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

Date of Decision: 17th October 2023

+ FAO 264/2023 and CM APPL. Nos. 52896/2023, 52898/2023

RAGHAV CHADHA

..... Appellant

Through: Dr. A.M. Singhvi, Senior Advocate with Ms. Warisha Farasat, Mr. Shadan Farasat, Mr. Amit Bhandari, Mr. Vivek Jain, Mr. Prashant Manchanda, Mr. Aman, Mr. Vivek Jain, Ms. Hrishika Jain and Mr. Honey Kumbhat, Advocates.

versus

RAJYA SABHA SECRETARIAT

..... Respondent

Through: Mr. Vikramjit Banerjee, ASG with Mr. Sandeep Mahapatra, Standing Counsel with Ms. Mrinmayee Sahu Mahapatra, Mr. Sugam Kumar Jha, Ms. Kritika Sharma, Mr. Harsh Raj, Mr. Megha Saxena, Ms. Osheen Verma, Ms. Akansha, Mr. Raghav Tandon, Ms. Anu Priya, Mr. Tribhuvan, Mr. Siddhartha Singh, Mr. Prashant Rawat and Mr. N. Chamwibo Zeliang, Advocates with Ms. Saraswati Saraf, EO.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present appeal filed under Order XLIII Rule 1 (a) and (w) of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns order dated 05.10.2023 passed by the learned



Additional District Judge, Patiala House Courts, New Delhi in CS No.151/2023 titled ***Raghav Chadha vs. Rajya Sabha Secretariat***, whereby the learned Trial Court has recalled order dated 18.04.2023 made by it, thereby vacating an *ad-interim* order granted in favour of the appellant; and also thereby returning the plaint for presentation after compliance of section 80(1) CPC.

2. Impugned order dated 05.10.2023 was passed on a review application filed by the defendant/respondent under Order XLVII Rule 1 CPC, seeking review of order dated 18.04.2023 by which the learned Trial Court had, on an application under Order XXXIX Rules 1 & 2 CPC, granted to the appellant *ad-interim* protection against being dispossessed from Bungalow No. AB-5, Pandara Road, New Delhi, without due process of law. By order dated 18.04.2023, the learned Trial Court had also issued notice to the respondent/defendant on an application filed by the appellant under section 80(2) of the CPC.

BRIEF FACTS

3. A brief conspectus of the relevant factual matrix of the case is as follows :
 - 3.1. The appellant was allotted Bungalow No. AB-5, Pandara Road, New Delhi ('subject bungalow') as official accommodation in his capacity as a Member of the Rajya Sabha. The subject bungalow is a Type-VII accommodation that was allotted to the appellant in exchange for Bungalow No. C-1/12, Pandara Park, New Delhi, which was a Type-VI accommodation. The allotment was made *vide* letter dated 08.09.2022 by the Rajya Sabha, upon a representation dated 29.08.2022 made by the



appellant, citing certain reasons for seeking upgradation of his allotted accommodation from Type-VI to Type-VII.

- 3.2. The appellant took physical possession of the subject bungalow on 09.11.2022 and has been residing there along with his senior-citizen parents and his sister ever since. For completeness, it may be mentioned that the House Committee of the Rajya Sabha, that deals with the official accommodation provided to its members, has also ratified the allotment of the subject bungalow on 24.11.2022.
- 3.3. There is no dispute that the appellant continues to be a Member of the Rajya Sabha, though, for certain reasons which have no concern with the present matter, he is presently under suspension from the House.
- 3.4. The genesis of the dispute is letter dated 03.03.2023, received by the appellant from the Director, Rajya Sabha Secretariat, effectively cancelling the allotment of the subject bungalow; and instead allotting to the appellant a Flat bearing No. 501 along with Servants Quarters Nos. 17 & 18 at SWAJAS Deluxe, New Delhi as his regular accommodation.
- 3.5. The aforesaid cancellation led to the appellant filing a suit before the learned Trial Court seeking reliefs essentially against dispossession or interference in his use and physical possession of the subject bungalow, pursuant to letter dated 03.03.2023 which he claimed was as illegal, *non-est* and void *ab-initio*. Apart from that the appellant also sought the ancillary and consequential relief of restraining the defendant from allotting



the subject bungalow to any other person, without prior permission of the court and without following the due process of law; as also damages for causing mental agony and harassment to the defendant.

3.6. It is important to note that the sole defendant in the suit is :

*Rajya Sabha Secretariat
Through its Secretary General
Parliament House/Annexe
New Delhi-110001*

3.7. Alongwith the suit the appellant had also filed 02 applications –
(i) an application under Order XXXIX Rules 1 & 2 CPC seeking an *ex-parte, ad-interim* relief of staying the effect and operation of letter dated 03.03.2023; and seeking restraint against the defendant from dispossessing the plaintiff without following the due process of law; and (ii) an application under section 80(2) CPC seeking leave of the court to file the suit and to “... *exempt the plaintiff from effecting the service of notice to the defendant.*”

3.8. By way of order dated 18.04.2023, made on the appellant’s application under Order XXXIX Rules 1 & 2 CPC, the learned Trial Court made the following operative decision :

“(c) Admittedly, the accommodation granted to the plaintiff falls under the definition of a public premises. Counsel of the plaintiff was directed to address arguments on the maintainability of the present suit. He has submitted that the suit is not barred by the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act as till date, no orders have been passed by the Estate Officer and the eviction proceedings have not been initiated. He has



argued that at this stage, plaintiff has no other remedy apart from approaching a civil court for vindicating his rights. He has contended that the accommodation was provided to the plaintiff under the procedure prescribed in Rule 4.18 of the Handbook for the Members of Rajya Sabha. He has mentioned that plaintiff is entitled to the category of accommodation provided to him. He has argued that the accommodation was canceled arbitrarily without providing any hearing to the plaintiff. He has mentioned that the concerned authority has canceled the accommodation without assigning any reason and justification. He has mentioned that the impugned letter dated 03.03.2023 is against the principles of natural justice. He has contended that the allotment was made to the plaintiff vide allotment letter dated 08.09.2022. He has argued that the circumstances under which, the allotment could have been canceled, were mentioned in the allotment letter itself. He has argued that the allotment, once made to a Member of Parliament, cannot be canceled except for the reasons enumerated in the letter of allotment. He has contended that there are various other persons, who are similarly placed but their allotment has not been canceled. He has argued that defendant is acting in haste and there is a strong apprehension that plaintiff may be forcibly dispossessed from the accommodation.

** * * * **

“(e) At this stage, I do not deem it expedient to comment on the arguments raised by the plaintiff that the allotment once made by the Secretariat cannot be canceled under any circumstances during the entire tenure of a Member of Parliament. However, I do find force in the second limb of argument advanced on behalf of plaintiff that a person cannot be dispossessed except by following the due process of law. Since, plaintiff is occupying an accommodation, which falls under the category of a public premises, defendant is obligated to follow the due process of law. It has been submitted on behalf of plaintiff that



*defendant is acting in haste and there is a strong likelihood that he might be dispossessed without due process of law. In view of these circumstances, a prima-facie case is made out for issuing directions to the effect that plaintiff shall not be dispossessed from the Bunglow No.AB-5, Pandara Road, New Delhi without due process of law. The balance of convenience also lies in favour of the plaintiff as he is residing in the accommodation along with his parents. Plaintiff would indeed suffer irreparable injury, in case, he is dispossessed without the due process of law. Accordingly, till the next date of hearing, defendant is directed not to dispossess the plaintiff from Bunglow No. AB-5, Pandara Road, New Delhi without due process of law. **Notice of the application under Section 80 (2) of CPC be issued to the defendant to show cause in respect of the relief claimed in the suit.***

(emphasis supplied)

- 3.9. It is to be noted that the respondent was neither represented nor heard when order dated 18.04.2023 was made on the application under Order XXXIX Rules 1 & 2 CPC.
- 3.10. Subsequently, the respondent filed an application under Order XLVII Rule 3 read with Order XLI Rule 5 CPC seeking review and setting-aside of order dated 18.04.2023, citing the following grounds : (a) that there was an error apparent on the face of the record inasmuch as order dated 18.04.2023 was made in breach of the provisions of section 80(1) and 80(2) of CPC; (b) that the court could not have granted any relief without first deciding the application under section 80(2) CPC; and (c) that the appellant had himself filed an application seeking leave of the court under section 80(2) CPC and even interim relief could not have been granted to the appellant



without affording to the respondent a reasonable opportunity of showing cause in respect of such relief. It was accordingly the respondent's case, that they were covered within the meaning of "Government" or "public officer" appearing in that provision.

3.11. It is on this review application that impugned order dated 05.10.2023 has come to be made by the learned Trial Court, thereby recalling order dated 18.04.2023; vacating the interim order granted to the appellant; and returning the plaint to the appellant. The relevant portions of impugned order dated 05.10.2023 are as follows :

"18. The sole ground taken in the review application is that there has been a non-compliance of the mandatory provisions of Section 80 (2) of CPC. The arguments were addressed by the counsels on various aspects and some of them touched upon the merits of the suit as well as the relief claimed by the plaintiff but the scope of the present review revolves around the non-compliance of Section 80(2) of CPC. I have gone through the provisions of Section 80 of CPC. It provides that a notice has to be issued before a suit could be instituted against a Government or a Public Officer. Section 80(1) of CPC stipulates the precondition of giving two months notice prior to the institution of suit against Government or a Public Officer. However, Section 80(2) of CPC carves out an exception whereby leave of the court could be sought for institution of a suit without giving such notice

* * * * *

"23. It was also argued on behalf of the plaintiff that there has been a substantial compliance of the requirement contemplated under Section 80(1) of CPC. Counsel for the plaintiff has mentioned that Section 80(1) of CPC postulates



a notice in advance so that Government is informed about the issue and given sufficient time of two months to rectify. He has contended that after the cancellation of accommodation, plaintiff wrote a letter dated 14.03.2023 to the defendant highlighting therein that the accommodation has been canceled arbitrarily. Counsel has submitted that this letter amounts to a notice under Section 80(1) of CPC. I do not find force in these submissions. Section 80(1) of CPC specifies categorically that the notice should contain the cause of action, the name, description and the place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such a notice has been so delivered. The letter dated 14.03.2023 cannot be treated as a notice under Section 80 of CPC. On the one hand, plaintiff himself sought a leave from the court under Section 80(2) that the suit may be regularized as the same has been filed without serving notice required under Section 80(1) of CPC while on the other hand, arguments have been advanced that there was substantial compliance of Section 80(1) of CPC in view of letter dated 14.03.2023. It is not possible to reconcile this contradictory stand. Similarly, the argument that defendant does not fall under the definition of a Government or Public Officer cannot be appreciated. Plaintiff moved an application under Section 80(2) of CPC claiming that he may be granted leave for instituting the suit but subsequently changed this version and started claiming that no notice under Section 80(1) of CPC was required to be served as the defendant does not fall under the definition of Government. The same is not permissible in view of the doctrine of approbation and reprobation. Accordingly, these arguments deserve to be rejected.

* * * * *

“29. In the light of the discussion made in the afore said paras, I have reached a conclusion that the application for review needs to be allowed. On going through the provisions of Section 80(2) of CPC in the light of the interpretation given by the Supreme Court of India in the



matters of 'State of Andhra Pradesh Vs. Pioneer Builders A. P.' (Supra) & 'State of Kerala & Ors. Vs Sudhir Kumar Sharma & Ors.' (Supra), it is an inescapable conclusion that for the purpose of determining whether an application should be granted under Section 80(2) of CPC, the Court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision and till a final order is passed granting the said application, the irregularity in filing of the suit continues. Section 80(2) of CPC categorically provides that although, a suit to obtain an urgent and immediate relief against the Government or Public Officer may be instituted with the leave of the Court without serving any notice as required under Section 80(1) of CPC but the Court shall not grant relief in the suit whether interim or otherwise, except after giving to the Government or Public Officer, a reasonable opportunities of showing cause in respect of the relief prayed for in the suit. It can be seen from the record that in terms of order dated 18.04.2023, notice of the application under Section 80(2) of CPC was issued to the respondent and simultaneously interim relief was granted to the plaintiff that he would not be dispossessed from the accommodation without due process of law. This is certainly an error apparent on the face of the record and the same needs to be corrected. Accordingly, the order dated 18.04.2023 stands recalled and the interim order stands vacated.

* * * * *

"30. Further, after hearing the parties, I find that plaintiff has failed to demonstrate that any urgent or immediate relief needs to be granted in the present matter for which leave could be granted under Section 80(2) of CPC. Plaintiff's allotment was canceled on 03.03.2023, whereas, the suit was instituted on 17.04.2023. The accommodation granted to the plaintiff falls under the definition of a Public Premises. Counsel for defendant submitted during the course of arguments that an action



under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is being contemplated and the appropriate proceedings are going to be initiated. As observed in the preceding paras, the accommodation allotted to the plaintiff is only a privilege given to him as a Member of Parliament. He has no vested right to continue to occupy the same after the privilege has been withdrawn and the allotment has been canceled. The argument that the plaintiff was not given hearing before the cancellation of allotment stands rejected as no such notice was required under the Law. Since, no urgent or immediate relief needs to be granted in the present suit, therefore, the plaint is returned for presentation after complying with the requirement of Section 80 (1) of CPC.

(emphasis supplied)

4. The court has heard Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the appellant and Mr. Vikramjit Banerjee, learned Additional Solicitor General representing the respondent.
5. Though counsel have addressed the court on various facets of the matter, both legal and factual, in the opinion of this court the scope of the present appeal is narrow and must be restricted only to the grounds and reasons on which the impugned order has been passed.

APPELLANT'S SUBMISSIONS

6. Appearing for the appellant, Dr. Singhvi submits, that on a plain reading of the impugned order it is seen that the learned Trial Court has reviewed interim order dated 18.04.2023 on two grounds : one, the purported non-compliance by the appellant of the requirements of section 80 CPC, since the learned Trial Court says that it had committed an error apparent on the face of the record when it issued



notice of the application under Section 80(2) of CPC to the respondent and simultaneously also granted interim relief to the appellant. And *two*, that since action under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('PP Act') was only being contemplated and appropriate proceedings were yet to be initiated, no urgent or immediate relief was required to be granted.

7. The main contention raised on behalf of the appellant is that section 80 CPC has no application to the suit filed by the appellant inasmuch as the defendant in the suit, *viz.* Rajya Sabha Secretariat is neither 'Government' nor a 'public officer' within the meaning of the law.
8. In this behalf, Dr. Singhvi has drawn attention of this court to the following provisions of the General Clauses Act, 1897 ('GC Act') :

3. Definitions—*In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—*

* * * * *

(8) "Central Government" shall,—

(a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor General in Council, as the case may be; and shall include, —

(i) in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that subsection; and

(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3)



of section 94 of the said Act; and
(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,—

(i) in relation to functions entrusted under clause (1) of Article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

(ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be; and

(iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution;

* * * * *

(60) “State Government”,—

(a) as respects anything done before the commencement of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorized at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government;

(b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor, in a Part B State, the



Rajpramukh, and in a Part C State, the Central Government;

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government;

and shall, in relation to functions entrusted under article 253-A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article;

* * * * *

(23) “Government” or “the Government” shall include both the Central Government and any State Government;

* * * * *

(emphasis supplied)

9. Furthermore, Dr. Singhvi submits that the Rajya Sabha Secretariat is an independent institution established under Article 98 of the Constitution, which reads as under :

98. Secretariat of Parliament.—(1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

(emphasis supplied)



10. Senior counsel further submits that Article 102 of the Constitution, which prescribes the disqualification for membership of either House of Parliament *inter-alia* stipulates that a person shall be disqualified from such membership if he holds any office of profit “...*under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder.*” It is argued therefore, that the Constitution itself draws a clear distinction between the Houses of Parliament *and* the Government, inasmuch as it prescribes the holding an office of profit under the Government disqualifies a person from being a Member of Parliament. It is submitted that this admits of only one interpretation, *viz.* Parliament is different from Government, since otherwise holding office as a Member of Parliament would be the same as holding an office under the Government, and thereby every member of Parliament would be disqualified from Parliament by virtue of such membership itself.
11. It is argued that the Government is the Executive wing of the State and is different and distinct from Parliament which is the Legislative wing of the State. It is therefore the submission, that the defendant in the suit, *viz.* Rajya Sabha Secretariat (acting through the Secretary General), is not ‘Government’ within the meaning of section 80 CPC at all; and accordingly, section 80 has no application to the case; and there was no requirement for the appellant to have either issued prior notice, or to have sought leave of the court to institute the suit or seek interim relief; nor was it incumbent upon the learned Trial Court to hear the respondent before granting interim relief.



12. Next, it is argued, that the term “public officer” as appearing in section 80 CPC has been defined in section 2(17) of the CPC itself, which provision reads as under :

2. Definitions.—*In this Act, unless there is anything repugnant in the subject or context,—*

* * * * *

(17) “public officer” means a person falling under any of the following descriptions, namely:—

(a) every Judge;

(b) every member of an All-India Service;

(c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey,



assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;

(emphasis supplied)

13. It is argued that a close reading of the foregoing provision makes it clear that the term ‘public officer’, which has been given an *exhaustive definition* (and not an inclusive one), notably omits any reference to the Legislative branch of the State.
14. If it requires any further elaboration, it is argued that the posts in the Rajya Sabha Secretariat are excluded from the purview of the Union Public Services Commission under the UPSC (Exemption from Consultation) Regulations, 1958; from the Administrative Tribunals Acts 1985; and that officers of the Secretariat are recruited directly under the orders of the Presiding Officer, *viz.* the Chairman of the Rajya Sabha.
15. As an alternative argument, it is submitted that even if it is assumed, for the sake of argument, that section 80 CPC applies, there is in any case no absolute bar in granting interlocutory or *ad-interim* relief in an appropriate case under Order XXXIX Rules 1 & 2 CPC even if the defendant in a suit is the Government or any public officer. It is



pointed-out that by order dated 18.04.2023, the learned Trial Court has only granted to the appellant *ex-parte ad-interim* relief; and that the application under Order XXXIX Rules 1 & 2 CPC has not been disposed-of, and section 80(2) CPC does not bar the court from granting *ad-interim* relief at the *ex-parte* stage, without hearing a defendant, who would be entitled to be heard at the time of final consideration of the application.

16. It is further the submission, that relief could also have been granted by the learned Trial Court in exercise of its inherent powers under section 151 CPC, to ensure that the ends of justice are not defeated, pointing-out that section 151 CPC begins with a *non-obstante* clause.
17. Another limb of the argument preferred by Dr. Singhvi, is that in deciding the review application, the learned Trial Court has opined that the appellant had failed to make-out any ground for grant of urgent and immediate relief as contemplated under section 80(2) CPC, which is wholly misconceived and reflects non-application of mind, inasmuch as the appellant was facing imminent eviction since, *vide* letter dated 03.03.2023, he was asked to vacate the subject bungalow. It is pointed-out that while granting interim relief *vide* order dated 18.04.2023, the learned Trial Court had itself appreciated the urgency made-out by the appellant and had also observed that a *prima-facie* case had been made-out by the appellant; that the balance of convenience lay in favour of the appellant; and that the appellant would indeed suffer irreparable injury if he is dispossessed without due process of the law.



18. In the circumstances, it is argued that the learned Trial Court had erred in observing in the review order, that the appellant had failed to demonstrate the need for any urgent or immediate relief only because the suit challenging the cancellation of allotment *vide* letter dated 03.03.2023 came to be instituted on 17.04.2023.
19. It is pointed-out that the Authority Slip for the appellant to take possession of the replacement flat was served upon an unauthorised person in the appellant's absence on 09.03.2023, while the appellant was away in Punjab. Furthermore, the vacation notice in respect of the subject bungalow was served on the appellant only on 18.09.2023 when the matter was already *sub-judice* before the learned Trial Court, directing him to vacate it within a week *i.e.* by 25.09.2023. Thereafter, a letter dated 05.10.2023 was issued by the Rajya Sabha Secretariat to the Directorate of Estates to initiate eviction proceedings against the appellant under the PP Act in respect of the subject bungalow, which it is submitted, was sent *within hours* of impugned order dated 05.10.2023 being made by the learned Trial Court.
20. Though Dr. Singhvi has also sought to make-out a case that the action initiated against the appellant is vitiated by malice, considering the limited ground on which the review order is based, it is not considered necessary to delve into those aspects of the matter.

RESPONDENT'S SUBMISSIONS

21. The learned ASG commenced his submissions by dealing, first and foremost, with the allegations contained in the plaint to the effect that the respondent's action of cancelling the allotment of the subject



bungalow smacks of arbitrariness and discrimination. He submits that that impression must be dispelled at the outset, inasmuch as the appellant was not entitled to a Type-VII bungalow in the first place. It is submitted that the allotment of a Type-VII Bungalow was above the appellant's entitlement as a first-time Member of Parliament, and that therefore, cancellation of such allotment was well in accordance with the relevant provisions of the Handbook of Members of Rajya Sabha.

22. To support this submission, attention has been drawn to clause 4.18 titled 'Accommodation', and in particular to Srl. No. 4 under that clause, to point-out that in fact a 'First time Member of Parliament' is entitled only to a "Type-V single Flats/Bungalows"; however, since the appellant is also a Former Member of the State Legislative Assembly, in accordance with Srl. No. 3(viii), he is entitled to "Type-VI bungalows/MS Flats/Twin flats".
23. That apart, the learned ASG stresses on the point that along with the suit, the appellant had himself moved an application under section 80(2) read with section 151 CPC seeking leave to institute the suit without serving notice under section 80(1) CPC. Learned ASG therefore submits that the appellant is now estopped from arguing that section 80 CPC has no application to the present case. It is also submitted that this argument was never raised before the learned Trial Court when interim order dated 18.04.2023 was passed; and that it was at the appellant's instance that the learned Trial Court issued notice on the section 80(2) CPC application. It was further pointed-out that it was only in reply to the review application filed by the respondents, that the appellant first raised the contention of non-



applicability of section 80 CPC to the defendant. The learned ASG contends, that the appellant cannot be permitted to approbate and reprobate on this point.

24. Coming next to the status of the respondent – viz. “Rajya Sabha Secretariat Through the Secretary General”, the learned ASG argues that the defendant in the suit is in fact a ‘public officer’ within the meaning of section 2(17) CPC; and in particular under section 2(17)(h) thereof, by reason of which section 80 CPC is undoubtedly applicable and was required to be complied-with at the time of institution of the suit, as also at the time of deciding the application for interim relief.
25. This argument is further buttressed by submitting that for purposes of section 2(17)(h) CPC, a public officer does not necessarily have to be an officer *of the Government*, that is to say *in service or pay of the Government*, but may be any other officer *remunerated by fee and commission* for the performance of any public duty. In the present case therefore, it is argued, that since the Secretary General of the Rajya Sabha has been named as the person *through whom* the Rajya Sabha Secretariat is impleaded as defendant, and the Secretary General is certainly a public officer within the meaning of section 2(17)(h) CPC, therefore section 80 CPC is applicable.
26. Furthermore, the learned ASG also relies on the definition of “public servant” contained in section 21(12)(a) of the Indian Penal Code, 1860 to submit that under that definition, the Secretary General of the Rajya Sabha is a ‘public servant’ performing a public duty. He also seeks to draw strength from the definition of “public office” in



Black's Law Dictionary, 6th Ed., to cite that the essential characteristics of 'public office' are (i) authority conferred by law; (ii) fixed tenure of office; (iii) power to exercise some portion of the sovereign function of government, the key test being that the officer is carrying-out sovereign function.

27. It is also the argument made on behalf of the respondent, that since the Secretary General of the Rajya Sabha draws salary and other remuneration from the Consolidated Fund of India in view of Article 266 of the Constitution; that since his appointment is notified in the Gazette of India, which is a document of the Government of India; and since the Rajya Sabha Secretariat falls within the definition of "public authority" under the Right to Information Act 2005, that further shows that the Secretary General is a public officer within the meaning of section 2(17) CPC for purposes of section 80 CPC.
28. In support of his plea that the Secretary General is a public officer as aforesaid, the learned ASG has also referred to the role, position, functions and responsibilities of the Secretary General as envisaged in a publication of Rajya Sabha Secretariat, to argue that those also support the proposition that the Secretary General is a public officer.
29. The learned ASG submits that, on the appellant's own admission as contained in the plaint,¹ the cause of action for filing the suit arose on 03.03.2023; however, the suit was filed more than a month later, on 17.04.2023. This, it is submitted, shows that in any case there was no

¹ Paras 28 & 29 of the plaint



urgency or immediacy in the relief sought that would attract the exception under section 80(2) CPC.

30. In support of his contentions, the learned ASG has relied upon the decision of the Supreme Court in ***State of Kerala & Ors. vs. Sudhir Kumar Sharma & Ors.***,² to argue that *firstly*, upon mere filing of an application under section 80(2) CPC it cannot be presumed that leave has been granted by the court; *secondly*, that the ingredients of section 80(2) must be complied with at the threshold; and *lastly*, that an application under section 80 must be decided *after* hearing both sides and considering the nature and urgency of the matter *before* taking a final decision.
31. Learned ASG has also cited ***State of A.P. & Ors. vs. Pioneer Builders, A.P.***³ to argue that the legislative intent behind section 80 CPC is to give the Government sufficient notice of the suit, so that it may re-consider and decide whether the claim made should be accepted or not, to avoid unnecessary litigation. Furthermore, the court cannot grant relief *even if* it finds that the suit is for urgent or immediate relief against the Government or a public officer *unless* a reasonable opportunity is given to the Government or public officer to show cause against the relief prayed-for. It is accordingly argued, that leave of the court is a condition precedent to the institution of the suit, if a suit is instituted without serving notice under section 80(1).

² (2013) 10 SCC 178

³ (2006) 12 SCC 119 at paras 14 to 18



32. Lastly, learned ASG points-out that in *Ambika Soni vs. Union of India & Ors.*⁴ and a connected matter, a Co-ordinate Bench of this court had said that Article 14 of the Constitution does not permit ‘negative equality’; and that in that case a Rajya Sabha member, who was holding official accommodation beyond her entitlement, was required to vacate it, with the court observing that since allotment of Government accommodation is a privilege, even if others against whom no action has been taken, may be continuing in unauthorised occupation of such accommodation, that does not entitle someone to continue in unauthorised occupation.
33. It is also submitted on behalf of the respondent, that order dated 18.04.2023 was clearly an interim order as contemplated in section 80(2) CPC; and it would make no difference that the interim order was granted at the *ex-parte* stage, since every kind of interim order is barred *if* it is passed without complying with the requirements of section 80(2) CPC.
34. Another argument proffered is that the appellant is not prejudiced by order dated 05.10.2023, inasmuch as all that the learned Trial Court has done is to return the plaint to the appellant, to re-file the same after complying with the requirements of section 80(1) CPC; and that therefore, the right of the appellant to institute the suit has been preserved. It is pointed-out, that even on point of fact, the appellant has not been prejudiced in any way, since till date he is an occupation of the subject bungalow, even though illegally.

⁴ 2015 SCC OnLine Del 10761



35. It is accordingly submitted, that non-compliance of section 80(2) was clearly an error apparent on the face of the record, which warranted review of interim order dated 18.04.2023, as has correctly been done by the learned Trial Court.

REJOINDER SUBMISSIONS

36. In rejoinder, Dr. Singhvi contends that the respondent's stand that the Secretary General falls within the definition of 'public officer' is wholly misconceived, since the defendant in the suit is 'Rajya Sabha Secretariat' – only acting through the Secretary General – which entity cannot be a 'public officer'; and, *if at all*, the Rajya Sabha Secretariat must fall within the definition of 'Government' for section 80 CPC to be applicable.
37. Senior counsel submits, that the term 'public officer' appearing in the CPC must be given a *uniform meaning when it refers to the same aspect viz. suits by or against Government in the same Code*, that is to say the meaning of public officer in section 80 CPC, must be consistent with that in section 2(17) CPC, which must be consistent with the meaning assigned to that term in Order XXVII Rule 5A and 8B CPC. It is pointed-out that Order XXVII Rule 5A and 8B CPC draw a clear distinction between a public officer *and* the Government, since they specify that if a suit is filed against a public officer, the Government must also be joined as a party. Furthermore, Order XXVII Rule 8B expressly states, that for the purposes of Order XVII, 'Government' shall mean either the Central Government or the State Government. The relevant parts of Order XXVII read as under :



ORDER XXVII

*Suits by or Against the Government or Public Officers in their
Official Capacity*

* * * * *

5-A. Government to be joined as a party in a suit against a public officer - Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

* * * * *

8-B. Definitions of “Government” and “Government pleader” - In this Order unless otherwise expressly provided “Government” and “Government pleader” mean respectively —

(a) in relation to any suit by or against the Central Government, or against a public officer in the service of the Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order;

(b)

* * *

(c) in relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in clause (7) of Section 2 or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.

(emphasis supplied)

38. To answer the contention that since the appellant himself filed an application under 80 CPC before the learned Trial Court, he is now estopped from contending that section 80 CPC is not applicable, learned senior counsel has cited the judgment of the Supreme Court in



Isabella Johnson (Smt) vs. MA Susai (Dead) by LRs,⁵ to argue that there cannot be any estoppel on a pure question of law; and that therefore the allegation in the present case that the appellant is approbating and reprobating is wholly misconceived. It is submitted that the application under section 80 CPC was filed *ex abundanti cautela*, for which the appellant cannot be faulted.

39. It is further the argument that the phraseology of section 2(17) CPC clearly shows that for a person to be a ‘public officer’, such person has to be an officer “*of the government*”, which term appears repeatedly in section 2(17). Senior counsel places reliance on *V. Padmanabhan Nair vs. Kerala State Electricity Board*,⁶ in which case the Kerala High Court has emphasised this phrase as the one from which the meaning of ‘public officer’ must derive.

ANALYSIS & DISCUSSION

40. Though much has been argued on both sides, in the opinion of this court, the conspectus of consideration in the present appeal is straight and narrow.
41. *Vide* order dated 18.04.2023, the learned Trial Court granted to the appellant an interim order in the suit. By order dated 5.10.2023, on an application made by the respondent seeking review of the interim order, the learned Trial Court has accepted the review; vacated the interim order; and has returned the plaint to the appellant.

⁵ (1991) 1 SCC 494 at para 6

⁶ 1987 SCC OnLine Ker 4 at para 7



42. The plaint has been returned on two grounds. *Firstly*, that the appellant has failed to comply with the provisions of section 80 CPC, in that no notice was issued by the appellant to the defendant in the suit (*i.e.* the respondent herein) under section 80(1) CPC before instituting the suit; and besides, the learned Trial Court could not have granted the interim order without hearing the respondent. *Secondly*, that since the letter cancelling the allotment of the subject bungalow was issued on 03.03.2023 but the suit only came to be filed on 17.04.2023, the appellant had failed to demonstrate the need for any urgent or immediate relief.
43. The appellant contends that section 80 CPC has no application to the matter inasmuch as the defendant in the suit is neither ‘Government’ nor a ‘public officer’ within the meaning of section 80 CPC. The appellant further explains that he had filed an application under section 80 CPC in the suit only by way of abundant caution; and that in any event, since there is no estoppel against the law, he is entitled to contend that, as a matter of law, section 80 CPC has no application to the case.
44. On the other hand, the respondent’s contention is that section 80 CPC applies; and since section 80 CPC was not complied with, the suit could not have been instituted; and in any case, interim relief could not have been granted without hearing the respondent. Furthermore, the respondent contends, that the appellant has suffered no prejudice, inasmuch as all that the learned Trial Court has done is to return the plaint to the appellant, asking him to comply with the requirements of



section 80 CPC; and thereafter to re-present the plaint, in accordance with law.

45. Section 80 CPC reads as under :

80. Notice.—(1) *Save as otherwise provided in sub-section (2), no suit shall be **instituted** against the **Government** (including the Government of the State of Jammu and Kashmir) or against a **public officer** in respect of any act purporting to be done by such public officer in his official capacity, **until the expiration of two months next after notice in writing** has been delivered to, or left at the office of—*

(a) - (c)

* * * * *

*(2) A suit to obtain an urgent or immediate relief against the **Government** (including the Government of the State of Jammu and Kashmir) or **any public officer** in respect of any act purporting to be done by such public officer in his official capacity, **may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:***

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3)

(emphasis supplied)

46. Considering the true scope of the controversy, it is clear that the impugned order must be tested *simply* and *only* on the meaning to be



ascribed to the words – “Government” and “public officer” – appearing in section 80 CPC.

47. An analysis of the provision shows that section 80 CPC is in two parts : section 80(1) and section 80(2). Upon a dissection of the parts, it is seen, that section 80(1) bars the *institution* of a suit against the “Government” or a “public officer” (in respect of an act purporting to have been done by the public officer in his official capacity); and requires that before a suit is instituted against a Government or a public officer, a 02-month prior notice in-writing must be delivered to such Government or public officer. The notice must state the cause of action alongwith the name, description and place of the residence of the plaintiff alongwith the relief claimed. Furthermore, the plaint filed must contain a statement that such notice has been so delivered or left.
48. Section 80(2) deals with a situation where a plaintiff seeks “*urgent or immediate relief*” against a “Government” or a “public officer” (in respect of an act purporting to have been done by such public officer in his official capacity). In case of such urgency, the provision says that a suit may be instituted *without* serving the 02-months notice required under section 80(1), provided the *leave of the court* is taken for the purpose. The provision further states that the court “*shall not grant relief in the suit, whether interim or otherwise*” except after giving to the Government or public officer, a reasonable opportunity of showing cause in respect of the relief prayed-for. It goes on to say that if the court is satisfied after hearing the parties that no urgent or immediate relief is needed, it shall return the plaint to the plaintiff, to



be (re-)presented after complying with the requirements of section 80(1).

49. For completeness, it may be pointed-out that section 80 also contains a sub-section (3), which bars the dismissal of a suit against a Government or a public officer merely by reason of an error or defect in the notice issued under section 80(1) CPC, provided such notice contains certain basic ingredients as stated in the provision. However, section 80(3) CPC is not relevant for the purposes of the present consideration.
50. But before that, the objection taken by the respondent that since the appellant had himself moved an application under section 80 CPC, he is estopped from subsequently contending that that provision has no application as that would amount to approbating and reprobating, must be addressed. In the opinion of this court, the applicability or otherwise of section 80 CPC cannot depend on whether a plaintiff has moved an application under that provision in a suit. The applicability of section 80 CPC is a *matter of law*, which must be decided on the basis of the *parties* to the suit and the *relief claimed* in the plaint. Since there is no estoppel against the law, this objection taken by the respondent is meritless.⁷
51. Now, the word ‘Government’ has been defined in Order XXVII Rule 8B CPC, which Order in fact deals with suits by or against the Government or public officer in their official capacity, and in

⁷ *Isabella Johnson* (supra) at para 6



particular in the context of Order XXVII Rule 5A CPC; and the term ‘public officer’ has been defined in section 2(17) of the CPC.

52. But to begin with, in this case, we must be clear as to *who the defendant is; what relief has been sought in the plaint; and against whom ?*
53. The plaint names a sole defendant viz. the “Rajya Sabha Secretariat Through its Secretary General”. The relief sought is of injunction against any action arising from order dated 03.03.2023, by which the allotment of the subject bungalow in favour of the appellant has been cancelled (along with other ancillary and consequential reliefs). The relief claimed is against the Rajya Sabha Secretariat, which is the permanent administrative office of the Rajya Sabha and *inter-alia* allots official accommodation to its Members. The allotment is made by the House Committee of the Rajya Sabha.⁸ To be sure, the House Committee comprises Members of the Rajya Sabha and the Secretary General is not part of the House Committee.⁹
54. On a plain reading of the plaint, it is seen that no relief has been sought against the Secretary General of the Rajya Sabha, either personally or acting in his official capacity. The appellant has filed a suit against the Rajya Sabha Secretariat, as an institution or body, against which he seeks restraint.
55. So, is the Rajya Sabha Secretariat either ‘Government’ or a ‘public officer’ within the meaning of section 80 CPC ?

⁸ cf. Chapter XVII-C, Rule 212U of Rules of Procedure & Conduct of Business in Council of States (Rajya Sabha)

⁹ cf. Rule 212Q *ibid.*



56. Let us first deal with the term ‘public officer’. The definition of ‘public officer’ in section 2(17) of the CPC reads : “*public officer*”, *means a person falling under any of the following descriptions, namely*”. Clearly therefore, the definition of public officer in section 2(17) is *not* an inclusive definition, but exhaustively refers to the persons who are covered within that definition, since it speaks in terms of ‘*namely*’. A perusal of the sub-clauses of section 2(17) CPC would show that reference is made to a public officer *of the Government* or *serving under the Government*, with certain other nuances and specifications. Applying the literal rule of construction, the Rajya Sabha Secretariat evidently *does not fall* within the ambit of a person who could be an officer *of the Government* or *serving under the Government*. Besides, it would stretch all canons of statutory construction to even debate whether the Rajya Sabha Secretariat is a public officer, since clearly a public officer must be a *natural person*; and that term cannot refer to an institution or body.
57. It may be observed here, that even when a corporate entity, such as a company or a society is sued, for obvious and evident reasons, such entities are sued *through* a human agency, such as a secretary, director, principal officer, or other office bearer.¹⁰ But that means nothing since the entity sued is *only* the corporate body and not its officer. If it is intended that an officer of a corporate entity be sued, that must be done by impleading such officer as a separate defendant. In the context of the present case, since obviously, the Rajya Sabha

¹⁰ cf. Order XXIX CPC; section 6, Societies Registration Act 1860



Secretariat was sued through the person that heads it, and who would act on its behalf, the name of the Secretary General appears as that person. That however does not mean that the defendant in the suit is the Secretary General. Clearly, the defendant in the suit is the Rajya Sabha Secretariat.

58. Insofar as the word ‘Government’ appearing in section 80 CPC is concerned, this word must be construed in consonance with the definition of “Government” appearing in Order XXVII CPC, which specifically addresses matters relating to suits by Government (Central or State). In Order XXVII CPC, the word ‘Government’ has been defined in Rule 8B to *mean* the Central Government or the State Government, as the case maybe; and most significantly, Rule 5A specifies that if a suit is instituted against a public officer in respect of any act alleged to be done by him in his official capacity, the Government shall be joined as a party to the suit - meaning thereby that the concerned Government is to be joined as a party *separately and independently*. This therefore, further draws a *clear distinction* between the Government *and* its public officer; from which it must be inferred that the terms *Government* and *public officer* cannot be conflated to be one-and-the-same. In the context of the present case therefore, the description of the defendant as ‘Rajya Sabha Secretariat, Through its Secretary General’ cannot be taken to mean that the Rajya Sabha Secretariat *and* the Secretary General are one-and-the-same thing or that relief has been sought against the Secretary General.



59. In the scheme of our Constitution – Part V “The Union” – contains separate chapters : dealing with the Executive in Chapter I; with the Parliament in Chapter II; and with the Union Judiciary in Chapter IV. Same is the position in Part VI “The States”, with similar separate chapters relation to the corresponding institutions at the State level. Article 12 of the Constitution, which is the opening provision of Part III ‘Fundamental Rights’ also refers to Government and Parliament (and State Government and State Legislature) – both separately – as being included in the definition of ‘the State’, which again bolsters the inference that Government and Parliament are two separate institutions of the State.¹¹
60. The expressions ‘Central Government’ and ‘State Government’ have been defined in section 3(8) and 3(60) of the GC Act, which clearly rule-out inclusion of the Parliament or the State Legislatures within the meaning of those definitions. It is significant to note that the definition of “Government” or “the Government” in section 3(23) of the GC Act says that the said words shall include both the Central Government and any State Government, again without reference either to the Parliament or to any State Legislature.
61. On a more authoritative note, the decision of the Supreme Court in *Pashupati Nath Sukul vs. Nem Chandra Jain & Ors.*¹² and connected matters said this :

¹¹ Article 12 Constitution of India

¹² (1984) 2 SCC 404 (3-Judge Bench)



“10. The above definition is an inclusive definition and it suggests that there may be other organs of State which may be included within the meaning of the expression “Government”. The expressions “Central Government” and “state Government” are defined in Section 3(8) and Section 3(60) of the General Clauses Act, 1897 respectively. These definitions are to be adopted unless there is anything in the context to the contrary. A general review of the constitutional provisions shows various expressions used in it to describe the several organs of the State. In Part I of the Constitution the expressions “the Union”, “the States” and “the Union Territories” are used. In Article 12 of the Constitution, we find the expressions “Government and Parliament of India” and “Government and the Legislature of each of the States” suggesting that Government is different from the Union Legislature or the Legislatures of the States. This is for purposes of Part III of the Constitution. In Article 102(1)(a) and Article 191(1)(a) of the Constitution, the expressions “the Government of India” and “the Government of any State” are used and they provide that a person holding an office of profit under the Government of India or a State Government is disqualified for being chosen as a member of Parliament or of a State Legislature respectively.....”

(emphasis supplied)

For completeness, it may be mentioned here that the observation of the Supreme Court in paras 12 and 13 of this judgement, to the effect that the definition of ‘Government’ appearing in the Representation of the People Act, 1951 must be given a more liberal construction to include even officers of the Legislature, has expressly been made *only* in the context of section 21 of the RP Act; and the Supreme Court has also categorically observed that the meaning to be assigned to the expression ‘Government’ would depend on the context in which it is used. The observation of the Supreme Court in that decision cannot therefore be imported to vitiate, *in all*



contexts, the clear distinction between the three organs of the State, not least in section 80 CPC.

62. To add to the heft of authority on this point, a recent decision of the Supreme Court in *State of Tamil Nadu vs. State of Kerala*¹³ says this:

“Indian Constitution : Separation of powers

98. Indian Constitution, unlike the Constitution of United States of America and Australia, does not have express provision of separation of powers. However, the structure provided in our Constitution leaves no manner of doubt that the doctrine of separation of powers runs through the Indian Constitution. It is for this reason that this Court has recognised separation of power as a basic feature of the Constitution and an essential constituent of the rule of law. The doctrine of separation of powers is, though, not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the Constitution. Indian Constitution has made demarcation without drawing formal lines between the three organs — legislature, executive and judiciary.”

(emphasis supplied)

63. Upon a conspectus of the above, this court is of the opinion, that the Rajya Sabha Secretariat, being the permanent administrative office of the Rajya Sabha, which is one of the Houses of Parliament, is *a separate and distinct institution* from the Government, which (latter) is the Executive wing of the State.
64. In the present matter therefore, it cannot be said that the word ‘Government’ appearing in section 80 CPC would include the Rajya Sabha Secretariat. Accordingly, in the opinion of this court, section 80 CPC has no application to the suit filed by the appellant, in which the

¹³ (2014) 12 SCC 696 (5-Judge Constitution Bench)



sole defendant is the Rajya Sabha Secretariat, against which relief has been sought-for in the suit.

65. By reason of the foregoing discussion, it is not necessary for this court to decide whether, in the circumstances of the case, the appellant has been successful in establishing the need for urgent or immediate relief as required in section 80(2) CPC.

CONCLUSION

66. In the above view of the matter therefore, the learned Trial Court was in error in returning the plaint for non-compliance with the provisions of section 80 CPC.
67. Accordingly the appeal is allowed, holding : (a) that there was no requirement for the appellant/plaintiff to file the application under section 80 CPC, or to comply with that provision; and therefore the application under section 80 CPC is disposed-of as infructuous; (b) directing the appellant to re-present the plaint before the learned Trial Court within 03 days of pronouncement of this judgement; (c) with a direction to the learned Trial Court to proceed with the matter by first deciding the application under Order XXXIX Rules 1 & 2 CPC, which stands restored before it; and thereafter to proceed with the suit, in accordance with law.
68. In the meantime, order dated 18.04.2023 shall stand revived till the application under Order XXXIX Rules 1 & 2 CPC is decided by the learned Trial Court.



69. The appeal is disposed of-in the above terms.
70. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 17, 2023/uj