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

+ **W.P.(C) 777/2024 & CM APPL. 3382/2024**

MAHUA MOITRA

..... Petitioner

Through: Mr Shadan Farasat, Ms Warisha Farasat, Ms Natasha Maheshwari, and Ms Hrishika Jain, Advocates

versus

ESTATE OFFICER, DIRECTORATE OF ESTATES & ORS.

..... Respondents

Through: Mr Chetan Sharma, ASG with Mr Apporv, Mr Anurag Ahluwalia-CGSC, Mr Amit Gupta, Mr Saurabh Tripathi, Mr Akhil Hasija and Ms Nidhi, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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18.01.2024

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 3382/2024 (stay)

1. Since the learned Single Judge holding the roster bench is not holding court today, under the directions of the Hon'ble Acting Chief Justice, this

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matter was mentioned in this court in post-lunch session. In view of the urgency expressed by learned counsel for petitioner, I heard both sides.

2. By way of this writ petition, brought under Article 226 of the Constitution of India, the petitioner has sought issuance of a writ of certiorari or any other appropriate writ, order or direction for quashing the order dated 16.01.2024 passed by the respondent no. 1 in the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act (hereinafter referred to as “the Act”), thereby directing the petitioner to immediately vacate the government accommodation; the petitioner has also sought a writ of certiorari or any other appropriate writ, order or direction thereby allowing the petitioner to retain possession of her government accommodation till the results of the 2024 General Elections. The said government accommodation bearing No. 9B, Telegraph Lane, Type VA, New Delhi was allotted to the petitioner upon her election as Member of Parliament.

3. Broadly speaking, the case set up by the petitioner is as follows.

3.1 On 08.12.2023, the petitioner, an elected member of the Lok Sabha was expelled from Lok Sabha by way of Gazette Notification, issued following a motion of her expulsion that was passed and adopted by the Lok Sabha.

3.2 On 09.12.2023, petitioner filed a writ petition before the Hon’ble Supreme Court of India, challenging (a) the report dated 08.11.2023 of Lok Sabha Committee on ethics; (b) resolution of the Lok Sabha concurring with the recommendations of the Lok Sabha Committee on Ethics Report; (c) the resolution of the Lok Sabha expelling the petitioner from Lok Sabha; and



the Gazette Notification dated 08.12.2023.

3.3 On 11.12.2023, the respondent no. 2 issued an order thereby cancelling the allotment of government accommodation in the name of petitioner with effect from 07.01.2024 and directing the petitioner to vacate the accommodation by 07.01.2024, failing which proceedings under the Act would be initiated.

3.4 The petitioner filed in this court a writ petition no. WP(C) 16420/2023, which was withdrawn by the petitioner on 04.01.2024 with liberty to make representation to respondent no. 2 to consider her case in accordance with SR 317-B-22 of the Compendium of the Allotment of Government Residences (General Pool in Delhi) Rules 1963, which permitted her to retain her accommodation for a period not exceeding six months on payment of twice the flat rate of license fee or twice the license fee being paid.

3.5 In the meanwhile, on 03.01.2024 the Hon'ble Supreme Court issued notice on the petitioner's writ petition challenging her expulsion from the Lok Sabha and posted the matter in the week commencing on 11.03.2024.

3.6 On 05.01.2024, the petitioner made a representation to respondent no. 2 seeking extension of time to vacate her accommodation till declaration of results of 2024 General Elections on the ground that (a) she is a woman living alone in Delhi; (b) she does not have any alternate residence in Delhi; (c) if evicted, she would have to perform her duties of campaigning while also finding and shifting to new residence; and the SR 317-B-22 permits retention of government accommodation on payment of stipulated fee.



3.7 Three days later on 08.01.2024, petitioner received a show cause notice from respondent no. 1 alleging that she was in unauthorized occupation of her allotted government accommodation and calling upon her to show cause why an order of eviction be not passed and she was asked to appear before respondent no. 1 on 11.01.2024 at 02:30 pm, failing which the case would be decided ex-parte. On same day, petitioner was taken to a hospital on account of certain medical problems for which she underwent surgery. On account of her medical condition, counsel for petitioner responded to the show cause notice, seeking extension of two weeks to file reply and in response, the respondent no. 1 extended the deadline for reply to 16.01.2024, further calling upon the petitioner to appear before the Estate Officer at 10:30 am on 16.01.2024.

3.8 On 16.01.2024, counsel for petitioner appeared before the Estate Officer, who issued an order deferring the show cause proceedings under the Act till resolution of the representation made by petitioner to respondent no. 2; counsel for petitioner also submitted written reply to the show cause notice. But despite the deferral, on the same day respondent no. 1 issued an order under Section 3B of the Act, calling upon the petitioner to immediately vacate the government accommodation allotted to her failing which she would be liable to be evicted from the premises.

3.9 Hence, the present petition.

4. During arguments, learned senior counsel appearing on behalf of petitioner took me through the above matrix and assailed the impugned eviction order on merits and at the same time sought to invoke humanitarian aspects in view of medical condition of the petitioner. Learned senior



counsel on behalf of petitioner requested that this petition be treated as mercy petition. Keeping in mind the medical condition of the petitioner as projected during arguments, a query was posed to the respondents as to whether the petitioner could be granted some reasonable time to vacate, for which the learned Additional Solicitor General on instructions expressed willingness to allow 3-4 days to vacate, but learned senior counsel for petitioner initially requested for time till March 2024 and thereafter said not less than a month is required, which was not acceptable to the respondents owing to a long queue of eligible applicants awaiting government accommodation.

5. Learned senior counsel appearing on behalf of petitioner submitted as follows. On 16.01.2024 after filing of reply to show cause notice, the respondent no. 1 had deferred the proceedings in presence of counsel for petitioner till decision on representation of petitioner to respondent no. 2 and in that regard, counsel for petitioner also signed the ordersheet of the respondent no.1, but the respondent no. 1 at the back of petitioner went ahead and passed the eviction order. Learned senior counsel submitted that the respondent no. 1 be called upon to produce records in that regard. It was further argued on behalf of petitioner that the Rule 40(1)(i) of the Central Government General Pool Residential Accommodation Rules, 2017 under which the eviction was ordered are not even applicable to the petitioner since the petitioner is a Member of Parliament and not a government servant. It was argued that the entitlements of Member of Parliament are governed by the Salary, Allowances and Pension of Members of Parliament Act 1954 read with the Housing & Telephone Facilities (Members of



Parliament) Rules 1956. At the same time, learned senior counsel for petitioner also sought to place reliance on Rule 83 of the Central Government General Pool Residential Accommodation Rules, 2017 to contend that the government certainly has power to relax the Rules. It was also argued that inquiry contemplated under Section 3B(2) of the Act was not carried out, so the impugned order is bad in law. Learned senior counsel also referred to relaxation in this regard granted to two more Members of Parliament.

6. On behalf of respondents, learned Additional Solicitor General made the following submissions. It was argued that all submissions advanced on behalf of petitioner are beyond pleadings and *de hors* the record. As regards parity claimed with the other Members of Parliament, that was done by the Hon'ble Supreme Court in exercise of jurisdiction under Article 140 of the Constitution of India which jurisdiction is not available to this court. Learned Additional Solicitor General placed strong emphasis on the judicial discipline, pointing out that the entire issue is already pending before the Hon'ble Supreme Court, so this court ought not to interfere by way of any interim relief, especially because the Hon'ble Supreme Court did not grant any interim relief to the petitioner. It was argued that keeping in mind the limited scope of superintendence under Article 226 of the Constitution, this court ought not to supplant any view contrary to the view of the Estate Officer unless it is a case of perversity, which has admittedly not been pleaded. Learned Additional Solicitor General also sought to invoke the principles underlying Order II Rule 2 CPC and contended that petitioner cannot be allowed to seek part of the relief from the Supreme Court and part



thereof from other fora. It was argued that nothing prevents the petitioner from approaching the Hon'ble Supreme Court for extension of time to vacate in view of her writ petition pending there.

7. In rebuttal, learned counsel for petitioner reiterated above arguments and contended that the petitioner cannot be stopped from assailing an order on merits and simultaneously invoking humanitarian grounds.

8. In nutshell, the petitioner has sought retention of her government accommodation pleading that her expulsion as Member of Parliament was contrary to law; that the procedure laid down by Section 3B of the Act was not followed and despite the respondent no. 1 having deferred the decision till resolution of representation of the petitioner by respondent no. 2, the eviction order was passed; and that in view of her medical condition and the difficulties she would face during campaigning for 2024 Parliament Elections, she deserves extension of time to vacate.

9. The prayer clause (b) of the writ petition shows it to be a matter of only political expediency and not medical issues. The petitioner wants to retain the government accommodation till the results of 2024 General Elections of Parliament are announced.

10. Admittedly, the allotment of the government accommodation to the petitioner was incidental to her election as Member of Parliament, from which post she has been expelled and despite her challenge before the Hon'ble Supreme Court, her expulsion has not been stayed.

11. As reflected from the representation submitted by the petitioner on 05.01.2024 with respondent no. 1, her constituency is Krishnanagar in West



Bengal and that being so, the ground of campaigning raised by her loses significance as the campaigning would be there and not in Delhi, so retention of government accommodation in Delhi on this ground does not convince this court, that too in view of a long list of eligible applicants awaiting allotment of government accommodation. Further, grant of extension for such reasons would also militate against the basic object of the enactment-the Public Premises (Eviction of Unauthorized Occupants) Act.

12. The entire tone and tenor of the representation submitted by the petitioner on 05.01.2024 before the respondents shows that the solitary basis of her claim of extension of time to vacate is her being Member of Parliament and her requirement of the government accommodation so as to enable her effectively campaign in the General Elections of 2024. There is not even a whisper of her unfortunate medical condition in the said representation.

13. Even before the respondent no. 1, as reflected from the impugned eviction order, the submission on behalf of the petitioner was as follows:

“And Whereas you also submitted that you have challenged your expulsion before the Hon’ble Supreme Court of India and the matter is likely to be heard during the week commencing from 11.03.2024. You also submitted that the jurisdiction of the Estate Officer to conduct proceeding does not arise as the matter of your expulsion from the Lok Sabha is pending before the Hon’ble Supreme Court of India”.

This also clearly shows that even according to the petitioner, the issue of government accommodation would fall within the scope of proceedings pending before the Hon’ble Supreme Court, as submitted on behalf of respondents. Nothing prevented the petitioner from seeking relief of



extension of time to vacate the government accommodation by approaching the Hon'ble Supreme Court where the basic dispute of her expulsion is pending consideration.

14. As regards the enquiry contemplated by Section 3B(2) of the Act, it is such enquiry as deemed expedient in the circumstances of the case by the Estate Officer. Presently, there is nothing before this court to lend credence to the claim of the petitioner that on 16.01.2024, the respondent no. 1 had deferred the decision as alleged, but at the back of the petitioner the impugned eviction order was suddenly passed.

15. The petitioner having been allotted the government accommodation incidental to her status as a Member of Parliament and that status having ceased upon her expulsion, which expulsion has not been stayed by the Hon'ble Supreme Court despite hearing afforded to her, presently she has no right to continue in the said government accommodation and accordingly, under Article 226 of the Constitution of India, she cannot be granted protection as sought. The allotment of government accommodation to the petitioner was co-terminus with her status, which has come to an end upon her expulsion. No specific Rule has been brought before this court which would deal with the eviction of Members of Parliament from the government accommodation after they cease to be the members.

16. To conclude, in view of the pendency of the issue of expulsion of petitioner before the Hon'ble Supreme Court and the issue of extension of time to vacate the government accommodation being inextricably linked with that, coupled with the fact that as on date petitioner has no right, this court is not inclined to invoke jurisdiction under Article 226 of the



Constitution of India at this stage to restrain the operation of the impugned eviction order. Accordingly, the application stands dismissed.

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17. List before the Roster Bench on 24.01.2024.

GIRISH KATHPALIA, J

JANUARY 18, 2024/as