



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

% Date of decision: February 23, 2024

+ LPA 132/2024

(20) PIYUSH BAGORIYA & ANR.

..... Appellants

Through: Mr. Pankaj Kumar, Mr. M.K.
Bhandari, Mr. Neeraj Kaushik and
Mr. Kanish Verma, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this appeal is to an order dated December 21, 2023 passed by the learned Single Judge in W.P.(C) 16623/2023 whereby the learned Single Judge while dismissing the petition has in paragraph 8 stated as under:

“Counsel for the petitioner, however, prays for some additional time for the family to vacate the said property. Taking a humanitarian view in the matter, time is given till 15th April, 2024 to vacate the said property.”

2. The challenge in the writ petition was to an order dated November 18, 2023 passed by the learned Principal District and Sessions Judge in an appeal filed against the order dated June 30, 2022, of the Estate Officer in the proceedings initiated under The



Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('Act of 1971', for short) in respect of a premises being House No. No.P-12/11, Basantra Lines, Delhi Cantt.-110010 which was directed to be vacated by the appellants herein within a period of 60 days.

3. The facts as noted from the record are that the appellants who are represented through their mother are the family members of Late Martyr Ram Chander, who was enrolled in Territorial Army on September 17, 2009. He died due to battle casualty (fatal) on May 31, 2016. On September 20, 2016, the appellant was allotted the premises. On February 24, 2022, the respondents initiated the proceedings under the Act of 1971 by issuing a notice stating that the appellants are unauthorized occupants of the aforesaid premises and directed them to vacate the same. The notice was replied vide letter dated April 15, 2022 with a request to the respondents to extend the accommodation on the ground that she has four children and is facing hardship.

4. The respondents had cancelled the allotment vide letter dated March 4, 2022 w.e.f July 20, 2022 and vide letter dated March 17, 2022 the appellants' case was transferred for trial by the Estate Officers' Court. The Estate Officer passed the order dated June 30, 2022, which became the subject matter of an appeal before the learned Principal District and Sessions Judge.

5. The case of the appellants before the learned Single Judge was that as per policy dated August 2, 2022, the maximum retention permissible is 5¹/₂ years because the said stipulation also prescribe that extension beyond 3¹/₂ years shall be of two years or till the youngest



child completes XIIth Class, “*whichever is earlier*”. The submission of the learned counsel for the appellants is that the youngest child in this case is of 8^{1/2} years age and as such he should be allowed to complete the XIIth Class and to that extent the policy which states “*whichever is earlier*” is arbitrary.

6. The submission of the learned counsel for the appellants is also that the policy is discriminatory inasmuch as it creates two classes: - children who are above 12^{1/2} years and children who are below 12^{1/2} years.

7. We find that the learned Single Judge has in paragraph 6 of the impugned order stated as under:

“6. Clearly, this is not the intent of the policy. The policy clearly intends to give an expanded time of five and a half years for the family of a service personnel having passed away in a battle casualty to continue living in the accommodation. It is not a lifetime measure or till all children complete their school education. In fact, ex facie the text of the policy suggests that if the youngest child has completed class 12th within five and a half years, the beneficiary would have to leave the said premises. Providing an upper cap/ceiling to an ameliorative allotment/extension for the family of a deceased service personnel, is just and reasonable, and in the view of this Court does not merit any interference. In any event, the policy is applicable and has to be implemented in its right earnest.”

8. We agree with the conclusion drawn by the learned Single Judge. No doubt the case of this nature is a hard case, but the policy



permits retention of quarter only for a period of 5 ½ years and not beyond that.

9. As the policy is in the nature of administrative instruction creates a balance between the right of a family of a martyr to retain a government accommodation for a period of 5½ years as against the right of an in service personnel, to be allotted a government accommodation, we are of the view the policy cannot be said to be arbitrary / discriminatory.

10. The submission of Mr. Jaswinder Singh, learned CGSC appearing for the respondents is that though as per policy the appellants could retain the accommodation for 5½ years, they have overshoot the period by two more years. We are of the view as the learned Single Judge has permitted the appellants to continue in the premises till April 15, 2024, no interference is called for to the impugned order.

11. The appeal is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 23, 2024/jg