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

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Date of Decision: 29.11.2022

% **LPA 686/2022**

JOGINDER SINGH

..... Appellant

Through: Mr. K Venkatraman, Advocate

versus

UNION OF INDIA

THROUGH SECRETARY & ANR.

..... Respondents

Through: Mr. Harish Kumar Garg, Mr. Saksham Garg, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SATISH CHANDRA SHARMA, CJ. (ORAL)

CM APPL. 51357/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The Application stands disposed of.

LPA 686/2022 & CM APPLs. 51358-60/2022

3. The instant Letters Patent Appeal bearing LPA No. 686 of 2022 has been filed by Mr. Joginder Singh ["**the Appellant**"] assailing the Judgement and Order dated 24.08.2022 in W.P (C) No. 2560/2019 and 12.09.2022 passed in Review Petition No. 229/2022 ["**Impugned Judgements**"]. The Ld. Single Judge vide the Impugned Judgement held that the Appellant has

failed to substantiate his claim that the accommodation allotted to him has been converted from a Key Personnel Accommodation to a General Pool Accommodation. As such, his plea for retention of his residence in Delhi for his family after his transfer from Delhi to Srinagar was denied. The Appellant has prayed for setting aside of the impugned judgment and for grant of reliefs prayed in the writ petition, including retention of his accommodation at Delhi and resumption of duty in an office at Delhi Cantt.

4. The facts of the case leading up to the filing of the LPA are set out hereinbelow:

5. On 01.07.2008, the Appellant, an Ex-Havildar from the Indian Army, was appointed as Lower Division Clerk ("**LDC**") in the Military Engineering Service ("**MES**") under Deputation-cum-Re-employment quota in the office of Commander Works Engineer, New Delhi. The Appellant was allocated accommodation at Qtr. No. P-56-D, Kabul Line (Type-III) [**"Quarter at Delhi Cantt"**] w.e.f. 19.10.2011, and he had been residing there with his family since then. Subsequently, in 2015, he was transferred from Garrison Engineer (East) Delhi Cantt to Garrison Engineer (Project), Air Force, Srinagar vide Chief Engineer, Western Command Letter No. 30313/Tenure/EIC(j) dated 20.05.2015.

6. After being posted to Garrison Engineer (Project) (Air Force) Srinagar, which is a non-family station, the Appellant applied for retention of his accommodation at his previous quarter vide Garrison Engineer (East) Delhi Cantt Letter No. 1006/Gen/29/EIA dated 08.07.2015, with due recommendation from the Garrison Engineer and Commander Works Engineer, Delhi Cantonment on 26.08.2015 whereby they recommended for

retention of the accommodation at Delhi.

7. On 29.09.2015, the Ld. Estate Officer cancelled the Appellant's allotment to the Quarter at Delhi Cantt. w.e.f. 21.07.2015. Thereafter, vide judgement dated 20.10.2015, the Ld. Estate Officer declared the Appellant as an unauthorized occupant of the said premises w.e.f. 21.07.2015, and accordingly directed him to vacate the same within 30 days of the receipt of the notice.

8. Aggrieved by the aforesaid, the Appellant filed Appeal No. 136/2016 before the District and Sessions Judge, Patiala House Courts, New Delhi. The Ld. Judge dismissed the same vide order dated 21.02.2019. Aggrieved by the same, the Appellant filed W.P (C) No. 2560/2019 before the Ld. Single Judge seeking quashing of the aforesaid impugned order dated 21.02.2019, a direction to the Respondents to allow the Appellant to retain the same Quarter at Delhi Cantt, and resumption of duty in an office in Delhi Cantt.

9. Vide the impugned judgement dated 24.08.2022, the Ld. Single Judge dismissed the writ petition primarily on the ground that the Appellant failed to substantiate his claim and no mistake or illegality has been in existence in the order passed by the District Judge. The operative paragraphs of the impugned judgement are reproduced below:

“16. This Court agrees with the learned District Judge that though the petitioner in his writ petition has pleaded that the said quarter was converted to 'General Pool Accommodation', but no document in this regard is placed on record by him. During the course of arguments, learned counsel on behalf of the petitioner submitted that the conversion of the said quarter to 'General Pool Accommodation' was recommended by

Garrison Engineer as well as Commander Works Engineer vide communication dated 26th August 2015. But it is not disputed that the said quarter/MES 'Key Personnel Accommodation' was not converted to 'General Pool Accommodation' by the Estate Officer.

17. Therefore, this Court does not find any error or illegality in the impugned judgment passed by the District Court.

16. Under Article 226 of the Constitution of India, the High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and questions of facts would amount to exceeding the jurisdiction.

17. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

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19. The law, as has been interpreted by the Hon'ble Supreme Court is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned, unless there is a gross illegality or error apparent on the face of record. I have perused the impugned order dated 21st February 2019, passed by the learned District judge. The learned judge has considered each submission made by the petitioner, according to law. It has been rightly noted that no document to substantiate the claim of the petitioner has been provided by the petitioner. I do not see any error manifest on the face of record to entertain the present writ petition.

20. This Court does not find any ground to entertain the present writ petition. Accordingly, the instant writ petition is dismissed along with pending applications, if any. ”

10. The Ld. Single Judge vide Impugned Judgement dated 24.08.2022 dismissed the writ petition on the ground that, although the Appellant contended that the Quarter at Delhi Cantt has been converted to 'General Pool Accommodation', no document in this regard has been placed on record. Before the Ld. Single Judge, counsel for the Appellant contended that the conversion of the quarter to 'General Pool Accommodation' was recommended by the Garrison Engineer and Commander Works Engineer vide communication dated 26.08.2015. Ld. Counsel for the Appellant had, therefore, only made a limited submission qua a recommendation for the aforesaid conversion. The Ld. Single Judge observed that it was undisputed that the said quarter was not converted from a 'Key Personnel Accommodation' to 'General Pool Accommodation' by the Estate Officer.

11. The Appellant, thereafter, preferred a review of the aforesaid order dated 24.08.2022. In the review petition, the Appellant, *inter alia*, contended that the Ld. Single Judge ought to have appreciated that the Petitioner has been transferred to Srinagar, which is a Non-Family Station, and, that it would be impossible for the Appellant to take his family with him. Further, he submitted that on 16.11.2012, the Commander Works Engineer, who is the only recommending authority, had issued a No-Objection Certificate to merge the said 'Key Personnel Accommodation' to 'General Pool Accommodation'. The Ld. Counsel for the Appellant also contended that the quarter has been allotted to one Sh. Ranjeet Kumar as Key Personnel, but soon after the accommodation was converted into 'General Pool Accommodation', indicating the discriminatory and arbitrary nature of the action of the Respondents.

12. Vide impugned order dated 12.09.2022, the Ld. Single Judge dismissed the review petition preferred by the Appellants. The operative paragraphs of the same have been reproduced below:

“17. So, it transpires that review is available on very limited grounds, namely:

i. discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed.

ii. mistake or error apparent on the face of the record.

iii. for any other sufficient reason.

18. It is not the case of Petitioner that there has been discovery of new and important matter or there has been mistake apparent on the face of record. On the contrary, the Petitioner is delving into the process of reasoning and arguments to give weight to his averments in the review petition. The powers of review are not to be confused with appellate powers which may enable an appellate court to correct all manner of errors. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

19. Therefore, as per the principles of review jurisdiction, the arguments raised in the review petition cannot be a ground for review as per the law laid down by the Hon'ble Supreme Court.

20. Accordingly, this Court does not find any cogent reasons to entertain the present review petition. The instant review petition fails being devoid of any merits and is accordingly dismissed. Pending applications, if any, also stands dismissed.”

13. The Ld. Single Judge dismissed the review petition on the ground that the Appellant had failed to indicate any of the limited grounds available for review viz., discovery of new and important fact, mistake apparent on the face of record, or any other sufficient reason.

14. The instant LPA has been filed impugning the aforesaid orders.

15. The Ld. Counsel for the Appellant contends that that in terms of the Letter dated 01.08.2015 issued by Garrison Engineer (East) Delhi Cantt Letter No. 1006/Gen/EIA, it was stated that the Quarter at Delhi Cantt was allotted to the Appellant, and is to be treated as 'General Pool Accommodation'. Further, the counsel submits, that the Garrison Engineer (East) clarified that, in terms of Para 15 of the AG's branch letter dated 03.05.2005, the surplus Key Personnel Accommodation may be allotted to MES Personnel on the waiting list for General Pool Accommodation. With respect to the same, the Commander Works Engineer, Delhi Cantt issued a 'NOC' for conversion of the aforesaid quarter as 'General Pool Accommodation' vide letter dated 16.11.2012.

16. The Ld. Counsel submits that one Sh. Ranjeet Kumar, JE who works in the Delhi Cantt was allotted the Key Personnel Quarter and thereafter the same was converted into General Pool Accommodation. He has further contended that such action on part of the Respondents is discriminatory and arbitrary as the Appellant was posted to a non-family station and was denied retention of his residence wherein his family members comprising of his wife, son, and daughter were residing.

17. Further, the Ld. Counsel for the Appellant submits that the Appellant has continued paying the House Rent Allowance for the Quarter at Delhi Cantt, along with three times licence fee to the Government, and, therefore, no loss was ever caused to the State. The Appellant was required to pay three times license fee as, even though he was only entitled to type II accommodation, type-III accommodation was allotted to him. While he has been asked to vacate the accommodation, the aforementioned amount

continues to be arbitrarily deducted. The Ld. Counsel for the Appellant submits that the order denying retention of residence, and the order declaring the Appellant as an unauthorized occupant has been passed by the same authority, i.e., the Estate Officer. As such, it is contended, the Appellant has been denied the opportunity to adequately raise his grievance.

18. *Per Contra*, the Ld. Counsel for the Respondents contended that the Appellant was on waiting list for allotment of General Pool Accommodation. However, the Appellant himself moved an application seeking allotment of Key Personnel Accommodation. Accordingly, the Appellant as per para 15 of the Policy issued by the Addl Dte Gen of LWE/Policy (Qtr.) bearing No. 42179/Policy (Qtr) dated 03.05.2005 was allotted the Key Personal Accommodation. Therefore, it is submitted that no conversion to General Pool Accommodation had been effectuated by the Respondents, and that the authority empowered to convert the Key Personnel Accommodation to General Pool Accommodation is the Estate Officer, who had rejected the recommendation for such conversion by the Respondents. It has been further contended that no change to Key Personal Accommodation was made at any time, and the request made by the Appellant for retention was accordingly denied. It was further submitted that the letter allotting the Quarter at Delhi bearing Letter No. 202/6/A/P-56--D/KL/Q5 dated 19.10.2011 contains detailed terms of allotment, and the same makes no mention of conversion of the quarter to General Pool Accommodation.

19. The Ld. Counsel for the Respondents in their Counter Affidavit have drawn our attention to Para 14(d) of policy bearing No. 42179/Policy (Qtr.)

dated 03.05.2005 whereby the initial allotment as made. The relevant extract of the policy dated 03.05.2005 reads as under:

"In case of posting of an individual occupying key personnel accommodation to other units in the same station or other station, key personnel accommodation held by him will be vacated within 10 days from the date of SOS."

20. In light of the aforesaid, the Appellant was liable to vacate the Key Personnel Accommodation allotted to him within 10 days from the date of posting out i.e., by 20.07.2015.

21. It was further submitted that as per SRP 308/1978, an individual on being posted back to the same Station has to apply and register for accommodation afresh and is not entitled to retain the same accommodation. The issue of NOC and letter by Garrison Engineer and Commander Works Engineer are only recommendations by the Station Commander and are not binding letters on the concerned Authority.

22. Heard learned Counsel for the Parties at length and perused the record.

23. The undisputed facts of the case make it very clear that the Appellant was allotted accommodation/ Quarter at Delhi Cantt. w.e.f. 19.10.2011. The Appellant was transferred by an order dated 20.05.2015 from Garrison Engineer (East) Delhi Cantt to Garrison Engineer (Project), Air Force, Srinagar. It is an undisputed fact that the quarter which was allotted to the Appellant was under the category of Key Personnel Accommodation. The policy dated 03.05.2005 in respect of allotment of quarter provides that in case an employee is transferred to some other station and he is occupying a Key Personnel Accommodation, the accommodation held by him will have

to be vacated within 10 days from the date of SOS. Thus, the Appellant was required to vacate the Quarter at Delhi Cantt within 10 days w.e.f. 20.07.2015.

24. The Appellant inspite of vacating the Quarter at Delhi Cantt, continued in the said quarter and started requesting the authorities to permit him to occupy the said quarter. As the Appellant failed to vacate the quarter in question which was meant for Key Personnel Accommodation, vide order dated 29.09.2015, the Estate Officer has cancelled the allotment of the Appellant w.e.f. 21.07.2015. The Estate Officer in exercise of powers conferred under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has passed an order declaring the Appellant as an unauthorized occupant of public premises bearing No. Qtr. No. P-56-D, Kabul Line (Type-III), Delhi Cantt w.e.f. 21.07.2015 and directed him to vacate the said premises within 30 days of receipt of the notice.

25. The Appellant has thereafter preferred an appeal before the District & Sessions Judge, Patiala House Courts, New Delhi and the same was dismissed on 21.02.2019.

26. The Appellant being aggrieved by the order dated 21.02.2019 passed by the learned District & Sessions Judge preferred a Writ Petition before this Court and the same was also dismissed by the learned Single Judge vide order dated 24.08.2022.

27. The Appellant thereafter preferred a Review Petition and the same was also dismissed on 12.09.2022. Meaning thereby, the Appellant continued unauthorisedly in the accommodation in question though it was under the category of Key Personnel Accommodation and he was required

to vacate the same within ten days from the date of his relieving. He has failed to vacate the said accommodation and kept harping upon the fact that the said accommodation has been converted from Key Personnel Accommodation to General Pool Accommodation. The documents on record nowhere reflect that the accommodation in question was converted into General Pool Accommodation. Only recommendations were made by the Commander Works Engineer at some point of time.

28. In the considered opinion of this Court, mere recommendation of immediate superior officer for converting the accommodation from the category of Key Personnel Accommodation to the category of General Pool Accommodation does not help the Appellant/ Petitioner in any manner. There is no document on record to establish that the accommodation in question was converted into General Pool Accommodation. On the contrary, on affidavit, the Respondents have categorically stated that the accommodation in question was under the category of Key Personnel Accommodation and continues to be under the said category.

29. We are, therefore, of the opinion that the learned Single Judge was justified in upholding the order passed by the learned District & Sessions Judge.

30. The Appellant before this Court has not been able to point out violation of any statutory provision of law in the matter. On the contrary, it was the Appellant who has overstayed in the Government Accommodation in spite of the fact that the Competent Authority has cancelled the allotment vide order dated 29.09.2015.

31. In light of the aforesaid, this Court does not find any reason to

interfere with the order passed by the learned District & Sessions Judge and the order passed by the learned Single Judge in the Writ Petition as well as in the Review Petition. No case for interference is made out in the matter.

32. Therefore, we find no merit in the instant Appeal preferred by the Appellant and the same is hereby dismissed.

33. The Judgement rendered by the Ld. Single Judge is upheld.

34. The Appeal is dismissed along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

NOVEMBER 29, 2022

