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

% **Date of decision: 25th November, 2021**

+ **W.P.(C) 13092/2019 and CM APPL. 53372/2019 (Stay)**

ROOPWATI WANGOO AND ANR. Petitioners

Through: Mr.Kunal Sabharwal and Mr.Sakshi
Jaiswal, Advs.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr.Rakesh Kumar, CGSC for UOI

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. This petition has been preferred seeking the following reliefs:-

“(i) Issue an appropriate writ in the nature of the Mandamus or any other appropriate writ, order or direction quashing the letter dated 21.08.2019 cancelling the allotment of the flat allotted by the Respondent no.2 and the Eviction Order dated 29.11.2019 passed by the Respondent no.2 and the Policy/Scheme dated 28.03.2017 ("Policy/Scheme") framed by the Respondent No.2 for the Kashmiri Migrants employees of the Central Government.

(ii) Issue directions to the Respondents to allow/permit the Petitioners to retain the quarter No. 088, Type-IV, Sadiq

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Nagar, New Delhi-49 till the Government make it possible for them to return to Srinagar, or till a suitable alternative accommodation is provided to them anywhere in Delhi or till such time this Hon'ble court deems fit and proper in the interest of justice on payment of normal license fee which the Petitioners have been paying since the time of allotment of the Flat to Mr. Wangoo. payment of minimal license fee which the Petitioners have been paying while Mr.Wangoo was in service.”

2. The petitioners are aggrieved by an order of eviction passed by respondents on 29th November, 2019. Admittedly, they are the mother and the son of the deceased Government employee Mr.Avtar Kishan Wangoo. The Government employee died on 11th May, 2019. The eviction order records that since the petitioners held no valid license to occupy the government premises or letter of allotment, they were clearly in unauthorized possession and were liable to be evicted. When the petition was initially entertained, the entire case rested on the judgment rendered by this Court in **Union of India vs. Vijay Mam**¹ and principles laid down in that petition dealing with the right of Kashmiri migrants or officers who had migrated from Jammu and Kashmir to occupy Government accommodation and for rehabilitative steps which were liable to be taken. The aforesaid issues as well as the decision of the Supreme Court in **J.L. Koul & Ors. vs. State of Jammu & Kashmir & Ors**² fell for consideration before two

¹ 2012 SCC OnLine Del 3218

² (2010) 1 SCC 371

learned Judges of the Supreme Court recently in **Union of India & Anr. vs. Onkar Nath Dhar**³. In its order of 5th August, 2021 passed in the aforesaid matter, the Supreme Court observed as follows:-

“13. In view of the judgments referred above, the Government accommodation could not have been allotted to a person who had demitted office. No exception was carved out even in respect of the persons who held Constitutional posts at one point of time. It was held that the Government accommodation is only meant for in-service officers and not for the retirees or those who have demitted office. Therefore, the view of the learned Delhi High Court and that of the Punjab & Haryana High Court is erroneous on the basis of compassion showed to displaced persons on account of terrorist activities in the State. The compassion could be shown for accommodating the displaced persons for one or two months but to allow them to retain the Government accommodation already allotted or to allot an alternative accommodation that too with a nominal license fee defeats the very purpose of the Government accommodation which is meant for serving officers. The compassion howsoever genuine does not give a right to a retired person from continuing to occupy a government accommodation.

14. According to a policy framed by the government, a displaced person is to be lodged in a transit accommodation and if it is not available then cash compensation is to be provided. But the displaced persons cannot occupy government accommodation. If a retired government employee had no residence, they have an option to avail transit accommodation or to receive cash compensation in the place of transit accommodation. The right of shelter is taken care of when alternative Transit accommodation is made available to the migrants to meet out the emergent situation. There is no policy of the Central Government or the State Government to provide accommodation to displaced persons on account of terrorism in the State of Jammu & Kashmir. Such directions of the Delhi High Court and of the Punjab & Haryana High Court is de hors any policy of allotting accommodation to the migrants under the guise of the right to shelter which is clearly in excess of jurisdiction vested with the Courts. The hardship faced by them does not lead to a corresponding duty of the State to provide them alternative government accommodation.

15. It was argued by Mr. Handoo that the right of shelter is a fundamental right under article 21 of the Indian Constitution. A right to shelter is a fundamental right, that may not be disputed, but such a right of shelter is granted to millions of Indians who do not have shelter. A section of society,

³ 2021 SCC Online SC 574

more so retired government employees, who had earned pension, drawn retirement benefits cannot be said to be in such condition, where the government should provide government accommodation for an unlimited period. The direction to allow a retired government servant to retain government accommodation for an indefinite period, to say the least, is a distribution of state largesse without any policy of the State. A section of the migrants cannot be treated as preferential citizens to give them the right to shelter at the cost of millions of other citizens who do not have a roof over their heads. The right of shelter to the displaced person is satisfied when accommodation had been provided in the transit accommodation. Such right of shelter does not and cannot extend to provide a government accommodation.

16. *J.L. Koul* is a case, accepting the rehabilitation scheme framed by the State authorities based on which appropriate accommodation was provided to 31 appellants and was given accommodation which was in their possession. Such direction was in terms of Article 142 of the Constitution. This Court in a judgment reported as *Indian Bank v. ABS Marine Products (P) Ltd.* held that the High Courts repeatedly followed a direction issued under Article 142, by treating it as the law declared by this Court. It was held that the Courts should therefore be careful to ascertain and follow the *ratio decidendi*, and not the relief given on the special facts. This Court held as under:

“26. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/ order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the *ratio decidendi*, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may.”

17. In another judgment reported as *Ram Pravesh Singh v. State of Bihar*, it was held that any direction given on special facts, in the

exercise of jurisdiction under Article 142, is not a binding precedent. This Court held as under:

23. The appellant next submitted that this Court, in some cases, has directed absorption in similar circumstances. Reliance is placed on the decision in *G. Govinda Rajulu v. A.P. State Construction Corpn. Ltd.* [1986 Supp SCC 651 : 1987 SCC (L&S) 71] We extract below the entire judgment : (SCC p. 651, paras 1-2)

“1. We have carefully considered the matter and after hearing learned counsel for the parties, we direct that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government departments or in the government corporations.

2. The writ petition is disposed of accordingly. There is no order as to costs.”

17. The tenor of the said order, which is not preceded by any reasons or consideration of any principle, demonstrates that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. Law declared by this Court is binding under Article 141. Any direction given on special facts, in exercise of jurisdiction under Article 142, is not a binding precedent.”

3. Thereafter on 07th October, 2021 while dealing with various applications which were preferred for modification of the directions issued by the Supreme Court and on a review of all the previous judgments which had been rendered by this Court as well as by the Supreme Court, their Lordships reiterated the legal position as explained in its earlier order. The Supreme Court further explained that the directives framed in **J.L. Koul** could at best be recognized as having been made by virtue of the powers conferred on it by Article 142 of Constitution.

4. From the above, it is evident that the challenge to the policy dated 28th March, 2017 cannot possibly be sustained in the light of the judgment *W.P.(C) 13092/2019*

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and findings returned and recorded in **Onkar Nath Dhar**. The Court further finds itself unable to interfere with the order of eviction dated 29th November, 2019 which must necessarily be held to be in consonance with the consequent enunciation of the legal position with respect to the right of retention of government quarters as explained in **Onkar Nath Dhar**.

5. Accordingly for the aforesaid reasons, this writ petition fails and shall stand dismissed.

NOVEMBER 25, 2021
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YASHWANT VARMA, J.

