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

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Date of decision: 25 February, 2022+ **W.P.(C) 4945/2021, CM APPL. 15196/2021****RAJBIR SINGH**

..... Petitioner

Through: Ms.Hemlata, Adv.

versus

AIR COMMANDER AOC AND ANR.

..... Respondents

Through: Mr.Ripudaman Bhardwaj, CGSC
with Mr.Kushagra Kumar, Adv. for
respondent/UOI.**CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****YASHWANT VARMA, J. (ORAL)**

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

“a) To satisfying the proceedings of notice no 3w/1320/11/1/org dated 09 April 2021 and 16 April 2021 issued by the estate officer to evict the Petitioner from the quarter SMQ No.31- D Old Pinto Park Air Force Station Delhi cantonment area New-Delhi-110010.

b) To call up Ld. Trial Court record pertaining to the impugned judgment 01.04.2021.

c) To stay the proceedings in the aforesaid matter till the proceedings of the aforesaid notice of the Estate Officer in the said matter till the Petitioner is allotted a suitable Quarter by the 13 BRD as per his status.”

2. The petition has evidently come to be preferred after the culmination of proceedings initiated by the respondents under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 [Act]. The record bears

W.P.(C) 4945/2021**Page 1 of 5**



out that the allotment of the quarter in question was cancelled by the respondents and an order of eviction framed. Since the petitioner failed to vacate the premises, the Estate Officer proceeded to pass an order of eviction on 11 September 2017. That order was challenged by the petitioner here by filing an appeal under Section 9 of the Act which has come to be dismissed on 01 April 2021. It becomes relevant to note that the orders passed in proceedings under the Act have neither been questioned nor assailed by the petitioner here.

3. Insofar as the backdrop in which the quarter came to be allotted to the petitioner is concerned, it becomes pertinent to note that, taking into consideration the medical ailment of the petitioner, the respondents on humanitarian grounds had made an allotment in his favour on 25 September 2013. Since the petitioner was undergoing treatment at that time, the allotment was continued upto 24 September 2016. Since the petitioner failed to hand over vacant possession after September 2016, notices were issued calling upon him to either apply for extension of permission to retain the premises if the same be based on cogent medical grounds or to vacate the same. Pursuant to those notices, the petitioner submitted an application on 06 October 2016 for being permitted to continue to occupy the premises. The said application was duly considered by the Senior Medical Officer [SMO] who upon consideration of the medical reports which were produced, proceeded to observe that his condition had improved and that he would only be required to go for periodical check-ups as an outpatient at the Safdarjung Hospital. Based on the aforesaid assessment, the respondents came to conclude that there existed no justification for permitting the petitioner to retain the premises in question.

W.P.(C) 4945/2021

Page 2 of 5



4. Ultimately and in light of the aforesaid opinion as formed by the Senior Medical Officer, the petitioner was called upon to vacate the premises on 21 October 2016. Since he failed to do so, the respondents proceeded to cancel the allotment and initiate proceedings for eviction. Undisputedly, the allotment was cancelled in terms of the communication of 31 May 2017. The said order has, thereafter, culminated in the passing of a final order of eviction under the Act on 11 September 2017. That order has been affirmed by the District Judge in appeal. It is in the aforesaid backdrop that the reliefs as claimed by the petitioner are liable to be evaluated.

5. Learned counsel for the petitioner has contended that the petitioner is still undergoing treatment and therefore the action of the respondents in proceeding to cancel the allotment is wholly arbitrary. It was her further submission that the respondents have also not placed on the record any material which may establish a situation where there is an imperative need of the present quarter which is in the possession of the petitioner. According to learned counsel, there are still various quarters and units of accommodation which are vacant and thus there was no justification for the petitioner being required to vacate.

6. The Court notes that the tenor of submissions have been addressed on the assumption that the petitioner had an indefeasible right to occupy the premises. The Court is constrained to observe as such since admittedly, the allotment itself was made for a temporary period and bearing in mind the exigencies prevailing at that time. It is also not disputed before this Court that the petitioner is stationed with another unit and consequently his claim for allotment would have been maintainable bearing that factor in mind
W.P.(C) 4945/2021



alone. Merely because the respondents allotted him the premises in question at a time when he was facing a medical emergency cannot confer him with a right to seek retention of the quarter infinitely.

7. The more fundamental aspect which comes to the fore is of proceedings under the Act having been duly initiated and culminating in an order of eviction framed by the Estate Officer. That order has been affirmed by the Appellant Authority. As was noticed in the introductory parts of this decision, no challenge was laid by the petitioner to the orders passed in proceedings taken under the Act. The relief as framed in the present writ petition, namely, for calling for the records of the Appellate Authority under the Act cannot possibly be interpreted or construed as a formal challenge to the orders of eviction as framed by the Estate Officer or the order of the Appellate Authority passed under the Act.

8. The Court while entertaining the writ petition initially had accorded interim protection to the petitioner bearing in mind the specter of eviction which was faced by him at a time when the pandemic was at its peak. It is also relevant to note that the principal posting of the petitioner is with the 13 BRD and it is accommodation which stands reserved for members of the force attached to that unit against which alone the petitioner can claim allotment.

9. The Court in conclusion notes that the allotment of the present premises was merely a *pro tem* measure adopted by the respondents bearing in mind the fact that the petitioner at the relevant time was undergoing medical treatment. It has been clearly recorded by the Senior Medical Officer that the circumstances since 2013 have changed for the better and therefore there is no justification for considering the temporary allotment

W.P.(C) 4945/2021



which was made being continued further. The fact that the petitioner today is not admitted in any hospital and is merely visiting the same as an outpatient for periodical review is also not disputed.

10. Regard must ultimately be had to the fact that the petitioner has availed of the benefits of the temporary allotment since 2013. Despite being asked to vacate the premises right from 2016, he has failed to accede to the requests made in that regard by the respondents. The Court has also not been shown any material which may establish that the health of the petitioner still remains in a precarious condition or at least one which is comparable to what he underwent in 2013. The aforesaid recital of facts evidences that the conduct of the petitioner is clearly unbecoming of a member of the Armed Forces and may even be viewed as unbefitting of the standards that are expected of members of the Armed Forces.

11. Bearing in mind the aforesaid facts, the Court finds no merit in the challenge raised in the writ petition. It consequently fails and shall stand dismissed. The pending application shall also stand dismissed.

YASHWANT VARMA, J.

FEBRUARY 25, 2022/bh