

Neutral Citation No. - 2023:AHC-LKO:67138**Court No. - 8**

Case :- WRIT - C No. - 1000861 of 2014

Petitioner :- Alok Awasthi

Respondent :- Additional District Judge-4 Lucknow And Another

Counsel for Petitioner :- Anurag Shukla

Counsel for Respondent :- C.S.C., Manish Kumar

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for petitioner and learned Standing Counsel for the State-respondents.
2. The petitioner has filed this petition and has stated that the petitioner is senior journalist and is accredited with one company known as CBV News Service. In terms of the fact that the petitioner is journalist, he has allotted a residential accommodation in the year 1999. Subsequently an order came to be passed cancelling the allotment on the ground that the petitioner was transferred out of Lucknow. The petitioner challenged the said order by filing the writ petition and also moved representation that he was regularly and continuously working in Lucknow. On the said representation the Estate Department dropped the proceedings and subsequently the petitioner's allotment was once again cancelled and on 16.01.2014, an order was passed for getting the premises evicted through use of police force on 23.01.2014. The said action of the respondents was challenged by means of the present writ petition mainly on the ground that the procedure for eviction was not followed prior to passing the order for vacating the premises.
3. In the counter affidavit, it was stated that allotment of the premises was done on the basis of some non-statutory rules of the year 1985. The said non-statutory rules are on record as annexure CA-1. In terms

of the said rules, there was a provision that a Committee comprising of the Secretary to the Chief Minister, Secretary to the Estate Department and Director, Information would recommend the allotment of accommodation to journalists and in terms of Rule 12 of the said Rules, the allotment was to continue only till the time the journalists continue to work at Lucknow. In terms of said non-statutory rules, the petitioner was allotted the premise on 05.07.1999 being House no.802 Laplass Colony, Lucknow and subsequently on 04.12.1999, the petitioner was allotted House no.105, Laplass Colony Lucknow which was cancelled on 20.05.2004 as he was transferred out of Lucknow. Subsequently, the same house was reallocated to the petitioner on 23.09.2004 as he was transferred again to Lucknow. It is stated that the petitioner was served with a notice dated 28.12.2012 requiring him to vacate the house within fifteen days and once again notice dated 28.12.2013 was served upon him requiring to vacate the house within fifteen days. As the petitioner choose not to vacate the house in question, a letter dated 16.01.2014 was issued and the said letter was sent to the District Magistrate for getting the premises vacated. It is stated in the counter affidavit that as per the list issued by the Director, Information of Media Representatives, the petitioner is not an accredited journalist and thus he was neither entitled to allotment of accommodation nor is he entitled to retain the accommodation.

4. It also appears from the record that an appeal filed by the petitioner came to be dismissed by the District Judge, Lucknow which is contained in annexure no.1 and is impugned in the present writ petition. A further contention raised in the counter affidavit is that the petitioner himself had given in writing an undertaking to vacate the premises on 21.01.2014 if 15 days' time is granted. The said undertaking is on record as annexure no. CA-8. The said fact is also noticed by the District Judge in the order dated 10.02.2014.

5. Surprisingly while filing the present petition in para 20 of the writ petition, the petitioner admitted that he was forced to submit the letter under duress whereas the counsel for the petitioner argues that the document contained as annexure no.CA-8 does not contain the signature of the petitioner.
6. While arguing the matter, learned Standing Counsel on behalf of the State Government states that although at the relevant point of time, allotment of the government accommodation was governed by Government Order dated 21.05.1985 (Annexure – CA 1) wherein the persons entitled for allotment of government accommodation were specified; the said government order continued to govern the allotment of the premises till the year 2016 when the State Government enacted an act known as “The Allotment of Houses under Control of the Estate Department Act, 2016” (U.P. Act No.23 of 2016). The said Act was enacted to regulate allotment of the houses under the control of the Estate Department to the various officers of the State Government. The reasons for enacting the Act are as under:

“to regulate the allotment of houses under the control of Estate Department to the employees and officers of the State Government, Employees association, political parties, journalists, officers of All India Service/judicial service, Member of Legislature Council, Member of Legislature Assembly, Trusts, Ministers, Chairman/Deputy Chairman of Legislative Council, Speaker/Deputy Speaker of Legislative Assembly and Justices.”

7. On a perusal of the said Act, it is clear that although the Act was enacted for regulating the allotment of houses to various persons including the journalists, however Section 2(m) defines “Journalist”. While prescribing the eligibility for allotment, Section 4 of the Act prescribed that Journalists were entitled to allotment of Type – 4 accommodation. The said Act No.23 of 2016 was amended by a subsequent amendment Act of 2016 known as “The Allotment of

Houses under Control of the Estate Department (Amendment) Act, 2016” (U.P. Act No.36 of 2016). In the said Act also, the reasons for enacting the Act were not modified/amended, however, Section 2(o) was inserted to define “Senior Journalist”. The statement of objects and reasons for amending act are as under:

STATEMENT OF OBJECTS AND REASONS

The Allotment of Houses under Control of the Estate Department Act, 2016 (U.P. Act no. 23 of 2016) has been enacted to regulate the Allotment of Houses under Control of the Estate Department to various persons, it has been decided to amend the said Act to provide for,-

(a) defining the words "Senior Journalist" and to include the "Senior Journalist" in the list of eligibility relating to type-5 houses;

(b) increasing the period of allotment of houses to a trust from five years to ten years and the renewal thereof from maximum period of five years to ten years at a time;

(c) the rent of houses allotted to the eligible persons other than the trust and society shall be charged at prescribed rate;

(d) the unauthorised occupation by the allottees shall be evicted under the provisions of acts mentioned in the principal Act.

The Allotment of Houses under Control of the Estate Department (Amendment) Bill, 2016 is introduced accordingly.

8. The Act No.23 of 2016 by virtue of Section 6(2) provided that the allotment to other applicants except trust shall be made for a period of two years and the renewal thereof shall be considered by the State Government for allotment for a period of one year at a time.
9. Section 7 of the said Act provided that the rent of the houses allotted shall be at the market rate in the case of trust and society, and in other cases, at such rate as may be prescribed.

10. Section 9 of the said Act empower the State Government to make rules by notification for carrying out the purposes of the Act.
11. In terms of the powers conferred upon the State Government by virtue of Section 9 of the Act of 2016, the State Government framed and notified the rules known as “The Allotment of Houses under Control of the Estate Department Rules, 2016”. In respect of the Journalists, the manner of allotment was prescribed under Rule 3(3) and was to be decided by a Screening Committee comprising four persons specified in Rule 3(3) on whose recommendations, the allotments were to be made.
12. Rule 8 of the said Rules made a specific prescription that the Journalists/Senior Journalists shall be allotted the house only during their posting at Lucknow and would have to vacate the house allotted to them within a period of 30 days from the date of their transfer.
13. Rule 9(4)(vi) further casts a mandate on the allottee to handover the possession of the allotted premises after the expiry of the allotment period; Rule 9(4)(Viii) prescribed for charging of damages if the allottee fails to handover the premises within 30 days of the cancellation; and Rule 10(6) prescribed for charging of rent at two times of the flat rent from the Journalists/Senior Journalists.
14. Thus, what transpires is that although the Act provided for regulating the allotment of flats to the persons specified in the Preamble of the Act. The said was regulated w.e.f. 2016 after the enactment of the Act.
15. In the present case, the allotment of the petitioner was prior to the framing of the 2016 Act and was governed by the non-statutory rules contained in the government order; no protection was afforded to the allottee. However, in terms of the undertaking taken from the proposed applicant at the time of allotment, it was prescribed that the applicant would vacate the premises within one month of the transfer

and hand over the the possession to the Estate Department. It was further undertaken that the applicant would tender the rent as per the rent fixed. In fact, they also undertook to pay five times of the fixed rent in case the applicant does not vacate the premises within time prescribed.

16. In the present case, the petitioner despite giving an undertaking on 21.01.2014 did not vacate the premises and continued to be in occupation of the premises. The facts with regard to payment of rent are not clear in the present case. Thus, in sum and substance, the petitioner has continued to occupy the premises despite giving an undertaking in the year 2014; he has not even filed a rejoinder affidavit to the counter affidavit which was served upon the counsel for the petitioner for a term of nine years. There is no order of allotment in favour of the petitioner after the 2016 Act coming into force, thus, this Court has no hesitation in holding that continuation of the petitioner in the premise in question is without any authority of law and he is liable to vacate the premises.
17. At this stage, learned counsel for the petitioner prays that keeping in view the age of the petitioner and the attending ailments suffered by him, some reasonable time be granted to vacate the premises.
18. Considering the said submissions, the petitioner, keeping in view his age, is granted four months' time to vacate the premises and to handover the vacant and physical possession to the Estate Department.
19. The petitioner shall also pay the outstanding amount of rent to the respondents in case the same has not been paid, within a period of four months from today.
20. To further clarify, the petitioner shall vacate the premises in question on or before 28.02.2024 and shall pay the outstanding rent prior to the said date.

21. The petitioner shall not make any alteration/modification to the premise in question and shall hand over the possession only to the officer of the Estate Department and to no one else.
22. The writ petition stands *disposed off* in above terms.
23. Before parting with the case, the Chief Secretary, State Government, U.P. is directed to revisit as to how the Journalists are being extended the benefit of Estate properties at throw away prices.
24. The State Government would be at liberty to revisit the entitlement for allotment keeping in view the object for which the Act was enacted.
25. Let a copy of this order be sent to the Chief Secretary, State of Uttar Pradesh.
26. The present petition is disposed off in terms of the directions given, as regards the petitioner, in paras 19, 20 and 21, however, an important question still arises in the present case in respect of the provisions of allotment of government accommodation as per the U.P. Act No.23 of 2016 known as “The Allotment of Houses Under Control of the Estate Department Act, 2016”. In terms of the said Act, uncanalised and unbridled powers are conferred for allotment to journalists, trusts and societies who do not even perform any duties which are akin to government duties or public functions. Uncanalised powers have been conferred for allotment of the government properties to the journalists, trusts and societies and the allotments in some cases have continued indefinitely.
27. The Hon’ble Supreme Court while dealing with the similar provisions relating to the allotment of residence to the Ex-Chief Ministers in the case of *Lok Prahari (I) vs State of Uttar Pradesh and others; (2016) 8 SCC 389*, had categorically observed in para 46 as under:

“46. So far as allotment of bungalow to private trusts or societies is concerned, it is not in dispute that all those bungalows were allotted to the societies/trusts/organisations at the time when there was no provision with regard to allotment of government bungalows to them and therefore, in our opinion, the said allotment cannot be held to be justified. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. Allotment of government property to someone without adequate market rent, in absence of any special statutory provision, would also be bad in law because the State has no right to fritter away government property in favour of private persons or bodies without adequate consideration and therefore, all such allotments, which have been made in absence of any statutory provision cannot be upheld. If any allotment was not made in accordance with a statutory provision at the relevant time, it must be discontinued and must be treated as cancelled and the State shall take possession of such premises as soon as possible and at the same time, the State should also recover appropriate rent in respect of such premises which had been allotted without any statutory provision.”

28. In view of the said judgment of the Hon’ble Supreme Court in the case of *Lok Prahari (I) (Supra)*, it was incumbent upon the Government to have taken decision in terms of the directions so given in the said case, however, no decision appears to have been taken by the State Government despite the fact that the directions given by the Hon’ble Supreme Court in the case of *Lok Prahari (I) (Supra)* are partake the nature of law and is binding on all the State.
29. Similarly once again, the Hon’ble Supreme Court in the case of *Lok Prahari (II) vs Sate of Uttar Pradesh and others; (2018) 6 SCC 1* observed as under:

“16. The Preamble to the Constitution of India embodies, inter alia, the principles of equality and fraternity and it is on the basis of these principles of equality and fraternity that the Constitution recognises only one single class of citizens with one singular voice (vote) in the democratic process subject to provisions

made for backward classes, women, children, SC/ST, minorities, etc. A special class of citizens, subject to the exception noted above, is abhorrent to the constitutional ethos.

36. In the light of the above views, the allocation of government bungalows to constitutional functionaries enumerated in Section 4(3) of the 1981 Act after such functionaries demit public office(s) would be clearly subject to judicial review on the touchstone of Article 14 of the Constitution of India. This is particularly so as such bungalows constitute public property which by itself is scarce and meant for use of current holders of public offices. The above is manifested by the institution of Section 4-A in the 1981 Act by the Amendment Act, 1997 (8 of 1997). The questions relating to allocation of such property, therefore, undoubtedly, are questions of public character and, therefore, the same would be amenable for being adjudicated on the touchstone of reasonable classification as well as arbitrariness.”

- 30.** The abovesaid views taken by the Hon’ble Supreme Court in the cases of *Lok Prahari (I)* and *Lok Prahari (II)* (*Supra*) were re-enforced in the case of ***Union of India and another vs Onkar Nath Dhar; 2021 SCC OnLine SC 574***, wherein after noticing the abovesaid two judgments [*Lok Prahari (I)* and *Lok Prahari (II)*] observed as under:

“13. In view of the judgments referred above, the Government accommodation could not have been allotted to a person who had demitted office. No exception was carved out even in respect of the persons who held Constitutional posts at one point of time. It was held that the Government accommodation is only meant for in-service officers and not for the retirees or those who have demitted office. Therefore, the view of the learned Delhi High Court and that of the Punjab & Haryana High Court is erroneous on the basis of compassion showed to displaced persons on account of terrorist activities in the State. The compassion could be shown for accommodating the displaced persons for one or two months but to allow them to retain the

Government accommodation already allotted or to allot an alternative accommodation that too with a nominal licence fee defeats the very purpose of the Government accommodation which is meant for serving officers. The compassion howsoever genuine does not give a right to a retired person from continuing to occupy a government accommodation.”

31. Considering the fact that through the Act, namely, “The Allotment of Houses Under Control of the Estate Department Act, 2016”, the Government largesse is being extended to the persons, who are not authorized or are not engaged in any Government functions, I deem it appropriate to take *suo moto* cognizance, as *prima facie*, the act is contrary to the mandate of Article 14 and the judgments of Hon’ble Supreme Court extracted above and is on the face of it arbitrary and purport to grant Government largesse without any control and without any nexus with government functions.
32. Let the necessary papers be placed before the appropriate Division Bench hearing the challenge to the vires of the statutory enactments by the Registry with all expedition.

Order Date :- 13.10.2023

Renu/-