

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

Writ Appeal No.1195 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. M.Sai Chandra Haas, learned counsel for the appellant; Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India represents respondents No.1, 2 and 4; and Mr. Prudhvi Raju Mudunuri, learned counsel for respondent No.3.

2. This intra court appeal is filed against order dated 20.09.2023, passed by a learned Single Judge in W.P.No.2918 of 2023.

2.1. The appellant is the wife of a serving army officer. An order of eviction was passed against her on 27.01.2023 by the Station Commander, Secunderabad, in exercise of powers under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (briefly 'the 1971 Act' hereinafter). The appellant challenged the validity of the

aforesaid order in a writ petition *viz.*, W.P.No.2918 of 2023, which has been disposed of by a learned Single Judge by order dated 20.09.2023. However, liberty was granted to the appellant to vacate the premises till 31.12.2023. Hence, this appeal.

3. Facts giving rise to filing of this appeal briefly stated are that the appellant is the wife of respondent No.3, who is a colonel serving in Indian army. Respondent No.3, at the relevant time, was posted in Field Area at Udhampur, Jammu & Kashmir. Thereupon, respondent No.3, by an order dated 22.03.2020 was allotted an accommodation *viz.*, P 234/2, Thimmaiah Lines at Secunderabad (briefly 'the accommodation' hereinafter). Respondent No.3 was entitled to the aforesaid accommodation so long as he was posted in the field area. However, on 01.06.2021, respondent No.3 was posted to Uttarakhand Sub Area, which is a peace area. Respondent No.3 joined in the aforesaid place on 28.06.2021.

Therefore, his entitlement to retain the accommodation in Secunderabad came to an end by efflux of time.

3.1. It appears that a matrimonial dispute between the appellant and respondent No.3 is pending. The appellant did not vacate the accommodation allotted to respondent No.3. Thereupon, notices dated 18.06.2022, 06.08.2022, 22.08.2022 and 23.08.2022 were issued to the appellant asking her to handover the possession of the accommodation. However, the appellant refused to hand over the possession of the accommodation, which was allotted to respondent No.3. Again notices dated 08.09.2022, 17.09.2022, 28.11.2022 and 19.12.2022 were issued to the appellant. Even then, the appellant did not vacate the accommodation, which was allotted to respondent No.3. Thereafter, proceedings under the 1971 Act were initiated.

3.2. The appellant submitted a reply to the aforesaid show cause notices on 30.12.2022. Thereafter, the competent

authority under the 1971 Act has passed an order dated 27.01.2023, by which the appellant was directed to vacate and handover the accommodation, which was allotted to respondent No.3. The appellant, thereupon, filed the aforesaid writ petition before the learned Single Judge, who, by the order dated 20.09.2023, upheld the validity of the order dated 27.01.2023 passed by the Station Commander, Secunderabad. However, the learned Single Judge permitted the appellant to remain in occupation of the accommodation till 31.12.2023. Being dissatisfied, the appellant has filed this appeal.

4. Learned counsel for the appellant submitted that the appellant has a statutory right to continue in the accommodation under Rule 4 of the Quartermaster Rules. It is further submitted that the provisions of the 1971 Act have not been followed while passing the impugned order and that the reply submitted by the appellant to the show cause notices has also not been considered. It is also urged that

on 27.08.2023, respondent No.3 has been transferred back to Secunderabad and therefore, the appellant is entitled to continue in the accommodation allotted to respondent No.3.

5. On the other hand, learned Deputy Solicitor General of India submits that there are many new officers, who are waiting for accommodation and since June, 2021, the appellant is continuing unauthorisedly in the accommodation. It is also submitted that the respondents have taken a sympathetic view and have permitted the appellant to continue in the accommodation for a period of more than two years.

6. On the other hand, learned counsel for respondent No.3 submits that on his transfer to Secunderabad, he is staying in a mess along with his ailing mother, who is a cancer patient.

7. We have considered the rival submissions made on both sides and have perused the record.

8. Before proceeding further, it is apposite to take note of Rule 4 of the Quartermaster Rules, which reads as under:

Married Officers. A married officer is entitled for allotment of married accommodation at the duty station, provided his family is residing with him. If his family is not residing with him, he may be allotted single accommodation vide paragraph 38. The terms “family” for purposes of allotment of accommodation means an officer, his wife or her husband, legitimate children and step-children/residing with and wholly dependent on him/her, a divorcee or a widower with dependent children will be treated as married.

9. Thus, from a perusal of the aforesaid Rule, it is evident that it only deals with entitlement of a married officer to an accommodation and does not confer any statutory right on the wife of a married officer to retain the accommodation unauthorisedly. Therefore, the contention of the learned counsel for the appellant that in view of Rule 4 of the

Quartermaster Rules, the appellant has a right to continue in the accommodation is misconceived.

10. It is pertinent to note that the accommodation was allotted to respondent No.3 when he was posted in field area at Udhampur. Since 28.06.2021, respondent No.3 has been posted in a peace area of State of Uttarakhand. Therefore, he is not entitled to accommodation in Secunderabad. The aforesaid position has not been disputed by respondent No.3 by contesting the proceeding before the competent authority under the Act. Therefore, the appellant, who is the wife of army officer, has no right to continue in the accommodation allotted to the army officer (respondent No.3), to which the army officer does not seek entitlement.

11. As many as eight notices were issued to the appellant. The appellant is continuing in unauthorised occupation of the accommodation for more than 2½ years. The competent authority under the 1971 Act had issued notices to the

appellant to which the appellant had submitted reply. Thereafter, the order of eviction has been passed. Admittedly, respondent No.3 was not entitled to accommodation in Secunderabad after 28.06.2021 *i.e.*, the date on which he was posted in a peace area in the State of Uttarakhand.

12. In view aforesaid, the contention of learned counsel for the appellant that the provisions of the 1971 Act had been violated is not tenable.

13. Insofar as the contention raised by learned counsel for the appellant that since respondent No.3 has been transferred to Secunderabad on 27.08.2023, the appellant is entitled to continue in the accommodation allotted to respondent No.3, it is pertinent to note that the aforesaid fact was not urged before the learned Single Judge. Respondent No.3 was posted in Secunderabad *w.e.f.* 27.08.2023. Mere posting of respondent No.3 at Secunderabad will not entitle the appellant to continue unauthorisedly in the accommodation allotted to respondent

No.3 earlier. Respondent No.3, on his posting at Secunderabad, is required to make an application for allotment of accommodation, which shall be dealt with in accordance with the Rules by the competent authority. Therefore, the contention of the learned counsel for the appellant that on transfer of respondent No.3 to Secunderabad, the appellant gets a right to continue unauthorisedly in the accommodation in question is *sans* substance.

14. For the aforementioned reasons, we do not find any ground to differ with the view taken by the learned Single Judge. In case, the appellant furnishes an undertaking before the competent authority by tomorrow *i.e.*, 29.12.2023 that she will peacefully vacate the accommodation without creating any hindrance, she will be permitted to occupy the accommodation till 15.01.2024. In case undertaking is not furnished by the appellant by tomorrow *i.e.*, 29.12.2023, the competent authority shall proceed to take action against the

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appellant for her eviction from the accommodation in accordance with law.

15. Subject to the above, the Writ Appeal is disposed of.

No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date: 28.12.2023

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