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

% *Decided on: 24th March, 2023*

\+ W.P.(C) 10889/2022 & CM APPLs. 31683/2022, 31684/2022, 53859/2022, 1646/2023, 1729/2023 & 4541/2023

CAPT. AMITABH RAJAN AND ANR. ..... Petitioners

Through: Mr. Shree Prakash Sinha, Mr. Rakesh Mishra, Ms. Mohua Sinha, Mr. Nawalendra Kumar, Advocates (M:9810368574)

versus

UNION OF INDIA AND ANR. ..... Respondents

Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Avishkar Singhvi, Ms. Manjira Dasgupta, Mr. Vivek Kumar, Ms. Anindita Burman, Mr. Shivam Chanana, Mr. Siddhant Bajaj, Mr. A. Hari Singh, Mr. Azeem Sanwal, Advocates for R-2 (M:9311077171)
Mr. Sanjiv Sen, Sr. Adv. with Mr. A.P. Singh, Ms. Akanksha Das, Mr. Mridul Suri, Advocates for R-3
Mr. Siddharth Khatana, Sr. Panel Counsel with Mr. Vedansh Anand, Advocate for R-1 and 4 (M:9811132326)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

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1. The present writ petition has been filed by employees of Respondent No.2, i.e., Air India Limited, wherein earlier 100% shareholding was with the Government of India. Subsequently, pursuant to Share Purchase Agreement dated 25.10.2021 entered into between the respondents, the entire shareholding of Air India Limited was transferred to M/s Talace Private Limited, a subsidiary of Tata Sons Private Limited. The transaction for privatisation of Air India Limited was complete on 27.01.2022.

2. The petitioners as employees of Air India limited, were allotted accommodation in the Air India Colony, Vasant Vihar, New Delhi in terms of Air India Housing Allotment Rules. The writ petition has been filed by two petitioners in a representative capacity on behalf of all the employees of Air India Limited who are occupants of the Air India Colony, Vasant Vihar, being President and Secretary of Air India Colony Residents' Welfare Association (RWA). Since the said RWA is not a registered organisation, the present writ petition has been filed in individual capacity.

3. Subsequently, during the course of hearing of this case, CM APPL. No. 1728 of 2023 was filed under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for impleadment of various residents of the Air India Colony, Vasant Vihar as petitioners in the present matter. The said applicants stated in the application that they were willing to give undertaking in writing giving the timeline as to when they will vacate the premises. However, since the present matter was already at the final stages, the said application was disposed of vide order dated 20.02.2023, with

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directions that orders passed by this Court in the present proceedings shall be binding on all the employees of Air India Limited residing in Air India Colony, Vasant Vihar and that all the employees of Air India Limited who are residents of Air India Colony, Vasant Vihar shall be treated at par with each other.

4. During the course of hearing, Air India Assets Holding Limited (AIAHL), which is a Government entity was made a party in the present proceedings in view of the fact that the colony in question has been transferred to it under the Share Purchase Agreement (SPA) and the scheme of privatisation.

5. By order dated 22.02.2023, Ministry of Housing and Urban Affairs, Land and Development Office, Government of India was also made a party to the present proceedings. This was done on the submission of the petitioners that the said Ministry was the owner of the residential complex in question and that the order appointing an Estate Officer for carrying out proceedings under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) for eviction from the colony in question, was also issued by the said Ministry.

6. The present writ petition has been filed primarily with prayer that the employees of Air India Limited, who had been allotted flats in the Air India Colony, Vasant Vihar, New Delhi, be allowed to stay in the said colony for the time being and for consideration of their representations dated 10.06.2022 and 28.06.2022.

7. There is further prayer for quashing the letter dated 29.09.2021 issued by the Ministry of Civil Aviation, Government of India. By

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way of the said letter, it was informed that post disinvestment, the employees of Air India were required to vacate the company accommodation as given to them, in terms of the decision of the group of Union Ministers who were part of the Air India Specific Alternative Mechanism (AISAM) constituted by the Cabinet Committee on Economic Affairs to drive the disinvestment process. Thus, letter dated 29.09.2021 stated as follows:

> *"… … …*
>
> *2. The AISAM in its meeting held on 09.08.2021 while considering the issue related to vacation of the company accommodation post disinvestment of Air India decided as under:*
>
> *"AI employees may continue to stay at the residential colonies of the company post disinvestment for a period of six months or till the property is monetized whichever is earlier. Appropriate binding legal and other arrangement including financial disincentives should be formulated to enable prompt vacation of the properties by the employees."*
>
> *… … …*
>
> ***5. Mechanism for prompt vacation of the accommodation at AI colonies:***
>
> *i. An undertaking shall be obtained from all employees (retired/serving) who are residing in AI colonies to the effect that they shall vacate and handover the peaceful possession of the accommodation within a period as mentioned in para 4 above.*
>
> *ii. Air India shall ensure the receipt of undertaking from all the occupants of AI colonies in the prescribed format attached herewith, within fifteen days of issue of this letter. In case an occupant does not provide the*

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undertaking by due date, eviction notice shall be issued to such employee for peaceful vacation of accommodation immediately and accommodation shall be got vacated within a period of one month of serving eviction notice.

iii. In case of employee retiring towards the end of the permissible six months period, post disinvestment, no separate notice for vacating the accommodation would be served. The undertaking furnished by the employee shall be treated as legal and valid notice to all such employees for vacating and providing peaceful possession of the accommodation within a period as mentioned in para 4 above.

iv. Eviction proceedings shall be initiated by the AI Estate Officer or any other designated officer who will continue to act as Estate Officer post disinvestment for peaceful vacation of unauthorized occupation i.e. in contravention of period permissible in para 4 above.

v. Any unauthorized occupation of accommodation i.e. in contravention of period permissible in para 4 above would be informed by the Estate Officer or any other designated officer to the AI Management. The AI Management will immediately initiate disciplinary action against such person under applicable rules.

vi. Any unauthorized occupation of accommodation i.e. in contravention of period permissible in para 4 above would attract penal rent equivalent to the sum of normal occupancy charges and double the market rent for the period of unauthorized occupancy. In addition to that, such employee would be liable to pay damage charges of Rs. 10 lakh and Rs. 15 lakh for accommodation at Delhi and Mumbai respectively. The penalty would be recovered from the JDC arrear and any other financial benefit accruable to such employee.

vii. All retired or serving employees residing in AI colonies who fail to vacate and handover peaceful

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possession of the accommodation within the timelines provided in para 4 above, the retirement/service benefits and any financial benefit accrued or likely to accrue in future including the entire JDC arrear admissible to them shall be put on hold and released only after peaceful vacation of the accommodation.

viii. Any liable charges, penal rent or damage charges would be recovered from the retirement/service benefits and any financial benefit accrued or likely to accrue in future including JDC arrear admissible to such employee.

... ...”

8. Reading of the aforesaid letter dated 29.09.2021 as issued by Ministry of Civil Aviation, Government of India clearly manifests that all occupants of the Air India colonies were required to provide an undertaking that they shall vacate and handover the peaceful possession of the accommodation at Air India Colonies within a period of 6 months post disinvestment, i.e., by 27.07.2022.

9. In terms of the aforesaid policy decision of the government as indicated by letter dated 29.09.2021, notice dated 23.05.2022 was issued by the Air India to the various occupants of the Air India Colony, Vasant Vihar, New Delhi, directing the said occupants to vacate the company allotted accommodation latest by 26.07.2022. It was further indicated by way of the said notice dated 23.05.2022 that in case of failure to vacate the accommodation, the said occupants would be liable to pay penal rent equivalent to the sum of normal occupancy charges and double the market rent for period of unauthorised occupancy. In addition, it was stated that they shall be liable to pay damage charges of Rs. 10 lakhs. There is prayer for

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quashing the said notice dated 23.05.2022 also as issued by Air India Limited to its employees in occupation of the Air India Colony, Vasant Vihar, New Delhi. One such notice dated 23.05.2022, is reproduced as below:

" NOTICE

To,
Name: Amitabh Rajan
Staff No. 675008
Address: C- 1/20, Air India Colony
Vasant Vihar, New Delhi

Ref No. DIR/IR/Estate/ Date: 23/05/2022

Sub: Vacation of company accommodation by the employees of Air India Limited (AI), post disinvestment- AISAM decision regarding

This is further to our letter no .... dated 08/10/11/12th Oct, 2021 communicating to you the decision of Ministry regarding handing over peaceful possession of the Company allotted accommodation to you.

2. Accordingly, in terms of the letter dated 29/09/2021, Ministry of Civil Aviation vide Ref No.F.No.17046/45/2021 had recommended various steps/actions to ensure prompt vacation of accommodation by the employees.

3. In line with the above directions of the Ministry, a reminder notice is hereby served upon you for vacation of the Company allotted accommodation latest by 26/07/2022.

4. In case of your failure to vacate the accommodation and continue to unauthorizedly occupy the same i.e. in contravention of period permissible in para 3 above, you would be liable to pay a penal rent equivalent to the sum of normal occupancy charges and double the market rent for the period of unauthorized occupancy.

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In addition, you shall also be liable to pay damage charges of Rs. 10 Lakh (for Delhi)/Rs. 15 Lakh (for Mumbai). In case, you fail to vacate the accommodation allotted to you by the Company, your retirement/service benefits etc and any other financial benefits accrued including JDC arrears admissible to you shall be put on hold and you will also be liable for recovery of any liable charges, penal rent, damage charges and penalty from your JDC arrears and any other financial benefits accruable to you.

5. Further, you shall also be liable for action under the Public Premises (Eviction of Unauthorised Occupants) Act 1971.

6. You shall also be liable for strict disciplinary action as per the Service Regulations/Standing Orders applicable to you.

7. In case, you have not yet submitted an Undertaking in line with letter issued vide Ref No. F.No.17046/45/2021 Dated 29/09/2021 you are advised to do so immediately on receipt of this notice, failing which notice will be issued for vacation of the accommodation immediately and accommodation shall be got vacated within a period of one month of serving eviction notice.

Sd/-
For General Manager (Pers)"

10. Perusal of the record shows that by way of the representation dated 28.06.2022, the residents of Air India Colony, Vasant Vihar had prayed to the Ministry of Civil Aviation, Government of India that they may be allowed to stay in the said Air India Housing Colony till one year of takeover is complete.

11. It is to be noted that the process of privatisation of Air India was complete on 27.01.2022. Thus, the period of one year for

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permission to stay, as prayed for by the residents of Air India Colony, Vasant Vihar, New Delhi in their representation dated 28.06.2022, got over on 27.01.2023. Even in the writ petition, it is the plea of the petitioners that they may be allowed to retain their accommodation for one year during which their services is protected. Thus, period of one year is long over.

12. It is further noted by this Court that even during the pendency of the present writ petition, many of the employees of Air India have already vacated their houses in Air India Colony, Vasant Vihar, New Delhi. Further, categorical statement was made before this Court on behalf of the various employees of Air India Limited, who are residents of the Air India Colony, Vasant Vihar that they are willing to vacate the premises being occupied by them. However, they needed some time for vacation.

13. An affidavit dated 09.03.2023 came to be filed on behalf of the petitioners, wherein it has been stated that 54 persons out of 146 occupants have already vacated the flats. 66 occupants recorded their consent by way of the said affidavit that they were willing to vacate the flats in question on or before 31.07.2023. As regards 38 occupants, it is stated that they undertake to vacate the premises within one month of monetisation of the land in question. Para 13 of the affidavit dated 09.03.2023 as filed on behalf of the petitioners, thus, reads as under:

> *"13. That the deponents respectfully submit that there are altogether 115 petitioners/applicants in the instant proceedings and out of which 98 have signed the above resolve. Besides there is a list of 12+36=48 residents*

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who are not parties in either the writ petition or in the impleadment application. The status of residents may be summarized in terms of the above referred Annexure-P/16 and P/17 in the following manner:

Status	***Vacated***	***Not vacated***	***Vacation on or before 31/07/2023***	***Vacation within one month of monetization subject to outcome***
98 Signatories out of 115 petitioners /applicants	*41*	*31*	*32*	*26*
48 signatories who are not parties	*13*	*23+12= 35*	*23*	*12*
Total- 146	***54***	***66***	***55***	***38***

… … …"

14. Today, ld. Counsel for the petitioners submits that petitioner No.2 has also vacated the flat occupied by her on 14.03.2023. Thus, she does not want to continue with the present litigation. At the oral request of ld. Counsel for the petitioner, petitioner No.2 is deleted from the array of parties.

15. Submissions made on behalf of the employees of Air India occupying the aforesaid colony that they shall vacate their flats within one month of monetisation of the land in question, cannot be accepted. As manifest from the record, in the wake of disinvestment of Air India Limited, the non-core assets including land and building, have been

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transferred to Air India Assets Holding Company (AIAHL), which is a subsidiary of the Government of India. Thus, the accommodation provided to the petitioners at the colony along with other residential colonies, have been transferred to AIAHL.

16. The employees of Air India Limited are no longer government employees after its privatisation. The colony in question is under the ownership of the Government, while the occupants are now employees of a private company after privatisation of Air India Limited. Thus, the employees of Air India Limited occupying the colony in question, do not have any legal or vested right to continue with the occupation of the premises in question. Even otherwise, the facility of accommodation cannot be claimed as a vested right and is only provided to the employees/workmen depending upon availability of such facility in their respective location. Thus, it cannot be contended that accommodation provided should be enjoyed by the said occupants perpetually and as an essential condition of service.

17. Even otherwise, as pointed out, the facility of accommodation was optional and majority of the employees of the erstwhile Air India and its subsidiaries chose not to avail this facility. The Air India Limited which is now a private entity owned by M/s Talace India Private Limited, does not have any right, title or interest over the property on which the accommodation has been provided to the various occupants at Air India Colony, Vasant Vihar, New Delhi. Consequent upon the transfer of shares held by Government of India in Air India Limited to M/s Talace India Private Limited, Air India Limited has ceased to be a government entity. Thus, the employees of

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Air India Limited are now employees of a non-government company.

18. The vacation of residential colonies occupied by employees of Air India Limited after its privatisation, is part of the policy decision taken by the Government of India in the wake of disinvestment of Air India Limited. The various occupants of Air India Colony, Vasant Vihar, thus, cannot be said to have any vested right to continue their occupation. The quarters at Air India Colony, Vasant Vihar, New Delhi, as noted above, is situated on land belonging to the Ministry of Housing and Urban Affairs.

19. Further, attention of this Court has been drawn to the Leave and License Agreement, as filed before this Court. Thus, as per the facts as brought forth on record, at the time of allotting the housing accommodation to its employees, a standard Leave and License Agreement was signed between the erstwhile company and the allottee, which stated that the company or the competent authority shall have right to terminate the allotment of housing accommodation, without assigning any reasons whatsoever. Thus, it transpires that the allotment and possession of the housing accommodation is governed by the terms of Leave and License Agreement, and the same is not a vested right of the employee of the erstwhile company.

20. AIAHL in its short counter affidavit has clearly brought forth that nearly 72% of the occupants of the colony in question have given their undertaking and have already vacated the flats occupied by them in the Air India Colony, Vasant Vihar. Therefore, it is clear that all employees of Air India Limited who have been occupying the Air India Colony, Vasant Vihar, have to be treated at par with each other.

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Therefore, no special equity flows in favour of the 38 occupants, who have prayed that they will vacate the premises within one month of monetisation of the land in question. The decision as regards monetisation of the land in question is a separate proceedings altogether and the said occupants cannot claim any vested or legal right to continue to occupy the premises in question.

21. As regards the undertaking given on behalf of 66 occupants of the Air India Colony, Vasant Vihar that they are willing to vacate the flats in question on or before 31.07.2023, this Court accepts the said undertaking.

22. In view of the aforesaid, all the employees of Air India Limited who are currently occupying the flats in Air India Colony, Vasant Vihar, New Delhi are directed to vacate the flats on or before 31.07.2023.

23. This Court notes that penal rent has been deducted from the employees who have been occupying the Air India Colony, Vasant Vihar. However, deduction of penal rent by the respondents cannot be held to be justified. On the one hand, the respondents have appointed an Estate Officer in respect of vacation of Air India Colony, Vasant Vihar, by way of Office Memorandum dated 28.09.2022 as issued by the Ministry of Housing and Urban Affairs, Land and Development Office, Government of India. On the other hand, without following the due process of law as envisaged under the PP Act, penal rent has been deducted from the Air India Employees occupying the Air India Colony, Vasant Vihar, New Delhi. Recovery of rent or damages in respect of public premises is dealt with under Section 7 of the PP Act.

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Therefore, no penal rent could have been deducted by the respondents randomly and in such arbitrary manner, without following the due process of law, especially when Estate Officer under the PP Act has already come to be appointed by the Government. Thus, the recovery of penal rent by the respondents from the various employees of Air India Limited occupying the Air India Colony, Vasant Vihar, New Delhi, is declared to be unlawful. Consequently, the respondents are directed to refund forthwith to the employees of Air India Limited, the amounts as deducted towards penal rent from their salaries. It is further directed that the respondents shall make no further deductions from the salary of the employees towards any penal rent, except after following due process of law.

24. The said issue regarding levy and recovery of penal rent is left open to be decided in appropriate proceedings.

25. As regards the contention of the petitioners regarding their claim for purchase of part of the property in Air India Colony, Vasant Vihar, New Delhi, as and when the respondents intend to monetise it, the petitioners/employees of Air India Limited who had been allotted accommodation in the said colony, are at liberty to make a representation to the respondents in this regard.

26. The present writ petition along with the pending applications, is disposed of in terms of the aforesaid directions.

MINI PUSHKARNA, J

MARCH 24, 2023
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