1 that no timeline can be predicted for the creation/availability of vaccine or cure from the COVID-19 infection and therefore, the Directorate of Estates cannot keep on extending the stay in GPRA till such time in view of the pandemic. The respondent No.1 has further submitted that more than 2000 officers who were to vacate/shift their houses could not vacate due to the lockdown in view

of the COVID-19 pandemic. The respondent No.1 has further submitted that all the services for transportation, packing and unpacking have already resumed and as per the records of the Directorate of Estates in GAMS approximately 1400 allottees have vacated/shifted in Delhi during this pandemic period.

40. The respondent No.1 has further submitted that the Directorate of Estates has not allowed any allottee to retain their houses beyond this permissible period, i.e., 15.7.2020, other than a few exceptional cases on grave health issues such as, *inter alia*, COVID-19 positive case in the family or treatment like chemotherapy of the allottee or the family member. The respondent No.1 has further submitted that the averment of the petitioner that in these cases unlimited extension has been given to such individuals is false, incorrect and misconceived.

41. It is essential to observe that during the course of proceedings dated 29.6.2020, submissions had been made on behalf of the petitioner by learned counsel for the petitioner that for those who were residing prior to March, 2020, there has been further extension granted and furthermore, it had also been submitted on behalf of the petitioner that the respondents have granted an unlimited time for vacation of the

said residential allocations, especially in Mumbai in view of the present pandemic and thus, on a parity as submitted by the petitioner, he was also entitled to the prayer made by the petitioner.

42. During the course of arguments on 8.7.2020 the learned counsel for the petitioner submitted that with the words ' Unlimited', he did not mean totally unlimited extension of time but extension till the period when there was normalization to enable a person to shift.

43. The respondent No.1 has further submitted through its short affidavit that numerous applications have been received from the very senior officers of the Government of India including the Secretary/Additional Secretary level officers with the requests to retain their accommodations beyond the permissible period and the same have been declined by the Directorate of Estates. It has been further submitted by the respondent no.1 that granting extension on the grounds like age and co-morbid conditions would have an implication on other such allottees and at present there are more than 600 allottees who have superannuated and are due to vacate and shift from the allotted accommodations. The respondent No.1 has further submitted that the Directorate of Estates has responded with the rule

position without ambiguity to representations/requests (written as well as telephonic) received from the allottees who were to vacate their houses but were not able to move due to the outbreak of COVID-19 pandemic and non-completion of their houses, citing reasons for age and co-morbid conditions and conveyed about the extensions upto 15.7.2020 across India other than Mumbai and Chennai.

44. The respondent No.1 has further submitted that considering the State specific lockdown conditions in Mumbai and Chennai, the extensions have been granted as per the prevailing situation and are not comparable in terms of pressure for demand in housing. It has further been submitted by the respondent No.1 that the total housing stock in all types in Delhi, Mumbai and Chennai are 61341, 8266 and 2671 respectively and the waiting list officials of all types are 62174, 4905 and 1605 respectively.

45. The respondent No.1 has further submitted that the contention of the petitioner that there has been an unlimited extension of the accommodation in Mumbai and Chennai is false and misconceived and erroneous and that from the additional documents filed by the petitioner himself, it was abundantly clear that even in those cities, the

extension has only been granted until 31.8.2020. The respondent No.1 has further submitted that the extension in Mumbai and Chennai was in response to the prevailing conditions in the respective states and the restrictions on the movement and services posed by the respective State Government and the local bodies and that the lockdown was extended in the State of Maharashtra till 31.7.2020 vide State Government's order No. DMU/2020/CR.92/DisM-1 dated 31.05.2020 and subsequent order No. DMU/2020/CR.92/DisM-1 dated 29.6.2020. Inter alia, the respondent No.1 has also placed on record the Government of Tamil Nadu's order No. GO Ms.No.262 dated 31.5.2020 and Press Note dated 15.6.2020 extending lockdown upto 30.6.2020.

46. The respondent No.1 has further submitted that as regards the Mumbai Metropolitan Region, the city of Mumbai and its adjoining municipalities are still reporting high number of COVID 19 positive cases and hence the relaxation granted to the citizens is bare minimum and that the public transport system in Mumbai has not resumed and is functioning only for essential services. Furthermore, it is submitted that similarly, all government offices excluding emergency services

are allowed to function at 15% strength or minimum 15 employees whichever is more. The respondent No.1 has further submitted that for the private offices the cap is fixed at 10% of the strength and that there are various containment zones and hotspots in Mumbai and nearby areas as well as other municipalities/cities in the State of Maharashtra and therefore shifting of accommodation and transportation of goods has major impediments for people even beyond the date of 31.07.2020 due to the various restrictions prevalent in the city and many other places in the State of Maharashtra.

47. Through the written submissions submitted by the respondent No.1 the submissions in the short affidavit submitted by the respondent No.1 are reiterated in *toto*.

48. It has been submitted further on behalf of the respondent No.1 that the Advisory issued by the Ministry of Home Affairs vide order No. 40-3/2020-DM-1(A) dated 29.6.2020 stated that there are no restrictions on the intra-state and interstate movement of persons and goods except in the containment zones and that vide the advisory issued by the Ministry of Home Affairs regarding protection of vulnerable persons it has been mentioned that persons above 65 years

of age, persons with co-morbidities, pregnant women and children below the age of 10 years are advised to stay at home, except for essential and health purposes and that the advisory does not restrict the movement of such persons.

49. The respondent No.1 has reiterated that after the order of the Ministry of Home Affairs 40-3/2020-DM-I(A) dated 30.5.2020 and OM No. 12035/2/2020-Pol.II dated 1.6.2020 extending the period of retention till 30.6.2020 and the after the issuance of the OM dated 1.6.2020 approximately around 1400 allottees have vacated their government accommodation and moved to different locations including Patna, Amritsar, Dehradun, Faridabad, Sultanpur (U.P.), Katni (M.P.) Sonipat (Haryana) and Lucknow .

50. The respondent No.1 has further submitted that during the course of the hearing held on 8.7.2020 a submission has been made that the trains were not running between Delhi and U.P. which was misconceived and that the internet site *www.erail.in* shows that the trains are running between Delhi and Lucknow daily which factum is also affirmed on behalf of the petitioner fairly by submission of the

down loaded print out in relation to the trains between Delhi and Lucknow daily.

51. The respondent No.1 has further submitted that all the services for transportation, packing and unpacking have already resumed and as per the records of the Directorate of Estates in GAMS approximately 1400 allottees have vacated/shifted in Delhi during this pandemic period and no unlimited extension has been given to such individuals after 15.7.2020 for the retention of the allotted accommodation after the expiry of the period of permissible and extended period of retention.

52. Similar submissions were made on behalf of the respondent No.1 by the learned Additional Solicitor General Shri Chetan Sharma who contended to the effect that the grant of the prayer made by the petitioner would have serious implications and a multiplier effect in relation to the official accommodations that are retained by the retired personnel and which necessarily have to be allotted to other incumbents who need accommodation in Delhi whilst reiterating that the housing condition in Delhi is not similar to that as at Mumbai and Chennai in view of the large number of persons from various

departments deployed in the city of Delhi which is the national capital of the country. Inter alia it has been submitted by the respondent No.1 that no fundamental right exists in the petitioner to continue the retention of the official accommodation in which the period of retention has already ended on 1.7.2020 and has been *suo motu* allowed to be extended by the Ministry of Home Affairs, Directorate of Estates till 15.7.2020.

53. *Inter alia*, it has been submitted on behalf of the respondent No.1 that the discretionary exercise of powers under **Article 226** of the Constitution of India is not warranted in the instant case.

ANALYSIS

54. On a consideration of the submissions that have been made on behalf of either side and the reliance placed upon on the verdicts on behalf of the petitioner, it is essential to observe that the petitioner vide the written arguments on his behalf has candidly stated that he being a retired senior officer knows his obligation under the Rules to vacate the premises on or before the deadline and that the petitioner has intended to do so and that he is aware that he cannot continue for long in the said accommodation in view of the prevailing pandemic,

bringing forth thus clearly that as per the submissions made by the petitioner himself the petitioner has no vested legal right to continue in the official accommodation that has been allotted to him on his superannuation and after the period of retention in terms of the GPRA Rules, 2017 as also in terms of the *suo-motu* extension of retention granted to the petitioner by the respondent No.1 till 15.7.2020.

55. It is submitted on behalf petitioner that there had been limited relaxation of the lockdown and thus preventing inter-State and intra-State movement of persons and goods and prevention on construction as a consequence of which the petitioner has been unable to complete the construction of his residential house at Lucknow nor was he in a position to move out as he and his wife are both senior citizens and that in terms of the advisory of the Ministry of Home Affairs the senior citizens have been advised to remain indoors and that the respondents ought to adhere to their own advisories.

56. In relation to this aspect it has to be observed that vehicular traffic inter-state without any restrictions was allowed vide order dated 30.5.2020 of the Ministry of the Home Affairs which came into effect from 1.6.2020, it cannot however be overlooked that despite the said

orders for a week starting from 1.6.2020 restrictions on travel between Uttar Pradesh and Delhi continued to remain in considering the fact of COVID 19 infections in the National Capital as submitted by the Uttar Pradesh Government before the Hon'ble Supreme Court on 12.6.2020.

“The Unlock Guidelines and Rules beginning from 1.7.2020 specify categorically vide clause 5 which read to the effect:-

“Guidelines for phased Re-opening (Unlock2)

5. States/UTs, based on their assessment of the situation, may prohibit certain activities outside the Containment zones, or impose such restrictions as deemed necessary.

However, there shall be no restriction on inter-State and intra-State movement of persons and goods including those for cross land-border trade under Treaties with neighbouring countries. No separate permission/ approval/ e-permit will be required for such movements.”,

wherein it is clearly stipulated vide order of the Ministry of Home Affairs No. 40-3/2020-DM-I(A) dated 29.6.2020 that there shall be no restrictions on inter-State or intra-State movement of persons and goods including those cross land-border trade under Treaties with neighbouring countries and no separate permission/ approval/ e-permit will be required for such movements.

57. The Court takes judicial notice of the fact that the Delhi/Noida Border did not open even till 21.6.2020 without passes and without the persons i.e. the commuters being those belonging to essential service staff, media and press holders. An article in the public domain dated 22.6.2020 indicates that there was no entry in Uttar Pradesh without a pass even as on 22.6.2020 resulting into the Delhi-Noida Border massive traffic jams due to the pass checking by the police. Thus practically seamless traffic between Delhi and Uttar Pradesh borders has commenced with effect from 1.7.2020 pursuant to the Unlock 2.0 Guidelines of MHA from 1.7.2020 as referred to herein above. Constructions also were allowed however with riders pursuant to the last year projects and thereafter in non-containment zones with safety measures in some projects across Noida, Greater Noida and with passes to be made.

58. Taking thus the entire scenario of the lockdown which commenced on 25.3.2020, it cannot be overlooked that though the lockdown had *de jure* eased w.e.f. 18.5.2020 in terms of order No. 40-3/2020/DMA-I(A) of Government of India which included the aspect of inter-State movement of passenger vehicles and busses with mutual

consent of the States and Union Territories without any specific restrictions on constructions prescribed therein, practically *de facto* the lockdown has eased w.e.f. 1.7.2020 qua inter-State and intra State movement of persons and goods between Delhi and Uttar Pradesh.

59. However, in view of the spread of the pandemic even recently also from the evening of 9/10.7.2020 till 12.7.2020 the State of Uttar Pradesh imposed the weekend lockdown. These are aspects which the Court cannot overlook despite the factum that the petitioner in terms of the *suo motu* extension of retention of official accommodation granted by the respondent No.1 has to vacate the official accommodation on or before 15.7.2020.

60. A submission was made on behalf of the petitioner that those who were to vacate their official accommodation on 31.03.2020 were granted time to vacate till May 2020 by the respondent no.1 and thus, those persons had already utilized their six months retention period from September 2019 till March 2020 for making their necessary arrangements after retirement and that too in an environment free of COVID-19 pandemic, that whereas the petitioner's valuable time from March 2020 till July 2020 has been spent inside his home in order to

protect himself and his wife from the virus of COVID-19 and that those allottees whose retention time after superannuation started in September 2019, which was a COVID-19 free environment, cannot in any manner be compared to the claims of the petitioner in view of the present pandemic times.

61. As regards this submission, it is essential to observe that every person in Government Service is aware of his/her date of superannuation which never changes and that thus, the contention of the petitioner that in as much as he was posted in Jammu & Kashmir from August-September 2016 till September 2019 and thus, it was not possible for him to give his full time for construction of his own house, cannot in any manner detract from the obligation of the petitioner to vacate the official accommodation on superannuation, coupled with the extended period of retention in terms of Central Government General Pool Residential Accommodation Rules, 2017 which was accorded in by the respondent no.1 till 01.07.2020.

62. As regards the contention that has been raised by the petitioner that in Mumbai and Chennai, time has been granted *suo moto* by the respondent no.1 to allottees who have superannuated to retain their

official accommodations till 31.08.2020 due to the corona virus pandemic, it is essential to observe that as submitted on behalf of the respondent no.1, as also submitted by the learned ASG and as also submitted in the written submissions of the respondent no.1, the conditions in Mumbai and Chennai are not comparable in terms of the pressure for demand in housing nor in relation to the pandemic, in as much as, there were restrictions on movement and services imposed by the State Governments and local bodies in Mumbai and Chennai, in as much as, the lockdown has been extended in the State of Maharashtra till 31.07.2020 vide State Government's Order No. DMU/2020/CR.92/DisM-1 dated 31.05.2020 and subsequent Order No. DMU/2020/CR.92/DisM-1 dated 29.06.2020 and the Government of Tamil Nadu vide Order No. GO.Ms.No.262 dated 31.5.2020 and Press Note dated 15.6.2020 further extended lockdown upto 30.6.2020.

63. Furthermore, it has been submitted on behalf of the Respondent No.1 that public transport has not resumed and is functioning only for essential services in Mumbai and shifting of accommodation and transportation of goods has major impediments for people even

beyond the date of 31.07.2020 due to the various restrictions prevalent in the city and many other places in the State of Maharashtra.

64. The submission that has been made on behalf of the respondent no.1 that Delhi is not comparable with Mumbai and Chennai in relation to the pressure for demand of housing also cannot be overlooked in view of the statistics put forth on behalf of the respondent no.1 that the **Total Housing Stock in all types in Delhi, Mumbai and Chennai are 61341, 8266 and 2671 respectively and the Waiting List officials of all types are 62174, 4905 and 1605 respectively.**

65. As regards the submission that has been made on behalf of the petitioner that the MHA itself has issued an advisory in relation to the senior citizens staying at home during the present pandemic as rightly submitted by the respondent no.1 the advisory does not restrict the movement of the senior citizens.

66. However, as observed elsewhere hereinabove, the lockdown has practically ceased only on 01.07.2020 and it has also been observed hereinabove that there are intermittent lockdowns taking place even now, in as much as, there are lockdowns still in existence in the State

of U.P. from Friday 10.00 pm till Monday 5.00 am as being a complete weekend shut down and that there are lockdowns even now in Maharashtra, Tamil Nadu, Jharkhand, Nagaland, West Bengal, Assam, Bihar, Madhya Pradesh, Kanjam District of Orissa, Chhattisgarh and Kerala with limited relaxations, taking the totality of the circumstances of the present scenario thus into account, though as observed hereinabove, the petitioner has no legal vested right to continue with the official accommodation beyond the period of time granted by the respondent no.1 in view of the factum that the period of the easing *de facto* of the lockdown, though the lockdown was eased w.e.f. 18.05.2020 vide order **No. 40-3/2020-DM-I(A) dated 17.05.2020** whereby inter-state movement of passenger vehicles and buses with mutual consent of the State(s) and UT(s) involved, was put into operation and virtually brought into effect between Delhi and U.P. w.e.f. 01.07.2020 and the period between 18.05.2020 to 30.06.2020 has apparently been virtually of no avail.

67. The respondent no.1 has already granted *suo moto* extension of retention of the official accommodation to the petitioner till 15.07.2020 vide order **No. No.12035/2/2020-Pol.II dated 22.06.2020**

and thus, in the circumstances, though, the petitioner is duty bound and obliged to vacate the official accommodation by 15.07.2020, the operation of the impugned orders dated 28.04.2020 bearing No. 1528393/2020/AD(TCC) 05.06.2020 bearing No.12035/2/2020-Pol.II and 22.06.2020 bearing No.12035/2/2020-Pol.II as issued by the respondent no.1 is stayed qua the petitioner hereinabove alone till the date 31.07.2020 only on payment of the normal license fee, whereafter, the respondent no.1 would be entitled to seek the vacation of the official accommodation allotted to the petitioner in which he has no right now to continue to reside in view of his superannuation and in view of the extended period of retention which is expiring on 15.07.2020, in accordance with law.

68. A prayer however, that has been made on behalf of the petitioner to allow him to retain the allotted house on prescribed license fee till the situation of COVID-19 normalizes, which cannot be granted, as it is not known when the situation of the present pandemic will end and no such prayer as made by the petitioner seeking retention of the allotted accommodation in which he has no right to reside, can be granted till eternity.

69. Even the prayer that the petitioner makes through the written submissions that have been submitted on behalf of the petitioner that he may be granted 5-6 months time to continue to reside in the allotted accommodation on payment of normal license fee, cannot be granted.

70. Whilst directing as hereinabove, this Court has taken into account the guidelines and ratios of the verdicts relied upon on behalf of the petitioner, but it cannot be overlooked that the facts in each of the said cases relied upon on behalf of the petitioner are not in *pari materia* with the instant case and the facts of each of the cases relied upon on behalf of the petitioner are distinguishable from the facts of the instant case. However, the guiding spirit behind each of the verdicts relied upon on behalf of the petitioner inclusive of the rights to life, liberty and of the right to shelter in terms of Article 21 of the Constitution of India, and the right of the individual under Article 19(1)(e) of the Constitution of India to reside and settle in any part of the territory of India have been taken in account, as also the reasonable restrictions that can be imposed thereupon, whilst granting the stay of the proceedings of the impugned order qua the petitioner till 31.07.2020.

71. The petition and the accompanying application are disposed of accordingly.

ANU MALHOTRA, J.

JULY 14, 2020
'neha chopra' /sv

