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

Date of decision: 31.07.2023

+ **CM(M) 1201/2023**
APARNA BADDE

..... Petitioner

Through: Ms.Satakshi Sood, Mr.Shreyansh
Tripathi, Advs. along with
petitioner in person.

versus

RAJ KUMAR BADDE

..... Respondent

Through: Ms.Sangeeta Sondhi, Mr.Shashwat
Roy, Advs. along with respondent
in person.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 38372/2023

1. Allowed, subject to all just exceptions.

CM(M) 1201/2023 & CM APPL. 38373/2023

2. This petition has been filed challenging the order dated 26.07.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Principal District and Sessions Judge, South East District, Saket Court, in CA no.231/2023 titled *Aparna Badde v. Raj Kumar Badde*, which directs that since the respondent has been allotted a new government accommodation, the petitioner herein may shift to



the same and, therefore, there is no reason to stay the operation of the order impugned in the said appeal.

3. The said appeal, in turn, challenges the order dated 14.07.2023 passed by the learned Mahila Court, whereby the learned Court had directed the petitioner herein to vacate and handover the presently occupied Government flat to the respondent or to the concerned authorities within a period of 15 days from the date of order and to shift her belongings to the new flat allotted by the Government to the respondent.
4. The learned counsel for the petitioner submits that the respondent had been residing in the presently occupied government accommodation/flat, separately from the petitioner, since March, 2021. The present government accommodation remained in occupation of the petitioner alone. The petitioner filed an application under the provisions of The Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act'), on which, by an order dated 07.03.2023, the learned Mahila Court was pleased to direct as under:

“Therefore, considering the submissions made and the allegations of domestic violence allegedly committed upon the applicant/complainant, the respondent is hereby restrained from dispossessing the applicant/complainant from the shared household.

It is further made clear that in case respondent has taken a different government accommodation and the same has been allowed to his name, complainant has a right to reside in the same.

The applicant/complainant may take assistance of the Protection Officer if the ex parte interim





orders passed in her favour vide this order are violated by the respondent.

The protection Officer may seek assistance of the SHO concerned, if required. The ex parte interim orders passed in favour of the applicant/compliant today shall remain in force till the NDOH.”

(Emphasis supplied)

5. In the meantime, the respondent, with a *mala fide* intent, applied for change of the government accommodation, and on his application, the government was pleased to allot him a new accommodation. The respondent thereafter moved an application stating that as he has been allotted a new government accommodation, the petitioner be directed to shift her belongings to the same. On this application, the learned Mahila Court was pleased to pass the order dated 14.07.2023 *inter alia* directing the petitioner herein to vacate the presently occupied government accommodation and to shift to the newly allotted government accommodation of the respondent and all expenses of such shifting were to be borne by the respondent. On being aggrieved of this order, the petitioner filed the appeal in which the impugned order has been passed, refusing stay of the operation of the order dated 14.07.2023 to the petitioner.
6. The learned counsel for the petitioner submits that the respondent, having applied for the change of the government accommodation with a *mala fide* intent, cannot reap benefit of the same by forcing the petitioner herein to shift to the new government accommodation allotted to him. She submits that as the respondent has been residing separately from the petitioner, if the impugned order is operated, the



petitioner would have to reside along with the respondent, thereby rendering her petition/complaint under the Act infructuous. She submits that serious allegations of domestic violence have been made in the complaint filed by the petitioner against the respondent. The petitioner cannot, therefore, be made to share the household with the respondent.

7. The learned counsel for the petitioner further submits that under the DV Act, the petitioner cannot be forced to vacate the shared household where she is residing and be directed to shift to a new accommodation. She submits that the respondent has already filed a suit for eviction of the petitioner as also damages and, therefore, the impugned order deserves to be set aside.
8. On the other hand, the learned counsel for the respondent, who appears on an advance notice, submits that the respondent had applied for the change of the government accommodation in the year 2022 as the present accommodation allotted to him was not suitable for residence for various reasons. She submits that, in any case, as the new government accommodation has been allotted, and the right of the petitioner to reside therein stands protected, no fault can be found in the impugned order. She submits that the respondent cannot be expected to maintain two government accommodations as that would be contrary to the rules.
9. I have considered the submissions made by the learned counsels for the parties.
10. One of the objects of the DV Act is to secure housing of a woman





and to protect her right to reside in her matrimonial home or shared household, whether or not she has any title or right in such home or household. In the present case, by the order dated 07.03.2023, the learned Mahila Court directed that in case the respondent is allotted another government accommodation, the petitioner herein shall have a right of residence therein. Therefore, in spite of knowledge that the respondent has applied for change of the government accommodation, no order was passed in terms of Section 19(1)(e) of the DV Act. The said order was not challenged by the petitioner herein. The protection granted by the said order, therefore, continues to be enjoyed by the petitioner even by the impugned order, inasmuch as she has been given accommodation in the flat, which now stands allotted to the respondent. The petitioner cannot insist that she will be residing only in one government accommodation and not the other, which now stands allotted to the respondent. It is not the case of the petitioner that the Government flat, which is now allotted to the respondent, is in any manner inferior to the one which she is presently occupying.

11. In case the petitioner is apprehensive of staying with the respondent, her remedy is to seek appropriate orders from the competent Court under Section 19(1)(b) of the DV Act. However, till such a relief is considered by the competent court and granted in favour of the petitioner, if at all, no infirmity can be found in the order impugned before this Court.
12. Merely because the respondent has also filed a suit seeking eviction



of the petitioner, this, in my view, also does not give rise to any ground of challenge to the impugned order.

13. Accordingly, I find no merit in the present petition. The same along with the pending application is dismissed, leaving it open for the petitioner to avail of her remedies in accordance with law.

NAVIN CHAWLA, J

JULY 31, 2023
RN/ss

