

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

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Date of decision: May 21, 2021

+ W.P.(C) 7840/2020, CM Nos. 25741/2020, 28544/2020 &
28600/2020

GIRJA BHAN

..... Petitioner

Through: Mr. Manoj V. George, Ms.
Shilpa Liza George and Ms.
Akriti Seth, Advs.

versus

THE ESTATE OFFICER AND ANR.

..... Respondents

Through: Mr. Digvijay Rai and Mr. Aman
Yadav, Advs.

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 28544/2020

For the reasons stated in the application, the same is allowed and the additional affidavit is taken on record. Application is disposed of.

W.P. (C) 7840/2020

1. The present petition has been filed by the petitioner with the following prayers:-

“In the light of the above mentioned facts and circumstances, it is most respectfully prayed by the

Petitioner before this Hon'ble Court that it may be pleased to:-

a) Quash and Set aside the order passed by the Respondent No.1 dated 28.09.2020;

b) Issue directions to the Respondents to regularize the Petitioner's allotment of Government accommodation at B- 57, Behind INA Market Colony, South West, and New Delhi- 110023 and charge her normal license fees;

c) Pass any other further such order or direction that this Hon'ble Court deems fit in the interests of justice.”

2. In effect, the Writ Petition has been filed by the petitioner seeking to set aside an eviction order passed by the respondent No.1 and to direct the respondents to regularize her allotment of Government accommodation.

3. It is the case of the petitioner, and contended by her counsel Mr. Manoj V. George, that she was a government servant who retired on June 30, 2019 from services of respondent No.2 / Airports Authority of India and is aggrieved by the impugned order dated September 28, 2020 passed by the Eviction Officer, Safdarjung Airport of respondent No.2 directing her to vacate the government accommodation allotted to her at B- 57, behind INA Colony, New Delhi-110023 within 15 days. It is submitted by him that the petitioner as a Kashmiri migrant is similarly placed like other government servants, who are retired Kashmiri migrants who have been granted retention of government accommodation even after their retirement.

4. It is submitted by Mr. George that the petitioner was appointed as the Telephone Operator in Civil Aviation Department by Director of Communication, Aeronautical Communication Station, Safdarjung Airport, New Delhi and was posted in Srinagar. The petitioner who was a Government of India employee was, on the formation of National Airports Authority w.e.f. October 2, 1989, absorbed in that organization. It is a matter of record that the Airports Authority of India, respondent herein was established in the year 1994 under the Airports Authority of India Act, 1994 and the petitioner became an employee of the said organization, wherein she continued to work till her superannuation. While she was posted in Srinagar, she was unable to lead a normal peaceful life having received multiple letters with threats to her life from the militants. It was in this background that the petitioner requested respondent No.2 to transfer her out of the State of Jammu & Kashmir. Subsequently, she was given posting at New Delhi and an accommodation was allotted at B-57, INA Colony, South West, New Delhi-110023.

5. It is stated by Mr. George that the petitioner in 2001 purchased a property bearing flat no. H-3, 2nd Floor, Plot No. 526 Shalimar Garden Extension I, Sahibabad, UP, by availing housing loan facility from respondent No.2. However, in 2010, owing to financial crunch and deteriorating health conditions of her parents, the petitioner had no other option left but to sell the property.

6. He also submitted that the impugned order passed by the Estate Officer/respondent No.1 is untenable in law. It is his argument that no fair hearing was provided to the petitioner so as

to present her case on humanitarian and sympathetic grounds at par with the other Kashmiri migrants who have been authorized to continue in government accommodation even after retirement from service. He also contended that the petitioner is not an unauthorized occupant as defined under section 28-A (f) of the Airports Authority of India Act, 1994 as she has been paying the annual fees of the premises along with the electricity and water bills regularly and that the impugned order dated September 28, 2020 is bad in law and thus the entire eviction proceedings predicated on the said notice are void *ab initio*.

7. The counsel for the petitioner in support of his submissions has relied upon a Supreme Court judgment in the case of ***J.L. Koul and Ors v. State of Jammu and Kashmir & Ors., 2010(1)SCC 371***, wherein the Court inter-alia held that the Kashmiri migrants / Kashmiri Pandits whose houses had been burnt/ destroyed by the terrorists in the valley were permitted to retain government accommodation allotted to them even after their retirement from the government job. He also relied upon a judgment of this Court in the Case of ***P.K. Koul v. the Estate Officer & Anr., (W.P.(C) No.15239/2004***), wherein this Court applied and implemented the principles of Internally Displaced Persons (“IDP”s, for short) as put forth by the “*Guiding Principles on Internal Displacement*” presented to the United Nations Commission for Human Rights.

8. Mr. George also placed reliance on ***Ravinder Kumar Wali v. UOI and Ors. 2019 SCC OnLine Del 7702: 2019 259 DLT 244 (DB)*** wherein it is held that the occasion for evicting the retired

Government servants who are Kashmiri Pandits and are in occupation of Government accommodation does not arise till such time a rehabilitation scheme is framed by the government.

9. A Counter Affidavit to the petition has been duly filed by respondent Nos.1 & 2. It is the case of the respondents and contended by Mr. Digvijay Rai, learned counsel appearing on behalf of the respondents, that the petitioner, after her appointment on January 18, 1982, had filed a declaration dated January 27, 1982 in the office of the Director of Communication, wherein she declared her permanent home town as, Village Karl Khud, L Bridge, Srinagar, Jammu and Kashmir. It is stated by him that even on a bio-data from the petitioner on January 03, 1997, she had declared that her permanent home address as House No.199, A/B, Nundreish Colony, Bemina Housing Colony, Near Bypass, Srinagar. This address was again declared as her permanent address when she submitted a Nomination Form dated June 21, 2019 prior to her retirement. It is further stated by him that the petitioner filled up an application for Gratuity on June 01, 2019 stating that her permanent Address is Girja Bhan C/o Vijay Maza, W/o A.K. Bhan, 57/C, Om Nagar, Uday Wala, Near Peer Baba, Jammu- 180018.

10. Mr. Rai submitted that the petitioner had applied for a House Building Advance ('HBA', for short) in 2001 and an amount of Rs.4,84,900/- was sanctioned by the competent authority of the respondent No.2 vide order dated May 16, 2001 and a cheque for the same amount was released. The petitioner then reconveyed the registration papers of the property bearing

No.H-3, IInd Floor, Plot No.5 & 6, Shalimar Garden, Ext-I, Sahibabad, Ghaziabad, to the respondents. Thereafter, the petitioner applied for departmental accommodation as the flat she purchased was 45 kilometers away from her place of posting. On December 14, 2001, a flat bearing G-2 was allotted to her. However, on her another request, a bigger flat was allotted to her bearing the address B-57, INA Colony, New Delhi and possession of the same was handed over to her on July 25, 2005. After the petitioner had repaid all the installments of the HBA, as per the order dated May 16, 2005, a No Dues Certificate was issued by the respondents on April 26, 2010 and the registration documents of the flat were also returned to her.

11. Mr. Rai stated, it is the petitioner's own case that she had sold the property on April 03, 2010. However, since the conveyance deed of the flat was released to her only on April 26, 2010, she could not have sold the property on April 03, 2010. It is further contended by Mr. Rai that on February 18, 2014 for the purpose of availing departmental accommodation, the petitioner had even certified in an undertaking that her private/purchased house is at H-3, 2nd floor, Plot No. 5 and 6, Shalimar Garden, Extension-1, Sahibabad, U.P. Furthermore, the petitioner, in her application for personal details dated February 10, 2016 had again stated that she owns a MIG Flat at Shalimar Gardens, Sahibabad, Uttar Pradesh and the value of the property was Rs. 6.35 lacs.

12. It is contended by Mr. Rai that in case the petitioner had sold the flat, she was bound to intimate respondent No.2 as per Regulation 18 of the Airports Authority of India (Employees

Conduct Discipline and Appeal) Regulations, 2003 ('Regulations', for short), which she has not done. Relevant part of said regulation reads as under:-

"18. Movable, immovable and valuable property.

(1) No employee shall, except with the previous knowledge of the competent authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family.

(2) No employee shall, except with the previous sanction of the competent authority, enter into any transaction concerning any immovable or movable property with a person or a company having official dealings with the employee or his subordinate.

(3) Every employee shall report to the competent authority every transaction concerning movable property owned or held by him in his own name or in the name of a member of his family, if the value of such property exceeds fifteen thousand rupees."

13. It is further stated by Mr. Rai that the conduct of the petitioner clearly amounts to misconduct as defined under Regulation 5. Regulation 5 reads as under:-

5. Misconduct.- Without prejudice to the generality of the expression "misconduct", it includes the following acts of omission and commission which shall be treated as misconduct for the purposes of these regulations, namely

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(xxv) Occupying or taking possession in an unauthorised manner or refusal to vacate or deliver possession of Authority's quarters or any of its premises, owned or hired when required to do so by Authority"

14. That apart, Mr. Rai submitted that the petitioner had not raised the issue that she is a Kashmir migrant while seeking retention of the flat. It is also submitted that the petitioner had already purchased a flat after taking HBA from the Department and further has a permanent residence in Srinagar as well as in Jammu and hence the judgments relied upon by the petitioner cannot be made applicable to the given facts and circumstances of the case.

15. Mr. Rai also stated that respondent No.2/Airports Authority of India is a body corporate, constituted under the Airports Authority of India Act, 1994 and performed its functions strictly as per Section 12 of the said Act. He further contended that respondent No.2 / Airports Authority of India is not empowered to make any rehabilitation policy for Kashmiri migrants as it is beyond the scope of the said Act.

16. A rejoinder is duly filed by the petitioner to the Counter Affidavit filed by the respondents. In addition to reiterating her stand in the petition, she stated, her ancestral home was destroyed by militants in the year 1990 and that she belongs to the category of Internally Displaced Persons and that the State is duty bound to provide accommodation to her.

17. A reply to the rejoinder is filed by the respondents. The respondents therein have stated that the petitioner has taken leave on multiple occasions over the course of her employment to visit Srinagar and that the address she had provided for these visits was 199, A/B Nundreish Colony, Bemina Housing Colony, Near Bypass, Srinagar; which according the respondents is her

permanent address. It is contented by Mr. Rai that the petitioner's frequent visits to the aforementioned address is clearly indicative of the fact that the petitioner has an habitable house in Srinagar and has no threats from militants.

18. Mr. Rai also alleged that the document filed as Annexure P-3 to the rejoinder, a form intimating the respondent No.2 / Airports Authority of India about the sale of her flat is forged and a perusal of the register maintained by ACS Palam goes to show that there was no entry of the intimation in it. He also stated that in the year 2010 the petitioner was a Senior Superintendent whereas, in the said form, she declares herself to be the Assistant Manager. In the said Form at Serial No.11 the petitioner declares sanction had been obtained for disposal, however, there was/is no sanction order.

19. An additional affidavit is duly filed by the petitioner wherein she denied the allegations put forth by the counsel for the respondents in his reply to the rejoinder filed by the petitioner. It is submitted by the learned counsel for the petitioner, that the petitioner does not dispute that she has a permanent address in Srinagar, however the same is not in a habitable state.

20. An additional affidavit is filed on behalf of the petitioner in furtherance of an order of this Court dated February 14, 2021, wherein details regarding the petitioner's family, their vocation and whether or not any of them own any property in the NCR, have been furnished. In the affidavit it is stated by the petitioner that her family consists of herself, her husband and two daughters. Her husband was allotted a shop meant for Kashmiri migrants, but

he stopped sitting in the shop in the year 2010 for medical reasons. One daughter is working as analyst in NatWest Groups, Delhi and another daughter is working in KPMG, Gurgaon.

21. Mr. George, during his submissions has also stated that the Court may issue notice to the Ministry of Works and Housing, Government of India so that they can place on record the Rehabilitation Scheme (if any) framed by it to enable the petitioner apply under the same for consideration and till such time, the petitioner may be allowed to continue in the accommodation.

22. Having heard the learned counsel for the parties, the only issue which arises for consideration in this petition is whether the petitioner is entitled to retain the accommodation being B-57, INA Colony, New Delhi allotted to her while in service in view of the Judgments of this Court and the Supreme Court.

23. It is a conceded case of the parties, that the petitioner while posted in Srinagar in the year 1990, i.e., thirty-one years back, was transferred to Delhi in view of the conditions prevailing in Kashmir. After 11 years of her posting, i.e., in the year 2001, the petitioner was allotted a quarter. It appears, a higher type quarter, i.e., the present one was allotted to the petitioner in the year 2005. Before her retirement on June 30, 2019, the petitioner vide her letter dated May 14, 2019 sought permission to retain the quarter for a period of six months from the date of retirement. In this letter she has not sought the retention of the quarter as a Kashmiri migrant. But in the subsequent letters submitted by her after her retirement, she had sought the benefit of retention of quarter being

a Kashmiri migrant in terms of the Judgments referred to above. The request of the petitioner was rejected on December 31, 2019 without dilating on the ground on which she had sought the retention. On failure to vacate the quarter, the respondents initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in which impugned order dated September 28, 2020 has been passed directing the petitioner to vacate the quarter, otherwise, she is liable to be evicted.

24. Mr. George has primarily relied upon the Judgments which have been rendered by this Court and referred to above, including the Judgments of the Division Bench of this court in the case of *Union of India & Ors. v. Vijay Mam LPA 332/2011; P.K. Handoo v. Estate Officer and Anr. 2006 SCC Online Delhi 852* in support of his case that the petitioner being a Kashmiri migrant is entitled to retain the accommodation / quarter till such time rehabilitation scheme is framed and benefit thereof is given to her.

25. Mr. Rai had contested the plea of Mr. George by stating that the petitioner having purchased a flat by taking House Building Advance (HBA) from the respondent Authority in the year 2001, which flat she retained with her for 10 years and having sold the same in the year 2010-2011, is not entitled to the benefit of the Judgments rendered by this Court. According to him, it is a case where she owned a flat in NCR with an intention to stay in Delhi. That apart, he lays stress on the fact that the petitioner having visited Srinagar on many occasions after her posting in Delhi by taking LTC / medical leave / marriage of her sisters, shows that the petitioner's family has a habitable house in Srinagar, where

they are staying. It is not a case where the house has been destroyed because of which she wants to retain the accommodation in Delhi.

26. To decide the short issue, it is necessary to consider first the Judgments relied upon by Mr. George.

27. I may state, it may not be necessary to refer to all the Judgments relied upon by Mr. George. In *Ravinder Kumar Wali (supra)*, the Division of this court has referred to the earlier Judgments on the issue including **Union of India and Ors. vs. Vijay Mam LPA 332/2011** decided on June 01, 2012, which is an appeal filed by the Union of India against the order of the Ld. Single Judge. The Division Bench in Paras 30 & 31 of *Union of India vs. Vijay Mam (supra)* has stated as under:

“30. Going by all these considerations, we do not find any fault with the directions given by the learned Single Judge in the impugned judgment. However, we make it clear that these direction are given keeping in view the salient and peculiar facts of these cases and, therefore, cannot be treated as general directions in all types of cases pertaining to right to shelter. Directions are circumscribed by the following peculiar features of the instant case:

(i) All these respondents were the employees of Central Government who were posted in Srinagar, J&K at the relevant time.

(ii) Because of the turbulent conditions and turmoil in the valley coupled with the fact that lives of these respondents and their family members were in gross danger, the Government itself took the decision to transfer them from Srinagar to Delhi. While in Delhi, they were allotted the Government accommodation.

(iii) *These respondents have their houses in Kashmir which have been destroyed by the extremists and they have not been able to reconstruct/restore them.*

(iv) *These respondents or their families have no other residence in any part of the country.*

(v) *Though they have retired, they are not in a position to go back to their native place because conditions are still not favourable for their safe return back to the valley.*

(vi) *Respondents want to enforce their right to shelter only till such time conditions are conducive for their safe return to their homes or till the time Government provides alternate accommodation.*

31. We also make it clear that the Central Government would be free to frame a rehabilitation scheme specifically for such retired employees like the respondents and in such a scheme, it can specify the terms and conditions on which such persons would be entitled to rehabilitate/alternate residence, which may include the term that these respondents or their family members do not have any residence in any part of the country. It would also be open to the Government to specify the nature of accommodation to which such retired Government servants would be entitled to or the place where they would be rehabilitated which may not necessarily be in Delhi but can be even in the NCR region. After the scheme is framed, the cases of the respondents can be scrutinized in terms of that scheme and those not found eligible for rehabilitation in terms thereof can be ousted from the present accommodation.”

(emphasis supplied)

28. In **Ravinder Kumar Wali** (*supra*), another Division Bench in Paras 23, 24 and 25 has stated as under:

“23. The Court therefore, rejects the stand of the Respondents seeking to make a distinction between such of those Kashmiri Pandits who are employed by the Armed

Forces and Intelligence Agencies on the one hand and those working for the Central Government in other Departments/Agencies on the other. There also appears to be no justification for drawing a distinction between serving employees and retired employees, in the matter of entitlement to alternative accommodation. It is not the case of the Respondents that the situation in Jammu & Kashmir today is such that there is no need to have a rehabilitation scheme as was directed not only in J.L. Kaul v. State of Jammu & Kashmir (Supra) but also by the Division Bench of this Court in Union of India v. Vijay Mam (supra).

24. *It is unfortunate that despite the Supreme Court being informed nearly a decade ago in J.L. Kaul (Supra) that the State authorities were going to frame a rehabilitation scheme and proceed with its implementation, till date that promise has remained only on paper as far as the Kashmiri Pandits are concerned. The decision dated 1st June 2012 of the DB in Vijay Mam also expected the Central Government to come forth with such a rehabilitation scheme. For nearly seven years now there has been no such rehabilitation scheme.*

25. *Kashmiri Pandits who were forcibly displaced from their homes during the turbulent years, have been unable to return to Jammu & Kashmir in the absence of any rehabilitation scheme either issued by the State Government or the Central Government. Consequently, the occasion for evicting the retired Government servants who are Kashmiri Pandits and are in occupation of Government accommodation does not arise till such time, as mandated by the DB of this Court, a rehabilitation scheme is not framed and the entitlement of the individuals including the present Appellant to alternative accommodation in terms thereof is not determined. Till such time, as ordered by the Division Bench in Vijay Mam, persons like the Appellant will not be disturbed from their accommodation which is now under their occupation.*”

(emphasis supplied)

29. In Para 30 of the Judgment in the case of *Union of India vs. Vijay Mam (supra)*, the Division Bench upheld the direction of the Single Judge for framing a rehabilitation scheme by the Central Government. In Para 31 of the said judgment, the Division Bench has also stated that on the framing of the rehabilitation scheme, the case of the Kashmiri migrants shall be considered in terms of the scheme to be framed by the Central Government and those who are not found eligible for rehabilitation in terms thereof can be ousted from the accommodation.

30. I also note that in *Ravinder Kumar Wali (supra)*, (before the Division Bench) it was represented by the Counsel for Union of India that the rehabilitation scheme as directed in *Vijay Mam vs. Union of India and Ors.*, (which is a judgment of Learned Single Judge) has not been formulated / prepared. It is for that reason the Court has commented that even after 7 years no rehabilitation scheme has been framed. But during the course of hearing in this petition, an affidavit has been filed by the respondents wherein they have annexed a communication dated June 02, 2020 received from the Ministry of Housing and Urban Affairs, wherein the said Ministry has enclosed therewith an Office Memorandum dated March 28, 2017 on the subject “*Scheme for retention of Govt. accommodation to retired Central Government employees belonging to the State of Jammu and Kashmir holding general pool residential accommodation in Delhi in terms of the direction of the Hon’ble High Court of Delhi.*” Para 4 thereof reads as under:

“Review of the direction of the Hon'ble High Court of Delhi, a scheme has now been formulated by Ministry of urban development in consultation with Ministry of Home Affairs for providing alternate residence to retired central government employees belonging to the state of Jammu and Kashmir and or possessing general pool residential accommodation in Delhi and who meet the specified terms and conditions to qualify as a Kashmiri migrant the scheme is enclosed at annexure.”

31. The annexure to the said Office Memorandum details the terms and conditions for qualifying to hold Government accommodation as Kashmiri migrant under the scheme. The same are reproduced as under:

“1. Terms and conditions for qualifying as Kashmiri migrant under the scheme:

i) The applicant should be a retired central government employee or his/her spouse (in case the employee is dead), and the applicant should be in possession of a General Pool Residential Accommodation (GPRA) in Delhi allotted by the directorate of states, Ministry of urban development on the date of making the application.

ii) Applicant should be a permanent resident of state of Jammu and Kashmir and should be and erstwhile domicile of Kashmir division excluding Ladakh and Kargil districts.

iii) Applicant was an employee of the central government and was posted in Srinagar, J&K at the relevant time, and he was transferred by the central government from Srinagar to Delhi on security grounds after 1 November 1989.

iv) He / she or his / her family have no other residence in any part of the country.

v) *Though he/she has retired, he / she is not in a position to go back to his / her native place because conditions are still not favourable for his / her safe return back to the valley.*

2. SCHEME

i) *The retired Kashmiri migrants (who were litigants in the cases decided by Hon'ble Delhi High Court) holding residential accommodation from general pool shall be provided retention in the quarters in their position at present.*

ii) *Such retired Kashmiri migrants, who meet the specified terms and conditions to qualify as Kashmiri migrant would be accommodated in Delhi for first five years starting from the date of their retirement and thereafter, be shifted to NCR. The Scheme would apply to those retired Central Govt. employees belonging to State of J & K who have been transferred by the Central Govt. from Srinagar to Delhi on security grounds after 1st Nov, 1989.*

iii) *The quarters may be held by the retired government employees till his/her demise or demise of his/her spouse which ever event takes place later, subject to extension of the scheme and the condition that the retired government employee, spouse doesn't procure a house in any part of India subsequent to their availing of the scheme. Extension of the scheme will be granted at par with the extension of the scheme of retention of GPRA at the last place of posting to civilian central government employees posted to the state of **J&K**.*

iv) *The incumbent or his / her spouse as the case maybe, will have to submit a life certificate once a year (in November) to the Directorate of Estates in the performa prescribed for pensioners for the purpose of availing benefits of the rehabilitation scheme for Kashmiri migrants*

3. *Documentary Proof to be submitted for examining the request on case to case basis.*

When a claim is received for consideration for providing alternate residence under the direction of the Hon'ble High Court, the claimant must provide adequate documentary proof in support of his claim that his or her case falls within the parameters of those retired Kashmiri migrants who were granted relief by the Hon'ble court as set out in para 30 of the judgement. Following documents maybe collected from them

a) Proof of posting in Srinagar, Jammu & Kashmir in Central Govt. Office during. relevant period (documentary proof issued by the employer).

b) Proof of transfer from Srinagar to Delhi during the relevant period i.e. after 1st November, 1989 (copy of transfer order / letter)

c) Proof that he / she or his/her family have no other residence in any part of the country. (copy of service book to ascertain if he has taken HBA from the Govt.)

d) A life certificate from the incumbent / spouse, as the case may be, once a year (in November) in the performa prescribed for the Pensioners for the purpose of availing benefits of Rehabilitation Scheme for Kashmiri migrants.

4. The claims with the documentary proofs received from such retired Kashmiri migrants may be processed in the allotment section on case-to-case basis and the entitlement to an alternative residence be decided in the light of specified terms and conditions and the documentary proof produced by them. Alternative residence should be provided only after verification from documentary proof that they fulfil the specified terms and conditions. Those who do not meet these conditions may be asked to vacate the quarters

as per the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Damage charges may also be made applicable on them for retaining the quarters beyond the permissible period.

32. The above shows, the scheme in terms of the directions in the case of **Vijay Mam (supra)** has been formulated by the Central Government, through the Ministry of Housing and Urban Affairs. It appears that the same was not brought to the notice of the Court in **Ravinder Kumar Wali (supra)**. Be that as it may, the scheme contemplates providing alternate accommodation to retired Central Government employees belonging to the State of Jammu and Kashmir and holding general pool residential accommodation in Delhi. The said scheme shall not be applicable to the petitioner as she was not a Central Government employee nor she was allotted an accommodation from the general pool residential accommodation in Delhi. The Ministry of Housing and Urban Affairs in their communication dated June 02, 2020 by which, the scheme was sent to the Airports Authority of India, has in Para 2 stated as under:

“2. The above accommodation is a Departmental Quarter of Airport Authority of India. The quarter was allotted to her while she was serving in the Airport Authority of India. This Directorate has framed a Policy regarding retention of General Pool Residential Accommodation to Kashmiri Migrant who had been retired from Government service. A copy of policy dated 28-03-2017 is enclosed herewith for your information and appropriate action.”

33. The aforesaid indicates that even the Ministry of Housing and Urban Affairs was of the view that the scheme would not be

applicable to the petitioner as the quarter was allotted to her while she was serving in Airports Authority of India. I concur with the said view.

34. The plea of Mr. George, that this Court had in the case of *Ravinder Kumar Wali (supra) (DB)* rejected the plea that Wali being an employee of Defence Accounts Service shall not be entitled to the benefit of directions in *Vijay Mam (supra)*, by holding that no distinction can be drawn between Kashmiri Pandits who are employed by the Armed Forces / Intelligence Agencies on one hand and those working for the Central Government in other departments / Agencies. Suffice to state Ravinder Kumar Wali though allotted accommodation from Defence Accounts Pool was still a Central Government employee, and the plea was rightly rejected. Whereas, in this case, the petitioner being an employee of Airports Authority of India, was not a Central Government employee.

35. Mr. George, had also by relying on the judgments of the Supreme Court in the cases of *Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489*; *Pradeep Kumar Biswas v. Indian Institute of Chemical Technology 2002 (5) SCC 111*; *Sudhdev Singh v. Bhagatram Sardar Singh Raghuvanshi 1975 (1) SCC 421*; *Mohan Mahto v. Central Coal Field Ltd. 2007 (8) SCC 549*; *Mysore Paper Mills Ltd. vs. Mysore Paper Mills Officers Association 2002 (2) SCC 167* and *Som Prakash Rekhi vs. Union of India 1981 (1) SCC 449*, urged that respondent Authority being a “State” within the meaning of Article 12 of the Constitution of India is required to

treat the petitioner at par with the other similarly placed Kashmiri migrants who are allowed to retain the accommodation till alternate arrangement is made.

36. In this context, it may be stated, assuming that such an obligation is vested with an autonomous body like Airports Authority of India, the principle laid down in the above Judgements, as held by a Coordinate Bench of this Court in ***Rattan Lal Raina v. Indian Meteorological Department & Anr. UOI W.P.(C) 7831/2010***, is to only ensure that Kashmiri migrants are not rendered homeless and their needs to live a life with dignity are addressed and an endeavour is made not to render the displaced persons homeless without considering their rehabilitation. The approach was more of a humanitarian nature, drawing sustenance from the Constitutional guarantees under Article 21 and 19 (1) (c) of the Constitution of India.

37. The facts in this case as detailed above do not call for invocation of the above provisions of the Constitution that too after thirty-one years of her transfer from Srinagar to Delhi; for the reasons (1) the purpose of providing shelter to displaced persons is only to assist them to overcome the initial trauma of being displaced and to pick the strings of their life [Ref:- ***Rattan Lal Raina (supra)***]; (2) when the petitioner could make her own arrangements for stay for 11 years till 2001, the year she was allotted the accommodation for the first time by the respondent; she can very well make similar arrangements even after retirement. (3) She on the basis of financial support extended by her employer by way of House Building Allowance (HBA) could

able to acquire a residential flat in NCR, which flat she retained for ten long years till 2010-2011, when she sold the same for Rs.18,05,000/-, may be for some pressing reasons, but that would not qualify her to again seek a shelter from her employer as a displaced person; (4) she retired from the respondent authority as Assistant Manager, and her children are working in NatWest Group and in Consulting Firm KPMG respectively, suggesting, they are well placed and settled.

38. Even the scheme formulated by the Ministry of Housing and Urban Affairs, Government of India has a stipulation that for the migrant to get the benefit under the Scheme should have no other residence in any part of the country and in that regard reference is made to the service book to ascertain if he / she has taken HBA from the government, which suggests, that acquiring a house after availing HBA would disentitle the migrant the benefit of shelter from the State.

39. Mr. Rai, by drawing my attention to various documents submitted by the petitioner from time to time, as an employee, had stated that the petitioner continued to visit Srinagar on LTC / during medical leave / marriage functions of her sisters between the years 1996 to 2007 to show that the house in Srinagar is habitable is appealing. The petitioner has not denied the stand of the respondent on her visiting Srinagar and staying at Bemina, Srinagar. It is also noted from the affidavits filed by the sisters of the petitioner in the year 2015 that they are living in Srinagar. This also indicates that the family of the petitioner continues to live in Srinagar.

40. The Coordinate Bench dealing with identical facts in ***Rattan Lal Raina (supra)***, has stated as under:

13. A bare perusal of the facts of the present case clearly indicate that the provisions of Article 21 or 19(1)(e) of the Constitution of India cannot be invoked by the petitioner to retain the accommodation provided by the Government. In the first instance, it is relevant to note that the petitioner was transferred from Srinagar to Chandigarh in March 1992 and thereafter posted at Delhi, in August 1992. The petitioner served in Delhi for almost 18 years, thereafter. This is a sufficiently long period for the petitioner to overcome the need for any immediate aid at the cost of the State. The purpose of providing shelter to displaced persons is only to assist them to overcome the initial trauma of being displaced and to pick up the strings of their life. The sustained and stable employment of 18 years outside the State of Jammu and Kashmir provided the petitioner adequate rehabilitation and thus disentitles him for any further humanitarian aid on account of displacement.

*14. More importantly, the petitioner is not a destitute person as is sought to be argued on his behalf. The petitioner had sufficient means to purchase a plot of land in Jammu in the year 1997 and in Faridabad in the year 2004. Thus, within a period of 7 years from being displaced from the Kashmir Valley, the petitioner had acquired the means for his rehabilitation and was in a position to build his own shelter. Subsequently, the petitioner did better; he sold the properties acquired in 1997 and 2004 and along with his wife acquired a residential flat in Vashi, Navi Mumbai. This clearly indicates that the petitioner had the means for meeting his rudimentary needs, which were sought to be ensured by this court in *P.K. Koul (supra)*, for the displaced persons by making good the Constitutional guarantees.*

15. It has been stressed by the learned counsel for the petitioner that currently the petitioner does not own any residential property. However, this cannot be a reason to permit the petitioner to indefinitely occupy the government accommodation that was provided to him as a part of his remuneration package. The petitioner (jointly with his wife) had acquired a residential flat at Vashi, Navi Mumbai. He had sold the same for a consideration of `32 lacs. The petitioner had also acquired/booked a residential apartment in Faridabad which is also stated to have been sold subsequently. In my view, the principle of ensuring that shelter is provided to displaced persons would have little application in the case of the petitioner who much after being displaced, demonstrably, had the ability to purchase property to provide for his residential needs. The fact that he has subsequently sold the same for other purposes or other exigencies would not entitle him for the relief of shelter on account of him being displaced in 1990.

41. Agreeing with the aforesaid view it must be held, the direction in the Judgment of this Court in **Vijay Mam vs. Union of India & Ors.** (of the Learned Single Judge) having been implemented by framing a Scheme, under which the petitioner is not eligible, the plea that similar directions need to be issued to Airports Authority of India, is unmerited and is rejected.

42. The petitioner having retired on June 30, 2019, and was allowed to retain the accommodation for six months i.e., till December 31, 2019, and thereafter being an unauthorised occupant, was rightly directed to vacate the same. I do not see any illegality in the impugned order. The Petition is dismissed. But at the same time being conscious of the situation prevailing because of COVID-19 and the fact that the petitioner's daughter is getting

married in the month of October, 2021, I deem it appropriate to extend the time for petitioner to vacate the quarter till December 31, 2021, during which period, the petitioner shall pay the licence fee as per the rules. No costs.

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In view of the above, these applications are dismissed.

V. KAMESWAR RAO, J

MAY 21, 2021/jg

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