

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on 26.07.2022
Pronounced on. 17. 08.2022

1. OWP No.641/2016

Abdul Rahim Rather

..... Petitioner(s)

Through: -

*Mr. M. I. Qadri, Sr. Advocate with
Mr. Mir Naveed Gul, Advocate.*

V/s

State of J&K and Ors.

..... Respondent(s)

Through: -

*Mr. Sajad Ashraf, GA for 1 to 3.
Mr. Nisar Ahmad Bhat Advocate for R-4.*

2. OWP No.143/2017

Fayaza Ahmad

..... Petitioner(s)

Through: -

Mr. Nissar Ahmad Bhat, Advocate.

V/s

State of J&K and Ors.

..... Respondent(s)

Through: -

Mr. Sajad Ashraf, GA.

3. CCP(S) No.68/2020

Fayaza Ahmad

..... Petitioner(s)

Through: -

Mr. Nissar Ahmad Bhat, Advocate.

V/s

Mr. Tasaduq Jeelani & Anr.

..... Respondent(s)

Through: -

Mr. Sajad Ashraf, GA.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

Hon'ble Mr Justice Mohd Akram Chowdhary, Judge

Judgment

Magrey, J

1. Petitioner, a former Legislator challenges the impugned notice bearing No. DDES/Pvt. House/2016/681-82 dated 06.04.2016, in terms

whereof he has been asked to vacate the Government accommodation by or before 15th April, 2016, failing which action as warranted under rules shall be taken without any further notice. Petitioner seeks quashment of the notice by allowing the writ petition with further direction to allow him to retain the accommodation.

Brief facts relevant for disposal of the writ petition are detailed out as under:-

- (i) Petitioner claims to have a long and outstanding political career and elected to the Jammu and Kashmir Legislative Assembly in the year 1977 and was re-elected in the year 1983, 1987, 1996, 2002 and 2008, viz for six consecutive terms in a row. He claims to be elected as Speaker of J&K Legislative Assembly in September, 1982 and thereafter inducted in the Cabinet from time to time and holding different portfolios till January, 2015.
- (ii) Petitioner after the dissolution of Assembly in the year 1990, claims to have shifted to his village Badipora, Tehsil Chadoora, District Budgam, but he along with his family had a narrow escape in the Bomb Blast incident that took place in his house, therefore, on the instructions of the Administration, the petitioner shifted to Jammu on imminent threat to his life, family and property. It is stated that the residential house in village Badipora of the petitioner was raised to ground by the militants in the year 1993 and many attempts were made to physically eliminate the petitioner.
- (iii) Petitioner claims to be in hit list of anti-national elements and in view of threat to his life, the respondent Government has put him in Z-Category of security cover. Petitioner states that he does not own and possess any house in City of Srinagar or elsewhere in Kashmir and his damaged house at

his native place is also not habitable. Petitioner after losing his status as Cabinet Minister has been provided Government accommodation w.e.f. 01.05.2015, after surrendering the ministerial bungalow in the capacity as former Legislator with reference to Government order No. 118-Est of 2015 dated 22.07.2015, extended from time to time till the year 2016, when the impugned notice is issued, which notice is the subject matter of the writ petition.

(iv) Petitioner states that during pendency of the writ petition, the respondents have extended the allotment of the accommodation in favour of the petitioner from 16.04.2016 to 31.12.2017 in terms of Government order No. 26-Est of 2018 dated 23.03.2018 on the terms and conditions detailed out in the order and, accordingly, the petitioner deposited the rent. The petitioner claims to be in possession of the allotted accommodation as on date and pays the regular rent, receipts whereof are kept with the rejoinder/supplementary affidavits.

(v) Petitioner claims retention of accommodation till the time he holds the status of former Legislator in terms of the allotment made by the Government, as a result of fulfilling all the criteria for such allotment in tune with the mandate of Regulation 4 (e) of the Jammu and Kashmir Estates Department (Allotment of Government Accommodation Regulations, 2004) (hereinafter referred to “Regulations, 2004”).

Grounds of challenge

Petitioner challenges the action of the respondents, asking him to vacate the allotted accommodation, provided to him by the Estates Department on the grounds detailed out as under:-

(a) That action of respondent Estates Department is initiated on the basis of the decision made by this Court in a bunch of writ petitions, lead case being OWP No. 545/2015, wherein direction was passed for constitution of the Committee, headed by Additional Director General of Police (Security) J&K, DC Srinagar/Jammu, Director, Estates, J&K and SSP (Security), Srinagar/Jammu and any other member co-opted by Additional Director General of Police, Security, to make an objective assessment of threat perception of each of the petitioners in those writ petitions and in the said background need to allow petitioners to retain present Government accommodation in their use or to provide alternate Government/hired accommodation. The Committee was further directed to allow petitioners to put forth their stand either in person or through their representative, including written representations. The Committee was further directed to examine the security cover or number of security personnel required by petitioners, so that they and their dependent family members are not exposed to any threat or risk. It is further submitted that the respondent-Estates Department has made reference to the recommendation of the Committee constituted in terms of orders passed by this Court in OWP No. 545/2015 and the decision taken by the Government as a matter of policy to intimate the petitioner to make your own alternate arrangement, which decision as stated, violates the rights guaranteed under the Constitution of India with reference to right to liberty and right to equality. It is submitted that petitioner was not a party to the decision made by this Court reference whereof is made in the impugned notice and the respondents have not also made reference to any decision of the Committee with respect to present petitioner. It is submitted that the decision is taken arbitrarily against the mandate of the

procedures governing such decision, therefore, the impugned notice is not based on fair decision and being arbitrary, deserves to be set aside.

(b) The petitioner also questions the validity of the impugned notice on the ground of being discriminatory in nature and violative of Article 14 of the Constitution of India, as the respondent Estates Department has allowed the former Legislators to retain the Government accommodation having less security threat. It is submitted that the details of these similarly situated Legislators were furnished to the respondent-Estates Department, namely, S/Sh. Zaffar Iqbal Manhas, Girdhari Lal Raina, Ghulam Ahmad Mir, Mohammad Rafi Mir, Nazir Ahmad Laway, Fayaz Ahmad Mir, Mohammad Yousuf Tarigami, Abdul Majeed Padder, Sajad Gani Lone, Basharat Bukhari, Javid Ahmad, Sofi Yousuf, Nizamuddin Bhat, Dr. Mehboob Beg, Abdul Razak Zaoora, and Mohammad Shafi Bhat, but still the impugned notice is issued, which is discriminatory in substance, therefore, violative of Article 14 of the Constitution of India, as such, deserves to be quashed.

(c) That the impugned notice in terms whereof the petitioner has been asked to vacate the Government accommodation will result in exposing the petitioner to imminent threat to life at the hands of anti-national and anti- social elements, as the petitioner is still put in Z-category by the Security Agencies and has no accommodation of his own in Srinagar or around in Kashmir. It is stated that the National Investigation Agency (NIA) while investigating the matter had called the petitioner for examination and have intimated him not to visit insecure areas in Kashmir particularly in his Constituency, as reportedly there is a danger to his life, as such, the action of respondents is violative of Article 21 of the Constitution of India.

(d) That the impugned notice and the action initiated is violative of the procedures as guaranteed under the statute occupying the field; that the action initiated will result in miscarriage of justice.

(e) It is stated that the respondent Estates Department has issued the impugned notice on the recommendations of the Committee which Committee had asked the Government that the Ministers on demitting the office are required under rules to vacate the Government accommodation and those who continue to face threat perception, the Government was asked to provide them alternate accommodation for reasonable duration (upto six months) within which ex-ministers shall make arrangements of their own besides providing them adequate security as per their category by the J&K police. It is stated that the petitioner had surrendered the ministerial bungalow only after demitting the office in January, 2015, and was provided accommodation as former Legislator in terms of Regulation 4 (e) of Regulations, 2004, therefore, the decision on the basis of recommendation of the Committee is not applicable to the facts of the case of the petitioner, as such, being wrongly applied results in miscarriage of justice.

2. On notice respondents 1 to 3 have filed objections/ reply, supported by the affidavit of Deputy Director, Estates *inter alia*, questioning the maintainability of the writ petition for the relief claimed by the petitioner on the ground that none of the rights stands violated, which formed the basis for grant of such relief. It is stated that petitioner cannot claim Government accommodation as a matter of right, as he is not eligible for such accommodation in terms of law laid down by the Hon'ble Supreme Court of India. It is admitted that petitioner was allotted house bearing No. H-7 at Friends Enclave at Srinagar Airport and on expiry of the term of the allotment, petitioner has lost right to seek retention, required in terms of Regulations, 2004, issued vide Government Order No. 169-GAD of 2004 dated 10.02.2004. It is stated that on failure of the petitioner to surrender the

possession of the said accommodation, the Government has declared him as unauthorized occupant. It is stated that similarly situated persons/Ex. MLAs, had also filed writ petitions before this Court together with the writ petition OWP No. 545/2015 titled Choudhary Mohammad Ramzan Vs. State of J&K and Ors., which stands disposed of with direction to consider the case of the petitioners after the recommendations of the Committee, constituted pursuant to such direction. It is stated that the Government constituted a Committee vide Government order No. 240-Est of 2015 dated 16.11.2015, headed by the ADGP (Security) and on examination of the issues related to the subject, the Committee made recommendations to the Government.

3. That some former Ministers/Legislators, including the petitioner appeared before the Committee, constituted vide Government order (Supra) and most of them had filed written representation. It is stated that the Committee decided that the unauthorized occupants, including the petitioner had to be simply informed to vacate the hired accommodation, it is how, the petitioner was asked to vacate the Government accommodation. The respondent Estates Department in the objections has made reference to the recommendation of the Committee. Relevant portion is also reproduced in the objections and applied to the petitioner's case, which is also extracted herein as under:-

“ Hon'ble Ministers on demitting office are required under rules to vacate the Government accommodation, however, for those who continue to face threat perception, it is recommended that the Government may provide them alternate accommodation for reasonable duration (upto six months) within which ex-ministers shall make arrangements of their own besides providing them adequate security as per their category by the J&K Police as per guidelines on the subject. ”

4. The respondent Estates Department has further stated that there is no question of adherence to the provisions of Section 4 of the J&K Pubic

Premises (Eviction of Unauthorized Occupants) Act, 1988, after the petitioner has consented to the disposal of the writ petition in which writ petition, direction was passed for constitution of Committee and hearing of the petitioners with further direction that the recommendation to be acted upon by the Government. It is stated that the petitioner cannot claim adherence to the procedure as established under law after the disposal of the writ petition OWP No. 545/2015, along with other bunch of writ petitions, resulting in reviewing the case of the petitioners for providing accommodation. It is stated that in terms of recommendation of the Committee, the petitioner has been provided accommodation for reasonable period after recommendation for six months to enable him to make alternate arrangement of accommodation. Respondents has further stated that the petitioner is estopped under law to question the impugned notice, which is passed on the decision of the Committee, constituted under the directions of the Court to deal with the cases, including the case of the petitioner.

5. Petitioner has filed rejoinder, wherein it is stated that the respondents have extended the hiring and allotment of private house to the petitioner in terms of Government order No. 26-Est of 2018 dated 23.03.2018, on payment of rent w.e.f. 16.04.2016, to 31.12.2017, therefore, during the pendency of the writ petition, the respondents have validated the occupation of the allotted accommodation to be legal and valid and in view of this position, the eviction notice issued on 06.04.2016, loses significance and becomes redundant and untenable in the eye of law, as the notice can be issued only in case an allottee is un-authorizedly occupying the accommodation. Once the allotment has been validated by the Government in favour of petitioner by issuing a Government order, he has every right to

retain the accommodation for which he has paid rent of Rs. 86,000/- on 02.05.2017, as per receipt, issued by respondent No. 3 and subsequently of Rs. 69,000/- as per receipt issued on 18.09.2018, under No. 0951105 and 1942627 respectively. It is stated that in view of this position that the respondents have accepted the rent of the petitioner up to ending September, 2018, shows that the petitioner's occupation is valid, authorized, therefore, no eviction proceedings can lie against the petitioner.

6. It is stated in the rejoinder that petitioner has never filed any writ petition prior to the present one, therefore, the assertion made that he has filed writ petition prior to present one is factually incorrect, wrong and misleading, as such, is vehemently denied. It is stated that the petitioner is entitled to accommodation in terms of Jammu and Kashmir Estates Department (Allotment of Government Accommodation Regulations 2004), which provides accommodation of different types under clause 4 (3). Therefore, the law laid down by the Hon'ble Apex Court, does not apply in the State of Jammu and Kashmir, where there is specific law providing the accommodation to the Ex-Legislators. Amongst Ex-Legislators, there are different categories same stands categorized as per the security point of view is concerned, by the State Government belong to Z+ or Z category. Z+ category is applicable to Hon'ble Governor, Hon'ble Chief Minister, Hon'ble the Chief Justice, when the Z category is applicable to all the Ministers, Ex-Ministers and Hon'ble Judges of the High Court etc. on the basis of threat perception. Petitioner also stands categorized as "Z" security category and, accordingly, necessary security continues to be provided by the respondents to the petitioner.

7. It is stated that petitioner had not filed any writ petition and was not party to the writ petition decided by this Court mention whereof is made in the impugned notice, therefore, the recommendation and decision taken qua the said Judgment is not having any binding force on the petitioner.

8. It is stated that petitioner did not appear before the Committee, constituted vide above mentioned Government order, as it was not required, as petitioner was not un-authorized occupant, in view of above submissions made, therefore, their decision was not applicable to the petitioner. It is further submitted that contention of the respondents in this behalf, is contrary to the Government order No. 26-Est of 2018 dated 23.03.2018, wherein period of allotment of hired accommodation from 16.04.2016 to 31.12.2017, has been regularized and thereafter also petitioner has been allowed to retain the accommodation and rent deposited, received by the respondents, therefore, the contention of the respondents is misleading and untenable. Further it is submitted that the decision of the Committee was contrary to the regulation 4 of 2004 regulations, where a right is created by statute in favour of Ex-Legislators, which cannot be taken away by a Committee thus also the contention of the respondents is misleading. Further the respondents did not provide the accommodation only to the petitioner but all other Ex-Legislators/Ministers and even to non-Legislators, how this power was exercised in favour of said non-Legislators, who continue to be in the possession of Government accommodation till date. Further the recommendations of the Committee shows that the Government is bound to provide accommodation to all those who continue to face threat perception by providing alternate accommodation. In the case of the petitioner, the threat perception continues till date, as the burnt house of the petitioner in

his ancestral village at Badipora, Chadoora was again attacked recently by the militants, which shows the threat perception continues, thus the contention of the respondents in this behalf is misleading and untenable.

9. It is stated that in view of the fact that the respondents have regularized the occupation of the accommodation by issuing Government order supra and acceptance of rent by the respondents, the petitioner was not unauthorized occupant at all, as the initial allotment was up to 15th of April, 2016, thereafter vide the same has been extended up to ending 2017 from 16th April, 2016, therefore, under law petitioner is deemed to be having a valid allotment of the Government accommodation, therefore, cannot be issued any notice of eviction, as such, contention of the respondents is misleading.

10. Mr. M. I. Qadri, has also filed supplementary affidavit, wherein it is stated that petitioner lost his election to the State Legislative Assembly, in the year 2014 from Charar-i-Sharief Constituency, when at that time, the petitioner was member of the State Cabinet as Finance Minister and was allotted a Government Bungalow in Tulsibagh, Srinagar, by the respondents, which was surrendered immediately by petitioner and vacant possession was delivered to the respondents, as such, the petitioner was not having possession of any Government accommodation in the month of October, 2014 in Tulsi Bagh, Srinagar, and applied to the respondents for allotment of any suitable accommodation in view of the fact that petitioner has no habitable house of his own in Kashmir Valley, either in his name or in the name of dependent family members, and at the same time the petitioner was categorized by the State Government, on threat perception as member of the

Z+ category and continues to be in that category till date and has been allotted security, accordingly, which continues till date.

11. That again respondents vide Government order No. 93-Est of 2016 dated 20.06.2016, granted post facto sanction in favour of the petitioner for allotment of above mentioned house against payment of rent, as admissible by rules, which was given effect from 01.11.2015 till 01.04.2016. Again vide Government order No. 26-Est of 2018 dated 23.03.2018, further post facto sanction for allotment of above house on payment of rent was granted in favour of petitioner on payment of license fee, under rules w.e.f. 16.04.2016 to 31.12.2017.

12. That petitioner continued, as such, in occupation of above mentioned house right from the date of occupation in the month of October, 2014 till date and lives with his family in the said house when in the year 2016, the respondents issued notice asking the petitioner to vacate the premises, which constrained him to approach the Hon'ble Court by above tiled writ petition and the Hon'ble Court stayed the eviction notice issued by official respondents against petitioner for above mentioned house vide order dated 22.04.2016 by means of MP No. 01/2016. The said Court order has been extended by the Hon'ble Court from time to time and lastly on 18.02.2021, and continues till date, when on 30.01.2018, the Court admitted the writ petition to hearing and interim direction was allowed to continue.

13. That the petitioner was provided vacant house without any furniture, or other accessories or Kitchen Utensils or Gadgets or furnishing etc., by official respondents as is being provided to the other occupants, who are allotted Government Bungalows, nor any Chowkidar/ Watchman / Mali or

any other employee was provided to the petitioner for last six years while living in above house, thus petitioner has been regularly paying the rent, as claimed by the respondents upto ending September, 2020 and as mentioned in the receipts as “rent”. Petitioner cannot be charged any other amount for any other service like providing furniture, Kitchen Utensils, Gadgets or furnishing or for services of Chowkidar, Mali etc., when same was not provided and petitioner is paying the electric charges and water charges of the house also in addition to the rent regularly.

14. That petitioner has no concern, directly or indirectly, legally or otherwise with the owner of the house, as petitioner has not hired the above mentioned house from the owner, viz landlady, nor any document thereon stands executed in between the petitioner or landlady, nor landlady has claimed any rent or other charges from the petitioner, nor she could do so, as there are no legal relationship of tenant/licensee of the petitioner with the landlady, nor petitioner paid ever any amount to landlady at all. Petitioner has occupied the said house, which has been allotted to him by the official respondents after hiring the same from the landlady that is why landlady has not claimed any rent from petitioner, nor petitioner paid rent or any other amount to her, when it was claimed by the official respondents alone. Therefore, petitioner has been and is under law required only to pay occupation charges to the official respondents, as claimed by them, which has been paid upto September, 2020, as per above mentioned receipts issued by the official respondents.

15. That the petitioner received a letter dated 01.01.2021, from Deputy Director, Estates, Kashmir, claiming rent of the landlady @ Rs. 34,000/-

w.e.f. 01.12.2018, till date, Which has been replied by the petitioner vide letter dated 15.02.2021, making very clear to the respondents that petitioner is not unauthorized occupant at all, as his occupation has been granted initially by the Government till 31.12.2017 and thereafter petitioner continues till date in the occupation of the allotted house as per the interim orders of the Hon'ble Court, as such, is not an unauthorized occupant, nor petitioner having taken over the said house from the landlady, nor has executed any document with her, therefore, has no relationship of any sort of tenant or licensee with the owner of the house, when house was allotted to petitioner by official respondents, nor the respondents have ever informed the petitioner of any claim of rent from landlady as per rate as mentioned in the above referred letter of 1st January, 2021 rather rent receipts shows that "rent" of above house has been paid upto ending September, 2020, which alone he was required to pay and no other service was ever provided like furniture etc., and instead the official respondents have been continuously receiving the rent of the above allotted accommodation/house from petitioner, which he has been depositing and so far petitioner has paid Rs. 2,56,568/-, to the official respondents, as rent of allotted house, as such, as per own admission of the respondents, made in rent receipt, the rent has been paid up to September, 2020, and petitioner is only in arrears of the rent from October, 2020, till date as per the rate as was fixed in the year 2017-18 and as claimed and received by the official respondents as per above four receipts. Therefore, the contention of the official respondents in this behalf is untenable, misleading and without any basis that petitioner is in arrears of rent of landlady when rent of house has been received and accepted by the official respondents.

16. Respondents have filed response to the supplementary affidavit, wherein it is stated that the supplementary affidavit filed by the petitioner on the face of it does not disclose infringement of any legal, fundamental or statutory rights of the petitioner.

17. It is stated in response to the supplementary affidavit that the house of respondent No. 4, was hired and simultaneously allotted to the petitioner for the period upto ending April, 2015. The term of hiring/allotment was further extended from 01.05.2015 to 15.04.2016,, the rent dues were also paid to the land lady-respondent No. 4, well in time. It is stated that after expiry of allotment orders, notice for eviction was issued to the petitioner for vacating the premises, however, instead of vacating the premises, the petitioner approached the Hon'ble Court and managed to get stay orders. It is further stated that the contention of the petitioner that he has paid rent for the private house is totally baseless. It is stated that the petitioner has remitted amount on account of maintenance charges of furniture/furnishing only. The petitioner has to pay the outstanding rent of his un-authorized period w.e.f. 01.01.2018 to till date @ Rs. 43,000/- per month directly to the respondent No. 4. It is further stated that the petitioner being law knowing person and financially well off having his personal house in the Srinagar and Jammu Cities, should have surrendered his Government accommodation as soon as he vacated the Government office, however, the matter of fact is that he has opted to retain said accommodation illegally and is trying to put burden on the Government exchequer.

18. Heard learned counsel for the parties, perused the records and considered the matter.

19. Mr. M. I. Qadri, learned senior counsel appearing for the petitioner has supported his claim for retention of accommodation mainly on the ground that the said accommodation is provided to the petitioner in the capacity as former Legislator by application of Regulation 4 (e) of the Estate Department (Allotment of Government Accommodations). Regulations 2004 being relevant with reference to claim made is extracted as under:-

“ 4. **Reservation of allotment for different categories:** (i) *the residential accommodation available with the Estates Department shall be reserved as under:-*

- a) *84% for move employees (60% for Secretariat employees and 40% for non-Secretariat move employees).*
- b) *7% for Government employees posted outside the division of residence.*
- c) *(Sic) for central Government employees and*
- d) *3% for employees of judiciary.*
- e) *5% discretionary quota placed at the discretion of the Minister Estates for persons, other than Government employees which will include Freedom fighters, ex-legislators and media persons also.*

Provided that any case for allotment of residential accommodation to media persons may be considered against the discretionary quota on the recommendations of the information Department.”

20. Mr. M. I. Qadri, learned senior counsel while strengthening his claim with reference to the averments made in the petition as also in the rejoinder and supplementary affidavits, submits that the basis for allotment of the accommodation by the Estates Department to the petitioner have not changed at the time of issuance of impugned notice, asking the petitioner to vacate the premises. It is submitted that admittedly, the petitioner was provided accommodation as former legislator on the material available with the Government at the time of allotment in the year 2014 with reference to Government order dated 22.07.2015 and nothing has changed after the retention of accommodation by the petitioner till today. Learned senior counsel submits that the basis for issuance of impugned notice are not available with the respondents, as the petitioner is not a party to the writ

petition or the batch of writ petitions which came to be disposed of in terms of final order passed by this Court in lead case being OWP No. 545/2015, titled Choudhary Mohammad Ramzan Vs. State of J&K and Ors., therefore, the reference to the decision applied to the case of the petitioner is factually incorrect and legally unsustainable. It is submitted that the Court may examine the Judgment, which is made basis for the impugned notice and will definitely come to the conclusion that such Judgment/final order was not passed in the case of the petitioner, therefore, its application is unwarranted/uncalled for.

21. Learned senior counsel declares the decision of the respondent Estates Department as arbitrary, unjustified and unreasonable in the facts and circumstances of the case, as the petitioner was never asked to present his case before the so called Committee for recommendation in tune with the decision of this Court. Learned senior counsel submits that the reply filed by the respondents is factually incorrect and legally unsustainable, as petitioner has never appeared before the Committee or submitted representation, as claimed in the objections, therefore, the decision is unfair and against the records. Learned senior counsel appearing for the petitioner submits that the respondent-Estates Department has to allow the petitioner to retain the accommodation till he holds the status of former legislator in tune with the Regulations, 2004. He further submits that the application of statute can by no stretch of imagination be misinterpreted/wrongly applied in the present case of the petitioner. Learned senior counsel while strengthening his arguments has referred to and relied upon the Judgments delivered by the Hon'ble Supreme Court in case titled ***Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.***, reported as AIR 2003 Supreme Court 511 and in

Bharat Petroleum Corporation Ltd. Vs. N. R. Vairamani, reported as AIR 2004 Supreme Court 4778.

22. Mr. Sajad Ashraf, learned GA, submits that the case of the petitioner is covered by the Judgment of the Division Bench of this Court passed in WP(PIL) No. 24/2020, titled Court of its own motion Vs. UT of J&K and Ors. Learned Government counsel has invited the attention of this Court to the direction passed by this Court in the said WP(PIL) which has reference to asking the Governmental authorities to ensure eviction of unauthorized and illegal occupants from Government accommodation and recovery of rent thereto, including former Ministers/Legislators/Retired officers/Politicians and Political persons on the strength of the Judgments passed by the Hon'ble Supreme Court in cases titled (i) S. D. Bandi Vs. Divisional Traffic Officer, Karnataka (2013) 12 Supreme Court cases 631 and (ii) Lok Prahari V. State of Uttar Pradesh and Ors. (2016) 8 Supreme Court Cases 389. Learned Government counsel further submits that the Hon'ble Supreme Court has not allowed any relief to the similarly situated persons who claimed threat perception after change of their status. Learned Government counsel has relied upon the Judgments delivered in case titled ***Taja Parveen and Ors. V. State of J&K and Ors.***, reported as 2019 (1) JKLT 587 (J&K), ***Ch. Gharu Ram & Ors. Vs. State & Ors.***, reported as 2018 (4) JKJ 238 [HC], and ***Ch. Mohd Ramzan v. State of J&K & Ors.***, reported as 2015(4) JKJ 326[HC].

23. The respondent No. 4, who claims to be the owner in possession of residential house bearing No.H-7 at Humhama, Srinagar , which is hired by the Estates Department for allotment to the petitioner and on being not paid the rentals for the occupation of the house by the petitioner, claimed to be the necessary party, therefore, laid a motion bearing MP No. 01/2017, and

this Court in terms of order dated 07.05.2019, has while allowing the application made him party as respondent No. 4.

24. Mr. Nissar Ahmad Bhat, learned counsel appearing for the respondent No. 4, has questioned the maintainability of the writ petition for the relief claimed and submits that the petitioner has lost the claim after expiry of period of allotment. It is submitted that the petitioner is in occupation of the private house and continues there, under the Court orders. He further submits that de-hiring of the accommodation by the Estates Department and its occupation by the petitioner under Court orders is adversely affecting the rights of the respondent No. 4, who is owner of the private house and is not being paid rent despite the directions passed by this Court from 01.01.218. learned counsel submits that grant of mandamus has reference to violation of right on the strength of the Judgment delivered by the Hon'ble Supreme Court in case titled '**State of Kerela V. Smt. A. Lakshmikutty & Ors.; (1986) 4 Supreme Court Cases 632**', at Paragraph No.34, has observed as under:

“34. We must refer to the case of Mani Subrat Jain v. State of Haryana & Ors., (supra) which was relied upon by learned counsel for the State Government. It is well-settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. Applying the principles stated in Halsbury's Laws of England, 4th edn., vol. 1, paragraph 122, this Court observed that a person whose name had been recommended for appointment as a District Judge by the High Court under Art. 233(1) had no legal right to the post, nor was the Governor bound to act on the advice of the High Court and therefore he could not ask for a mandamus. It was observed:

“It is elementary though it is to be restated that no one can ask for a mandamus without a legal right.

The initial appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court. The Governor is not bound to act on the advice of the High Court. The High Court recommends

the names of persons for appointment. If the names are recommended by the High Court it is not obligatory on the Governor to accept the recommendation.

The consultation of the Governor with the High Court does not mean that the Governor must accept whatever advice of recommendation is given by the High Court. Article 233 requires that the Governor should obtain from the High Court its views on the merits and demerits of persons selected for promotion and direct recruitment.”

The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of mandamus. The present trend of judicial opinion appears to be that in the case of non-selection to a post, no writ of mandamus lies.”

25. Again, in the case of ‘**State of UP & Ors. V. Harish Chandra & Ors.**; (1996) 9 Supreme Court Cases 309’, at Paragraph No.10, the Hon’ble Supreme Court has held thus:

“10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But so mandamus can be issued to direct the Government to refrain from enforcing the provision of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, it any, of persons included in the list did not subsist. In the course of hearing the learned counsel for the respondents, no doubts have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned counsel appearing for the appellants submitted that in some cases pursuance to the direction of the Court some appointments have been made but in some other cases it might have been done by the Appointing Authority. Even though we are persuaded to accept the submission of the learned counsel for the respondents that on some occasion appointments have been made by the Appointing Authority from a select list even after the expiry of one year from the date of selection but such illegal action of the Appointing Authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution. We have no hesitation in coming to the conclusion that such appointments by the Appointing Authority have been made contrary to the provisions of the Statutory Rules for some unknown reason and we deprecate the practice adopted by the Appointing Authority in making such appointments contrary to the Statutory Rules. But at the same time it is difficult for us to sustain the direction given by the High Court since, admittedly, the life of the select list prepared on

4.4.87 had expired long since and the respondents who claim their rights to be appointed on the basis of such list did not have a subsisting right on the date they approached the High Court. We may not be understood to imply that the High Court must issue such direction, if the writ Petition was filed before the expiry of the period of one year and the same was disposed of after the expiry of the statutory period. In view of the aforesaid conclusion of ours it is not necessary to deal with the question whether the stand of the State Government that there existed one vacancy in the year 1987 is correct or not.”

26. Learned counsel appearing for the respondent No. 4, further referred to and relied upon the Judgment of Hon’ble Supreme Court passed in Civil Appeal No. 6619 of 2014 titled Union of India and Anr. Vs. Onkar Nath Dhar, reported as AIR Online 2021 SC 513.

Discussion

I. Admittedly, the petitioner on losing the status of Cabinet Minister in the erstwhile State of Jammu and Kashmir, surrendered the ministerial Bungalow immediately and was on consideration by the respondent Estates Department provided hired Government accommodation in the capacity as former Legislator. While in possession of the Government accommodation, the petitioner is asked to vacate in terms of the impugned notice, which is admittedly, based on the recommendation of the Committee constituted under the directions of this Court made in a batch of writ petitions lead case being OWP No. 545/2015, vide order passed on 01.05.2015.

II. We have gone through the order passed by the learned Single Bench in the batch of writ petitions on 01.05.2015, and have noticed that those writ petitions were filed by former Cabinet Ministers, Parliament Members and Legislators. The learned Single Bench has mainly passed the order on the contentions raised by the appearing parties and on the material available having reference to the “threat perception”. Paragraphs 13 to 17 of the order of the learned Single Bench being relevant are taken note of:-

“13. It is admitted case of parties that petitioners are Protected Persons and therefore exposed threat to their life and to life of their family members.

14. There is no scope for disagreement with the stand taken by learned Advocate General that J&K Estates Department (Allotment of Government Accommodation) Regulations, 2004, link allotment and retention of Government accommodation to status of allottee. In other words, once an allottee loses status that entitles him to allotment, he automatically loses right to retain accommodation and need not be served any notice or given an opportunity to put forth his stand against an order, requiring to vacate such premises. However, in present case, petitioners have not been allotted Government accommodation only because of their status as Ministers, Members of Parliament, Legislators etc., but also because of “threat perceptions” and their safety requirements as “Protected Persons”. The matter, therefore, has to be looked not only from viewpoint of Regulations of 2004 but their “threat perception”. True, that petitioners may not insist on retention of accommodation allotted to them commensurate with their last status, but they cannot be altogether denied Government or hired accommodation in a safe area, if they are required to be given such accommodation having regard to their ‘threat perceptions’, and made vulnerable to threat to their life and that of their family members. To illustrate, if a petitioner has been allotted a VIP bungalow as categorized in Regulations, he may not have a right to retain such bungalow, but nonetheless is to be considered for other types of accommodation i.e Special-A Type Quarter etc., as provided in Regulations, having regard to the “category” in which he has been placed. Similarly, in case any of petitioners has been provided particular security cover or particular number of personal security officers, but at the same time is to be provided such security as would serve intended purpose.

15. Learned counsel for petitioners have, during course of arguments, referred to number of instances, where political activist of one of other party continue to use Government accommodation notwithstanding their failure to get elected in 2008 or 2014 elections. Mr. Ratanpuri has even placed a list of persons provided Government accommodation at Pulwama. It is pointed out that a number of such allottees are political activists and not elected as legislators. However, it would not be appropriate to dilate on this aspect of the case as the observations made herein are not restricted to one or few protected persons but would relate to all such persons, who have been provided Government accommodation and security cover by State Government.

16. This Court is not equipped with necessary mechanism to assess “threat perception” of petitioners or to conclude whether petitioners or any one of them deserves to be allowed to retain present accommodation or provide alternate government/hired accommodation. Similarly this Court does not have necessary inputs to assess the case of each and every petitioner for security cover or nature and gravity of threat, to which petitioners or any one of them is exposed. The exercise is to be left to experts.

17. Viewed thus, petitions are disposed of, with following directions:

- (i) State Government shall constitute a Committee headed by Additional Director General of Police, Security, and comprising of District Magistrate, Srinagar/Jammu; Director Estates; Superintendent of Police, Security, Srinagar/Jammu; and any other member co-opted by Additional Director General of Police, Security, to make an objective assessment of threat perception of each petitioners and in the said background need to allow petitioners to retain present government accommodation in their use or to provide alternate government/hired accommodation. The Committee shall allow petitioners to put forth their stand either in person or through their representative including written representations;
- (ii) The committee shall also examine the security cover or number of security personnel required by petitioners, so that they and their dependent family members are not exposed to any threat or risk;
- (iii) The committee, on threadbare examination of the matter, shall make its recommendations to State Government within two weeks from the date of

receipt of copy of order. The Committee, while making its recommendations, shall have due regard to the “category”, in which petitioners have been placed i.e. any of one of X,Y, Z or Z+ categories. State Government, having regard to recommendations so received, shall issue necessary orders as warranted in facts and circumstances of the case.

(iv) Till recommendations are received from the committee and necessary orders on such recommendations passed, petitioners would be allowed to retain present accommodation and security cover.

(v) Let copy of order be provided to Mr. Sajad A. Geelani, learned Dy. AG, under signature of Bench Secretary, so that needful is done without delay. Disposed of.”

III. From the examination of the above extracted paragraphs of the Judgment, what is relevant for decision in the case in hand is that petitioner was not party in any of the decided writ petition. Notably the subject of the writ petitions was not any notice issued, seeking vacation of accommodation by those petitioners but the petitioners had approached the Court on apprehending their eviction. Well in the instant case, the petitioner is claiming retention of accommodation as former legislator in tune with the mandate of Regulation 4 (e) of 2004 Regulations. It is further noted that respondent Estates Department has applied the Judgment, recommendation of the Committee and the policy decision of the Government in the case of the petitioner, when he was not a party at all, and has not filed any representation before the Committee.

IV We had pointedly asked Mr. Sajad Ashraf, Learned GA to show from the records that petitioner was heard by the Committee or had filed any representation in terms of Judgment of learned Single Bench, though records were produced but there is no such material available in the records, which demonstrates that the petitioner has been heard by such Committee in compliance to the directions passed in batch of writ petitions in which petitioner was not a party, therefore, we hold that the basis of the impugned notice are against the records.

V. We have noticed that the Government in implementation of the Judgment dated 01.05.2015, passed by the learned Single Bench of this Court in OWP No. 545/2015, vide Government Order No. 240-Est-2015 dated 16.11.2015, has constituted a Committee comprising of Additional Director General of Police (Security) J&K, District Magistrate Srinagar/Jammu, Director Estates, J&K and SSP Security Kashmir/Jammu and the report of the Committee reveals that the case of the petitioner was not at all placed or discussed. However, without representation of the petitioner, the recommendation of the Committee is applied in his case, asking the petitioner to vacate the accommodation.

VI. From the records we have also noticed that the Government in terms of Government Order No. 35-Est of 2016 dated 31.03.2016, constituted a Committee under the chairmanship of ADGP (Security), comprising of following officers viz ADGP (Security), J&K, Chairman, DC Srinagar/Jammu, Director Estates, J&K member Secretary and SSP (Security) Srinagar/Jammu, Member.

The mandate of the designated Committee as per the above quoted order is as under:

III. Other persons (Former Legislators/Political Persons/Freedom Fighters etc).

- a. Fresh allotments in respect of persons belonging to the above categories under the discretionary quota available with Hon'ble Minister I/C Estates in terms of 4 (e) of the J&K Estates Department (Allotment of Government Accommodation) Regulations, 2004.
- b. Allotments in respect of the persons belonging to the above category as have already been made under discretionary quota placed at the disposal of I/C Minister Estates shall cease in the event of relinquishing of the office by the Minister In-charge Estates (HCM).

- c. All the existing together with fresh allotments shall be subject to mandatory annual review and renewal which shall be done by the end of March every year by the Estates Department based on the recommendation of Committee headed by ADG (Security) J&K.

VII. It is noticed that this Committee held a meeting on 04.03.2020, and deliberated upon three agenda items.

Agenda item No. 1:

Residential Allotment of Ex-Ministers/Ex-MLAs/Ex-MLCs/Political persons/Activists.

Agenda item No. 2:

Residential Allotment of Ex-Ministers/Ex-MLAs/Ex-MLCs/MSP/Political persons/Activists at Srinagar.

Agenda Item No. 3:

Fresh requests of political persons for residential accommodation at Jammu/Srinagar.

VIII. The committee on discussion and deliberation of the agenda items, recommended continuation of Government residential accommodation, provided by the Estates Department to the sitting MPs/former Ministers, legislators at Jammu/Srinagar, while as recommended eviction of others, including the petitioner. Minutes of meeting held on 04.03.2020, reveal that the decision has been taken after examining all these cases. We had asked Mr. Sajad Ashraf, learned GA, to place the material before the Court about examination of the case of the petitioner by the Committee, but no such material was placed before us. We had also asked Mr. Sajad Ashraf, learned GA, to place the norms/criteria adopted for retention of accommodation by some former legislators and decision of eviction of other former legislators, but no such criteria was placed before us. However, Mr. Sajad Ashraf, learned GA submits that fresh requests of political persons are assessed on the threat perception reports from CID Hqrs, report from their respective Deputy Commissioners

about secured accommodation if any provided by the District Authorities and report from SSP Security J&K regarding their secured hotel accommodations, if any, and report as to their owning private houses in Srinagar/Jammu.

IX. Since no material was placed before us about the decision of the Committee, regarding the case of the petitioner as having examined the same, therefore, the respondents are required to place the case of petitioner before the Committee afresh for seeking recommendation.

X. We have noticed that the respondent Estates Department has hired the accommodation of respondent No. 4, for allotment to the petitioner who admittedly is continuing in said accommodation as on date, initially under the orders of the Government and subsequently as per the Court direction, therefore, we hold respondent No. 4, entitled for the rent as fixed in terms of the agreement between the respondent Estate Department and respondent No. 4 for the period for which he has not been paid.

Conclusion

A. On the discussion made and the findings recorded we come to a definite conclusion that the impugned notice was not given effect as the same was kept in abeyance under the orders of this Court and pending decision in the writ petition, the respondents had constituted yet another Committee vide Government Order No. 35-Est of 2016 dated 31.03.2016, under the Chairmanship of ADGP (Security), comprising of following officers viz ADGP (Security), J&K, Chairman, DC Srinagar/Jammu, member, Director Estates, J&K member Secretary and SSP (Security) Srinagar/Jammu, Member, which Committee is stated to have examined the case of the petitioner and recommended his eviction on 04.03.2020, but no action is taken probably because of the pendency of the instant petition and the interim orders. We have also noticed that in terms of impugned notice, the petitioner

was asked to vacate the accommodation by or before 15th April, 2016 on the basis of the decision of the Committee constituted pursuant to the orders passed by this Court in WP(PIL) No. 24/2020 on 01.05.2015, but subsequent thereto the Government has allowed the petitioner to retain the accommodation and regularized the same in terms of Government order No. 26-Est of 2018 dated 23.03.2018, in view of these subsequent developments we have come to the conclusion that the impugned notice is no more in force, therefore, cannot be acted upon now.

Relief

B. In view of the discussions made, findings recorded and conclusions drawn, we dispose of the writ petition in the following manner:-

- i. The notice impugned dated 06.04.2016 is quashed.
- ii. The petitioner shall make a detailed representation along with supported documents before the Director Estates within one week from today.
- iii. The Member Secretary of the Committee shall convene a meeting of the Committee with the approval of the Chairman on 31st August, 2022, and place the case of the petitioner before the Committee, constituted in terms of Government Order No. 35-Est of 2016 dated 31.03.2016, comprising of ADGP (Security) J&K, DC Srinagar, Director Estates, J&K and SSP(Security) Srinagar for fresh examination and consideration qua allotment of accommodation in favour of petitioner. The Committee on examination and consideration shall also keep in mind the mandate of Regulation 4(e) of the Regulations, 2004.
- iv. The Committee shall submit the report within a period of

one month to the Government and the Government shall take a decision within one month thereafter and the total exercise as directed shall be completed within a period of two months from today.

- v. Till the recommendations are received from the Committee and necessary orders passed, petitioner would be allowed to retain present accommodation or alternate Government accommodation.
- vi. Let copy of order be provided to Mr. Sajad Ashraf, learned GA, under the seal and signature of the Bench Secretary, so that needful is done without delay.

Disposed of along with connected CM(s).

OWP No. 143/2017

1. Admittedly, the house of the petitioner was hired by the Government for accommodating Shri Abdul Rahim Rather, petitioner in OWP No. 641/2016 and in terms of decision of the Government, the petitioner was paid rentals upto December, 2017.

2. On detailed discussion in OWP No. 641/2016, we have noticed that the house of the petitioner has remained in occupation of Shri Abdul Rahim Rather, petitioner in OWP No. 641/2016 under the directions of the Court.

3. We dispose of the instant writ petition with direction to the respondents 1 to 3 to ensure payment of rent to the petitioner for the period she has not been paid on account of retention of house by Shri Abdul Rahim Rather, former legislator-petitioner in OWP No. 641/2016 in terms of the agreement. The payments shall be made within a period of two months from today.

Disposed of along with connected CM(s).

Cont. No. 68/2020

In view of the directions passed in the writ petition bearing OWP No. 641/2016, qua the claim made by the respondent No. 4 therein, the contempt petition shall stand settled.

Disposed of.

Registry to place copy of the order on each of the file.

(Mohd Akram Chowdhary)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR

17.08.2022

"Mohammad Yasin Dar"

Whether the order is speaking: **Yes/No**

Whether the order is reportable: **Yes/No**