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HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP(C) PIL No.24/2020

Dated: 18th of February, 2021.

Court on its own motion.

..... Petitioner(s)

Through: -
None.

V/s

Union Territory of JK & Ors.

..... Respondent(s)

Through: -
Mr B. A. Dar, Sr. AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge
Hon'ble Mr Justice Vinod Chatterji Koul, Judge

(JUDGMENT)

{Per Magrey; J (Oral)}:

01. This Writ Petition, in 'Public Interest', directed to be registered as such by this Court on its own motion in terms of order dated 27th of October, 2020 passed in CM No.4613/2020 arising out of RPLPA No.03/2015 titled '*State of JK & Anr v. Mir Saifullah*', revolves round the subject of unauthorized/ illegal occupation of Government accommodation by the erstwhile allottees in the Union Territory of Jammu and Kashmir. In order to set straight the records, we feel it appropriate to reproduce the operative portion of the aforesaid order passed by this Court hereinbelow, *verbatim*:

"Insofar as this aspect of illegal retention and occupation of Government accommodation by the erstwhile allottees in the Union Territory of Jammu and Kashmir in contravention of the direction of the Supreme court of India in judgment reported at 2018 6 SCC 1 Lok Prahari v. State of UP, are concerned, the Registry shall register it as

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a separate writ petition in public interest which shall be listed on 12th of November, 2020, of course, after seeking orders on the administrative side by the Registrar Judicial.”

02. After having been registered as a Writ Petition, in Public Interest, at the instance of this Court, the matter came up for consideration on 12th of November, 2020, on which date, this Court, while issuing notice to the respondents, directed the respondents to file the details of properties/ official accommodations which are under illegal occupation of the erstwhile allottees including ex-Ministers/ ex-Legislators/ Bureaucrats in the Union Territory of Jammu and Kashmir. In compliance of the aforesaid directions, the Secretary to Government of the Union Territory of Jammu and Kashmir, Estates Department, has filed the action taken report on 26th of November, 2020, wherein, at paragraph Nos. 5 to 8, it is stated as under:

“5. That pursuant to directions of Hon’ble Court in OWP No.1750/2015 titled Mohammad Yaseen Shah vs State of J&K and Ors, many former ministers/ legislators/ retired officers/ politicians/ political persons vacated Government accommodation after department served them notices, however, 74 former ministers/ legislators/ retired officers/ politicians/ political persons are still occupying the Ministerial Bungalows/ Special Houses (A-type, B-type and C-type quarters) in Srinagar and Jammu beyond the period of their allotment.

6. That the answering respondents have already given final eviction notices/ orders to all the illegal occupants/ former ministers/ legislators/ retired officers/ politicians who are occupying the Ministerial Bungalows/ Special Houses (A-type, B-type and C-type quarters) both in Srinagar and Jammu.

7. That besides above the Department has recovered rent of rupees 47,65,906/- (rupees forty-seven lacs, sixty-five thousand, nine hundred and six) from illegal occupants (former ministers/legislators/retired officers/ politicians/political persons) w.e.f. February, 2020 to till date.

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8. That the matter was taken up with Home Department for security assessment of these illegal occupants vide communication bearing No. Est./Lit/S/17/2016 dated 22nd of September, 2020.”

03. Perusal of the detailed action taken report so filed by the Government of the Union Territory of Jammu and Kashmir makes it axiomatic that the Government of the Union Territory of Jammu and Kashmir is in the process of evicting the illegal/ unauthorized occupants (former Ministers/ Legislators/ Retired Officers/ Politicians/ Political persons) in tune with the mandate of law and the rules governing the field.

04. We have heard Mr B. A. Dar, the learned Senior Additional Advocate General, appearing on behalf of the Government of the Union Territory of Jammu and Kashmir and have also gone through the detailed action taken report filed by the Government of Jammu and Kashmir.

05. At the very outset, we wish to observe that it is unfortunate that some former Ministers/ Legislators/ Retired Officers/ Politicians/ Political persons, etc., have illegally/ unauthorizedly managed to continue to stay in the residential accommodation provided to them by the Government of Jammu and Kashmir, though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorized occupants must realize that rights and duties go correlative to each other, inasmuch as the rights of one person entail the duties of another person, whereas, the duties of one person entail the rights of another person. In this context, the unauthorized

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occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or direction can entirely control this act of disobedience, but for self-realization among the unauthorized occupants.

06. Apart from the above perspective, it, needs, must be said that the natural resources, public lands and the public goods, like Government bungalows/ official residence are public property that belong to the people of the country. The '*Doctrine of Equality*', which emerges from the concepts of justice and fairness must guide the State in the distribution/ allocation of the same. Any former Minister/ Legislator/ Retired Officer/ Politician/ Political person, once he/ she demits the office, is on a par with the common citizen, though by virtue of the office held, he/ she may be entitled to security and other protocols as per assessment of the concerned filed agency. But allotment of Government bungalow, to be occupied during the lifetime of such persons, would not be guided by the constitutional principle of equality.

07. Hon'ble the Supreme Court has also had the occasion, many a times, to deliberate upon this issue of unauthorized/ illegal occupation of Government accommodation and, in two leading cases, being (i) '*S. D. Bandi v. Divisional Traffic Officer, Karnataka: (2013) 12 Supreme Court Cases 631*'; and (ii) '*Lok Prahari v. State of Uttar Pradesh & Ors. (2016) 8 Supreme Court Cases 389*', it has not only held that such illegal and unauthorized occupation is bad in law, but has also directed the authorities concerned to recover appropriate rent from the occupants of the said

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government accommodation for the period during which they were in unauthorized occupation of the said accommodation.

08. In the light of the above factual and legal position, we are of the considered view that although there is no requirement of issuing any further directions, than the ones already passed by Hon'ble the Supreme Court in the two above referred cases, but, with a view to lend a sense of clarity to the entire issue, we feel that no useful purpose can be achieved by keeping this Petition pending before this Court and that the same can be disposed of in view of the directions so passed by the Apex Court of the country in the following manner:

- i. The directions passed by this Court from time to time in the matter of eviction of unauthorized/ illegal occupants from Government accommodation and recovery of rent thereof, earlier in point of time, shall be strictly implemented by the authorities concerned of the Government of the Union Territory of Jammu and Kashmir in the same spirit in which they were meant to be;*
- ii. The Chief Secretary of the Government of Jammu and Kashmir and the Secretary to Government of Jammu and Kashmir, Estates Department, shall take all possible steps for ensuring eviction of the illegal/ unauthorized occupants (former Ministers/ Legislators/ Retired Officers/ Politicians/ Political persons) from Government accommodation, including Ministerial Bungalows/ Special Houses (A-type, B-type and C-type quarters), in tune with the mandate of law provided by Hon'ble the Supreme Court in the two judgments referred to hereinabove; and*

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iii. *The Chief Secretary of the Government of Jammu and Kashmir and the Secretary to Government of Jammu and Kashmir, Estates Department, shall ensure recovery of rent/ arrears of rent from the occupants of Government accommodation for the period for which they were in authorized/ unauthorized occupation of the said accommodation as Land Revenue.*

09. We order accordingly.

10. Writ Petition (PIL) shall stand *disposed* of on the above terms.

(Vinod Chatterji Koul)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR

February 18th, 2021

"TAHIR"

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| i. | <i>Whether the Judgment is reportable?</i> | <i>Yes/ No.</i> |
| ii. | <i>Whether the Judgment is speaking?</i> | <i>Yes/ No.</i> |

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