

02.

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

+ LPA 175/2020

SH. Y.S. DWIVEDI Appellant

Through: Mr. Dhruv Dwivedi, Adv.

versus

DIRECTORATE OF ESTATE & ANR. Respondents

Through: Mr. Chetan Sharma, ASG and
Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan Siddhant, Mr. Amit
Guptan and Mr. Anish Roy, Advocates
for R-1 & 2 along with Ms. Ritu Sain
and Mr. Harvesh Kumar, from
Directorate of Estates, in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 17.07.2020

HEARD THROUGH VIDEOCONFERENCING

CM 15400-15402/2020 (exemption)

Allowed, subject to all just exceptions.

LPA 175/2020 & CM No.15399/2020 (stay)

1. The appellant, writ petitioner in W.P. (C) 3772/2020 is a government servant, who had attained the age of superannuation on 31.12.2019, has filed the present appeal challenging the judgment dated 14.07.2020 passed by the learned Single Judge dismissing a petition filing by him seeking a direction to the respondents to permit him to

retain the government accommodation, allotted to him beyond 1st July 2020, in view of the COVID-19 pandemic situation.

2. We may briefly allude to the undisputed facts of the case. The appellant was allotted a government accommodation bearing Flat No. E-5/1, Sector-13, Block E, R.K. Puram (hereinafter referred to as “the premises”). The appellant attained the age of superannuation on 31.12.2019. The respondent No.1/Directorate of Estate (hereinafter referred to as “DoE”) issued a notice on 28.04.2020, calling upon the appellant to vacate the premises on or before 1.07.2020, failing which necessary action would be taken against him under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and further, he would be liable to pay penal damages for the period of overstay. The notice also stated that the accounts of the appellant should not be settled without obtaining a “NO DEMAND CERTIFICATE” from the respondent No.1/DoE.

3. In view of the spread of the COVID-19 pandemic, the respondent No.1/DoE, Ministry of Housing and Urban Affairs issued a Notification dated 5.06.2020, permitting government servants to occupy residential accommodations allotted to them upto 30.06.2020, even if they had superannuated and the period given to them to vacate the accommodation, had expired.

4. The respondent No.1/DoE issued another Office Memorandum dated 22.06.2020, whereby the period for retaining government accommodation for the occupants, who had attained superannuation and the time to vacate had expired, was by extended by further 15 days, from

30.06.2020 to 15.07.2020. All the concerned allottees were advised to vacate the government accommodation on or before 15.07.2020.

5. The case of the appellant before the learned Single Judge was that he does not have any accommodation in Delhi, that he intends to settle down in Lucknow post-retirement and has already started constructing his house there but it is still under construction and not in a habitable condition. Due to the lockdown which came in force with effect from 25.03.2020, he was not able to complete the construction of the house. It was stated that the lockdown was periodically extended till 31.05.2020 with certain relaxations but the appellant could not proceed ahead with the construction of his house. The appellant pleaded that in view of the lockdown, the respondents were morally and legally bound to extend the retention period of the government accommodations for all the Officers, who were unable to vacate the premises during the lockdown; that he was in any event permitted to retain the premises till 1.07.2020 and in view of this, the subsequent notices relating to the date for vacating the government accommodation are not applicable to him. The appellant also stated that in view of the COVID-19 pandemic, he is not in a position to get any house on rent in Delhi and it is not safe and advisable to proceed ahead with the construction activities as it poses a serious and grave threat to him and his family.

6. The appellant therefore challenged the notice dated 28.04.2020 issued by the respondent No.1/DoE, permitting him to retain the house till 30.06.2020 as also the Notification dated 5.06.2020 and the Office Memorandum dated 22.06.2020, issued by the respondent No.1/DoE.

7. The respondent No.1/DoE filed a short affidavit stating *inter alia* that the number of houses available in Delhi for accommodating government servants is very limited and that there are several persons waiting in the queue to get accommodation; that in view of the outbreak of the COVID-19 pandemic, the DoE had proactively permitted *suo motu* retention of houses to all the allottees initially for a period of 75 days from 17.03.2020 to 31.05.2020, vide O.M. No.12035/2/2020/-Pol-II dated 25.03.2020, by relaxing the rules; that the said relaxation was further extended upto 30.06.2020, when the lockdown was extended upto 31.05.2020, vide Order No.40-3/2020-DM-I(A) dated 17.05.2020.

8. It was further stated in the affidavit that the Government has initiated phased re-opening post the lockdown and under the 1st phase, interstate movement of goods and services had been permitted, except in Containment zones. Despite lifting of the lockdown, the respondent No.1/DoE gave further relaxation and the allottees, who had superannuated and who were to vacate the government accommodation during this lockdown, were granted a buffer period of 15 days and were permitted to retain their accommodations upto 15.07.2020, to enable them to make necessary arrangements and vacate the government accommodations allotted to them. After 29.06.2020, the Union of India has initiated Unlock-2 Phase, virtually permitting all activities except in those areas, which are in Containment zones.

9. It was stated by the respondent No.1/DoE in the affidavit that there are over 1000 officers in Delhi who are waiting for allotment of Type VI-A government accommodation. Out of 64 occupants residing in Type

VI-A accommodations, who were to vacate, 28 of them have already handed over possession during this period. Sector-13, R.K. Puram, where the appellant is residing, is not under any Containment zone and he had sufficient time to vacate the premises and make alternative arrangements. The affidavit further stated that numerous applications have been received from various senior officers of the Government of India including Secretary/Additional Secretary level officers with a request to retain their accommodations beyond the permissible period, which have been declined by the respondent No.1/DoE and therefore, it would not be possible to consider the request of the appellant favourably.

10. After considering the arguments advanced by both sides, the learned Single Judge has dismissed the writ petition filed by the appellant. However, the impugned order, whereby the appellant has been permitted to use the accommodation for further 15 days, has been stayed till 31.07.2020, thus granting two more weeks to the appellant to make alternative arrangements.

11. During the course of hearing, we have asked Mr. Dwivedi, learned counsel for the appellant, who happens to be the son of the appellant, as to whether his father and his family members would be willing to give an undertaking that they would vacate the premises by 8.08.2020, in which case we could request Mr. Chetan Sharma, learned ASG, who is appearing on advance notice, to obtain necessary instructions on this aspect. However, learned counsel for the appellant has flatly refused the offer and states that he is not interested in taking this benefit and would rather address arguments on merits.

12. Learned counsel for the appellant contends that due to the COVID-19 pandemic, it is not possible for the appellant to get an alternative accommodation in Delhi and for the same reason, construction of his house in Lucknow could not be completed due to which the appellant would not be able to shift to Lucknow. He submits that more time of 3 to 4 months, if not 5 to 6 months ought to be granted to the appellant to vacate the government accommodation. It is contended that the subsequent Notification dated 5.06.2020 and Office Memorandum dated 22.06.2020 would not apply to the case of the appellant because in any event, he was permitted to retain the flat till 1.07.2020.

13. Mr. Chetan Sharma, learned ASG, on instructions from Mr. Anurag Ahluwalia, learned CGSC, states that there is a long queue of officers, who are waiting for allotment of government accommodations in Delhi and are having to live in guest houses. He submits that due to the COVID-19 pandemic, concessions have already been granted by the respondent No.1/DoE to the allottees who were to vacate the government accommodation upon attaining the age of superannuation during the lockdown and it is not possible to accommodate the request of the appellant for more time as this would become a precedent and several officers, who are similarly placed throughout the country, would start approaching the court for extension of the same benefit.

14. We have heard Mr. Dhruv Dwivedi, learned counsel for the appellant and Mr. Chetan Sharma, learned ASG appearing for the respondents.

15. It is well settled that unless there is a right, a writ cannot be issued. A writ of mandamus presupposes a legal right in favour of the person seeking issuance of a writ. The right must be a subsisting right, enforceable in a court of law. For a writ to be issued, there must also be a corresponding legal duty on the State which it is required to discharge.

16. In the instant case, Rule 40 (1)(ii) of the Central Government General Pool Residential Accommodation Rules, 2017 provides that on attaining the age of superannuation, a Government servant is entitled to retain the residential accommodation provided to him for a period of six months, on payment of normal license fee. The appellant had retired in December, 2019 and was entitled to retain the premises till 30.06.2020. The Government has on its own and keeping in mind the prevailing situation of the COVID-19 pandemic, extended the period of retention of government accommodation upto 30.06.2020 for those allottees, who had superannuated and the period to vacate the premises was extended so that such officers/allottees are not compelled to vacate their government accommodations during the lockdown. This period has been extended till 15.07.2020. The appellant could thus retain the government accommodation till 15.07.2020, even though he had to vacate the premises by 30.06.2020. Otherwise, he does not have any vested right to retain the government premises beyond 15.07.2020.

17. A writ petition under Article 226 lies only when a petitioner is able to establish his/her fundamental right or demonstrate that some legal right has been infringed. [Refer Calcutta Gas Co. Propriety Ltd. v. State of West Bengal, AIR 1962 SC 1044, G. Bassi Reddy v. International

Crops Research Institute, (2003) 2 SCC 225] In the absence of any right, the appellant herein cannot pray for issuance of a writ of mandamus to the respondents to extend the period of his stay in the government accommodation.

18. We may note that the learned Single Judge has been sympathetic and has stayed the impugned order upto 30.07.2020, thus giving him an additional two weeks to vacate the premises. As stated by Mr. Sharma, the learned ASG, that there is a long queue of officers who are waiting for allotment of government accommodation and there is no good reason as to why those officers must be denied their right. The lockdown has ceased to be in force after 30.05.2020. The appellant had two months to locate an alternative accommodation or complete the construction of his house at Lucknow. There is no reason as to why the period which has already been granted to him by the Government and further extended by the learned Single Judge, be extended any further.

19. As noted above, we were willing to extend the date of vacation of the government accommodation by one more week, till 8.08.2020 and had asked learned counsel for the appellant to state as to whether the appellant and his family members would be prepared to give an undertaking that they would vacate the premises by the said date which offer was not accepted by him. In the absence of any right in the appellant, the demand for extension of time to retain the government accommodation beyond 15.07.2020, cannot be acceded to.

20. As a result, the impugned judgment is upheld and the present appeal is dismissed *in limine* along with the pending application.

HIMA KOHLI, J.

SUBRAMONIUM PRASAD, J.

JULY 17, 2020

jitender

