

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14975 of 2017

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1. Chandrika Roy, Son of Late Daroga Prasad Rai, Resident of Village+Post-Bajhiyan, P.S.-Dariyapur, District-Chapra (Saran).
2. Abdul Bari Siddiqui, Son of Late Ali Ahmad, Resident of Village-Rupaspur Post-Dhamsain, P.S.-Alinagar, District-Darbhanga.
3. Dr. Abdul Gafoor, Son of Md. Jamal, Resident of Village-Bhalahi Bauharwa, P.O.-Bhalahi, District-Saharsa.
4. Shiv Chandra Ram, Son of Shri Prabhu Ram, Resident of Village-Mahua, Mukundpur, P.O.+P.S.-Mahua, District-Vaishali.
5. Anita Devi, Wife of Late Anand Mohan Singh, Resident of Village-Akashi, P.O.-Mokar, P.S.-Agrer, District-Rohtas.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Bihar, Patna.
2. Estate Officer, Building Construction Department, Bihar, Patna.
3. Bihar Legislative Assembly Patna through its Secretary.

.... Respondents

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with

Civil Writ Jurisdiction Case No.14930 of 2017

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1. Prof. Chandrashekhar @ Chandrashekhar, Son of Sri Aniruddha Prasad Yadav, resident of Quarter No. 16/6, Gazettes (An E Category of Assembly Pool), Officer's Flat, Bailey Road, Police Station-Shastrinagar, District- Patna.
2. Vijay Prakash, Son of Sri Akhileshwar Prasad Yadav, resident of Quarter No. 11, Strand Road, Police Station- Sachiwalay, District- Patna.
3. Aalok Kumar Mehta, Son of Tulsidas Mehta, resident of Quarter No. 6, Netaji Subhash Marg, Strand Road, Police Station- Sachiwalay, District- Patna.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Estate Officer, Building Construction Department, Government of Bihar, Patna.
4. The Competent Authority, Building Construction Department, Government of Bihar, Patna.
5. The Executive Engineer, Building Construction Department, Patliputra Division, Government of Bihar, Patna.
6. The Collector-cum- District Magistrate, Patna.
7. The Additional District Magistrate, Law and Order, Patna.
8. The Secretary, Bihar Legislative Assembly, Patna. Respondents



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Appearance :

(In CWJC No.14975 of 2017)

For the Petitioners : Mr. Abhinav Srivastava, Advocate.
For the State : Mr. Lalit Kishore, A.G.
For the Respondent No. 3 : Mr. P.K. Shahi, Sr. Advocate, M/S. Kaushal Kumar Singh and Niraj Kumar, Advocates.

(In CWJC No.14930 of 2017)

For the Petitioners : Mr. Bindhyachal Singh and Mr. Satya Prakash, Advocates.
For the State : Mr. Lalit Kishore, A.G.
For the Bidhan Sabha : Mr. P.K. Shahi, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

9 28-02-2018 These two writ applications have been filed, challenging the letters dated 20.09.2017 issued individually to the petitioners by the Estate Officer, Building Construction Department, Government of Bihar, having the same purport as to vacate and handover the quarters to the Building Construction Department, which were allotted earlier on 11.12.2015 under Central Pool to the petitioners in the capacity of Minister of the Government of Bihar, as they do not hold now the office of the Minister, and the permissible period of one month as being prescribed under Patna Central Pool Rules, 1986, since the cessation of their ministership had already been elapsed. The petitioners have also sought for an alternative relief, seeking direction upon the respondents for allotments of quarter under Legislative Pool as per their entitlement in terms



of the provisions of rule 13 of the Bihar Legislative Assembly Members Residence Allotment Rules, 2000, with ad-interim protection as to restrain the Building Construction Department from taking any further step in pursuance to the said letters dated 20.09.2017 until the allotment of quarters are made to the petitioners as per their entitlement.

The brief facts lie within a narrow compass. All the petitioners in both the writ applications were earlier holding the office of the Minister in the Government of Bihar, and the quarters in question were allotted to them on 11.12.2015 under the Central Pool in the capacity of Minister by the Building Construction Department, Government of Bihar. Afflux of time, changed the political Scenario in the State of Bihar and a New Coalition Government came to be formed in the State. The petitioners by virtue of cessation of their ministership, no longer remained in that capacity thus the letters dated 20.09.2017, made to challenge hereunder, came to be issued as to vacate and handover the quarters in question, to the Building Construction Department. Now the petitioners are Members of Bihar Legislative Assembly and quarters are allotted to them under the Legislative Pool in terms of 'Bihar Legislative Assembly Members Residence Allotment Rules, 2000'. The



Building Construction Department has already made allotment of the quarters in question under Patna Central Pool Rules, 1986, to the various Ministers of the New Coalition Government of the State of Bihar.

The Respondent Estate Officer, Building Construction Department, issued respective letters to the petitioners bearing different Letter No.(s) dated 20.09.2017 of the same purport for vacating the quarters and handing over its possession to the said department. Thereafter, vide Memo No. 8332-65 dated 26.09.2017, quarters being allotted to the petitioners under the Legislative Pool by the Secretariat of Bihar Legislative Assembly.

These petitioners made representations before the various authorities, raising their grievances that allotment of quarters to them under Legislative Pool by the Under Secretary, Bihar Legislative Assembly, have not been made as per their entitlement and seniority. They also made request to the authorities concerned as to make transfer of such quarters being in their occupation, under the Assembly Pool from the Central Pool, so that those may be allotted to the petitioners. While making such request regarding transfer of quarters for one pool to another, these petitioners set out some illustrations



about the transfer of such quarters from Central Pool to the Legislative Pool being made earlier by the Building Construction Department in case of some erstwhile Ministers, who were allowed by the respondents to continue in occupation of such quarters, which were allotted to them under Central Pool in the capacity of Minister and by virtue of transfer, the same converted into Legislative Pool.

The petitioners setting out such practice adopted earlier by the Building Construction Department have made their claim to hold the quarters in question by way of transfer from Central Pool to the Legislative Pool or till the allotment of quarters are made by the Secretariat of Bihar Legislative Assembly as per their entitlement and seniority. The representations of the petitioners had been sent by the Secretary of the Bihar Legislative Assembly to the Principal Secretary, Building Construction Department, Government of Bihar, for needful and necessary action.

A counter affidavit has been filed by the respondent no.3 i.e. Bihar Legislative Assembly contending therein that after coming into force of Notification No. 74 dated 16.01.2013 contained in Annexure-A/R 3, rule 13 of Bihar Legislative Assembly Members Residence Allotment



Rules, 2000, has become inoperative by virtue of the amendment brought under Bihar Vidhan Mandal (Salary, Allowance and Pension of Members) Rules 2006. By the said notification dated 16.01.2013, a sum of Rs. 28,250/- has been made payable to the Members of Bihar Legislative Assembly towards House Rent and other miscellaneous expenses i.e. Electricity Bill, Water supply, Sanitation etc. The respondents also refuted the allegations of the petitioners about non-adherence of rule 13 of said 'Rule 2000' in the matter of allotment of quarters under the Legislative Pool and thereby the allotment being not made as per their entitlement and seniority. By way of a supplementary counter affidavit, the Bihar Legislative Assembly contended that the quarters under Legislative Pool as per entitlement of the writ petitioners are not vacant, and in future, if such quarters are found vacant, in that case those shall be allotted to the petitioners on priority basis. It was also contended that on account of demolition of quarters in order to make new construction, there being scarcity of such type of quarters for which the petitioners are entitled to and have claimed for.

The respondent nos. 1 and 2 i.e., the Building Construction Department has also filed a counter affidavit



contending that since the petitioners are no longer Minister of the State Government, so they have to vacate the quarters, which are earmarked under Central Pool for Ministers of the State Government. The Building Construction Department also contended that the allotment of quarters to the Members of Legislative Assembly alike the petitioners are not made by it, therefore, it has no obligation to consider the grievance of the petitioners relating to allotment of quarters being not made as per their entitlement and seniority under Assembly Pool. It was also contended that the quarters in question are of Central Pool of the Building Construction Department and they have already been allotted to the Minister of New Coalition Government.

The petitioners filed a rejoinder to the counter affidavit of the respondent nos. 1 and 2, stating that they are entitled for 'E'-Type quarters in terms of the provisions contained in rule 13 of the Bihar Legislative Assembly Members Residence Allotment Rules, 2000, and they are residing in the same type of quarters. The petitioners further contended that if there has been any scarcity of 'D' and 'E' Types quarters, that is solely on account of arbitrary and illegal allotment made by the respondents to such persons who are not even entitled as such and a large number of 'E' Type quarters



are still laying vacant and have not been allotted to anyone. The petitioners have also filed a supplementary affidavit, contending therein that in terms of the provisions contained under rule 4 of the Bihar Government Quarters Allotment Administrative Pool Rules, 1996, the State Government can make transfer the quarters of Administrative Pool to the Patna High Court, Patna, Bihar Legislative Assembly and Bihar Legislative Council, so that the same may be allotted to the Judges of the High Court, members of Legislative Assembly and the Legislative Council. The petitioners have made specific averments in paragraph no.8 of the supplementary affidavit, which reads thus:

“8. That the highhandedness and illegal dispossession on the part of the concerned respondent authorities under the State Government would also be manifest from the fact that a number of quarters belonging to category D and category E have been allotted to Members who are otherwise not entitled for allotment of such quarters as residence in terms of the provisions contained under rule 13 of the aforesaid Bihar Legislative Assembly Members Residence Allotment Rules, 2000, description in relation to whom are as



follows:

<u>S1.No.</u>	<u>Name</u>	<u>Quarters No.</u>
01.	Sri Vidya Sagar Nishad.	12,Veer Chand Patel Path.
02.	Sri Meva Lal Chaudhary.	B-3/21, Bailey Road.
03.	Sri Sunil Chaudhary.	3/1, Bailey Road.
04.	Sri Anand Kumar Singh.	1, Mall Road.
05.	Sri Subhash Singh.	21,Harding Road.
06.	Sri Narendra Kr. Singh.	21-M, Strand Road.
07.	Sri Sanjay Singh, M.L.C.	22-M, Strand Road.
08.	Sri Sanjay Singh Gandhi,MLC.	7,Strand Road.
09.	Sri Samir Kumar Mahaseth.	5,Veerchand Patel Path.
10.	Sri Ashok Kumar Singh.	14, Veerchand Patel
		Path.
11.	Sri Ramvachan Rai.	7-M, Strand Road.
12.	Smt. Reena Yadav.	31/10, Bailey Road.
13.	Sri Rajnish Kumar.	24/10, Bailey Road.
14.	Sri Ranvir Nandan.	36, Harding Road.
15.	Sri Sanjay Jha .	8-M, Strand Road.
16.	Sri Gayanendra Kr. Gyanu.	23, Bailey Road.

The petitioners have also contended towards provisions contained under rule 13 of the Bihar Legislative Assembly Members Residence Allotment Rules, 2000, which



stipulates about entitlement of a person for allotment of 'D' and 'E' Types of quarters. It has been stated that by the impugned letters dated 20.09.2017, the petitioners have been asked to vacate and handover the possession of the quarters in question to the Building Construction Department, whereas a large number of persons, who are not even entitled to, have been in possession of the quarters belonging to 'D' and 'E' Type, but the Department never intended to get such quarters vacated from occupation of such disentitled persons. The petitioners also raised the issue that a number of quarters of 'E' Type are laying vacant and the Department has not taken any steps towards the allotment of such quarters in favour of the persons i.e. Ministers of the New Coalition Government instead of asking the petitioners as to vacate and handover the quarters. In paragraph 14 of the supplementary affidavit of the petitioners detail of 'E' Type of quarter have been given, which are still laying vacant, and further stated that the same may be allotted to the Ministers of the newly formed government but in garb of allotment of quarters of the Central Pool to the newly appointed Ministers, the Building Construction Department has issued impugned letters dated 20.09.2017.



The Building Construction Department in reply to the paragraph no. 8 of the supplementary affidavit of the petitioners, stated that the allotment as depicted in the said paragraph no. 8 has not been made by the Building Construction Department, and Rule 13 of the Bihar Legislative Assembly Members Residence Allotment Rules, 2000, has to be followed and implemented by the Bihar Legislative Assembly not by the Building Construction Department of the State Government.

The respondent no.3 filed a supplementary counter affidavit in reply to the contentions made by the petitioners. There is almost reiteration of the plea taken in the counter affidavit. In the said affidavit it has been contended that out of 16 persons named by the petitioners, only 9 (nine) are members of Legislative Assembly and among them Sri Vidya Sagar Nishad at serial no.1 and Sri Sameer Kumar Mahaseth at serial no. 9 have been allotted their respective quarters, as the Building Construction Department made recommendation in favour of them. In respect of allotment of quarters to the remaining persons named in paragraph 8 of the supplementary affidavit, there has been various stand taken by the respondent Bihar Legislative Assembly but nowhere there being



contention that such persons have been entitled to the Quarters of 'D' and 'E' Types in terms of Rule 13 of the Bihar Legislative Assembly Members Residence Allotment Rules, 2000.

For the sake of convenience and clarity the relevant rules of the Bihar Legislative Assembly Members Residence Allotment Rules are reproduced hereunder:

"13. आवासों का वर्गीकरण :—

(क) सभा-पूल के आवासों (अनुसूची 'अ') की पाँच श्रेणियाँ होंगी जिसके लिए वरीयता के आधार पर सदस्य आवंटन के पात्र होंगे।

(ख) आवासों की श्रेणी	सदस्य की पात्रता
श्रेणी – "ए"	प्रथम बार निर्वाचित / मनोनीत सदस्य
श्रेणी – "बी"	द्वितीय एवं तृतीय बार निर्वाचित / मनोनीत सदस्य ।
श्रेणी – "सी"	चतुर्थ एवं पंचम बार निर्वाचित / मनोनीत सदस्य ।

इसमें विधान सभा की समिति के सभापति भी शामिल हैं जो कम से कम तीन बार निर्वाचित मनोनीत हुआ हो।

श्रेणी – "डी"	वैसे सदस्य जो पूर्व में उपाध्यक्ष, उप-सभापति, राज्य मंत्री, उप-मंत्री एवं संसद सचिव रह चुके हो या और कम से कम तीन बार निर्वाचित मनोनीत हो चुके हो अथवा छः बार से अधिक बार सदस्य निर्वाचित / मनोनीत हुआ हो;
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श्रेणी – "ई"	वैसे सदस्य जो पूर्व में राज्यपाल, मुख्य मंत्री, केन्द्रीय मंत्री, अध्यक्ष सभापति मंत्री का पद धारण कर चुका हो या एवं कम से कम तीन बार निर्वाचित / मनोनीत हुआ हो;
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(ग) वीरचन्द पटेल पथ स्थित विधायक क्लब का दो कमरा मिलाकर श्रेणी 'ए' के एक आवास के बराबर होगा;

14. आवश्यकतानुसार राज्य सरकार द्वारा आवास उपलब्ध कराये जाने की दशा में समय-समय पर अध्यक्ष के आदेश से अनुसूची - "अ" में संशोधन किया जा सकेगा;

15.(क) किसी वर्गीकृत श्रेणी में पात्र सदस्यों की संख्या की अधिकता के अनुपात में आवासों की कमी की दशा में सदस्यों को उनके टर्म के आधार पर निम्नतर श्रेणी का आवास आवंटित किया जायेगा।

(ख) किसी वर्गीकृत श्रेणी में आवासों की संख्या के अनुपात में पात्र सदस्यों की संख्या कम रहने की दशा में सदस्यों को उनके टर्म के आधार पर उच्चतर श्रेणी का आवास आवंटित किया जायेगा।

16.(क) इस नियमावली में अन्यथा उपबंधित नियमों को छोड़कर जो सदस्य जिस श्रेणी के आवास का पात्र हो, उसे उच्चतर श्रेणी का आवास आवंटित नहीं किया जाएगा।

(ख) नियम 13 के अधीन जो सदस्य जिस श्रेणी के आवास का पात्र हो, यदि वह उससे निम्नतर श्रेणी का आवास, जो उपलब्ध हो, लेना चाहता हो और इसके लिए उसने लिखित सूचना दी हो तो उसे नियमावली में उपबंधित नियमों के अधीन निम्नतर श्रेणी का आवास आवंटित किया जायेगा।

(ग) समान श्रेणी के आवास में रहनेवाला कोई सदस्य यदि आपसी सहमति के आधार पर आवास का विनियम करना चाहे, तो उसे ऐसा करने की अध्यक्ष द्वारा अनुमति दी जायेगी।"

Taking into consideration the facts and circumstances in totality as referred above, especially the plea taken by the petitioners that they are entitled for 'E' Type of Quarter under the Legislative Pool, whereas allotment of quarters by the



Secretariat of Bihar Legislative Assembly under the Legislative Pool, have not been done as per their entitlement and seniority, therefore, they should be allowed to remain in occupation of the quarters in question, so long as the allotment of quarters be made under the Legislative Pool as per their entitlement in terms of the provisions contained under Rule 13 of Bihar Legislative Assembly Members Residence Allotment Rules, 2000. I may also take notice of the alternative plea taken by the petitioners that the quarters in question earlier allotted to them under the Central Pool may be transferred under the Legislative Pool, and in support of such plea they have set out some illustrations. On the basis of the plea and submissions as noticed above, the petitioners have made prayer as to allow them to continue in occupation of the quarters in question and also to quash the letters dated 20.09.2017 issued individually to the petitioners by the Estate Officer, Building Construction Department, Government of Bihar.

In view of the undisputed fact that the petitioners are no longer remained in capacity of Ministers of the Government of Bihar and the quarters in question earlier allotted to them under the Central Pool by the Building Construction Department have already been allotted to the Ministers of New



Coalition Government and the permissible period of one month prescribed under Patna Central Pool Rules 1986, since the cessation of their ministership has also been elapsed, therefore, in my considered opinion, the petitioners have no vested or residuary right to remain in occupation of the Quarters earlier allotted them under the Central Pool in capacity of the Minister of the State Government.

Therefore, the letters dated 20.09.2017 issued individually to the petitioners by the Estate Officer, Building Construction Department, Government of Bihar, do not require any interference of this Court. However, the petitioners shall be granted 15 days further time by the Building Construction Department, Government of Bihar, as to vacate the said quarters in question and it shall be incumbent also upon the petitioners to vacate and handover the quarters within the said period.

Now coming to the next issue and taking note of the plea advanced by the petitioners that a large number of persons who are not even entitled to, have been in possession of the quarters of 'D' and 'E' Types under Legislative Pool on the basis of arbitrary allotment made by the respondents. In support of the said plea, the petitioners have brought the names



of the persons on record who are disentitled under relevant rules to remain in occupation of the same. I find no specific rebuttal in respect of the contention of the petitioners regarding such arbitrary allotment being made in de hors of the relevant Rules either by the respondent Building Construction Department or by the Bihar Legislative Assembly. Therefore, in the ends of justice, the Secretary, Bihar Legislative Assembly is directed to find out such illegal allotment of quarters being made under Legislative Pool to the persons, who are disentitled for the same and thereafter take necessary steps in accordance with law as to get such quarters vacated in order to make allotment of the same to the petitioners as per their entitlement. It is made clear that the said exercise must be completed within 60 days from today. The petitioners will be at liberty to make representation before the concerned authority indicated above, if so advised.

It is also observed that while finding out the issue of disentitlement, unauthorized occupation and illegal allotment in terms of the relevant rules, the Secretary, Bihar Legislative Assembly shall examine the respective entitlement of the occupants/allottees with reference to the types of quarter. It is also made clear that inter-se entitlement of the members of



Legislative Assembly, who are entitled for the same type of quarter under the relevant rules, cannot be a subject of such exercise as directed above by this Court for the simple reason that the individual claim of the petitioners regarding allotment of quarters under Assembly Pool as per their entitlement under the relevant rules has accrued incidentally, on account of cessation of their ministership with the formation of a New Coalition Government, therefore, this Court deems necessary to restrict the directions made herein above as not to examine the inter se entitlement of the petitioners with others members of Bihar Legislative Assembly who being entitled for the same type of quarter under the Assembly Pool, otherwise there would be a possibility to vitiate the earlier allotments of quarter made to the entitled persons even, which might have been done taking stock of prevalent situation of the relevant time.

In terms of the aforesaid observations and directions, both the writ applications are therefore, accordingly, disposed of.

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(Sudhir Singh, J)

