

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.325 of 2018

IN

Civil Writ Jurisdiction Case No. 14930 of 2017

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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 Yasdav, 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.

.... Appellants

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

With

Letters Patent Appeal No. 326 of 2018

IN

Civil Writ Jurisdiction Case No. 14975 of 2017

=====

1. Chandrika Roy, Son of Late Daroga Prasad Rai, Resident of Village+Post-Bajhiyan, P.S.-Dariyapur, District-Chapra (Saran)
2. Dr. Abdul Gafoor, Son of Md. Jamal, Resident of Village-Bhalahi Bauharwa, P.O.-Bhalahi, District-Saharsa
3. Anita Devi, Wife of Late Anand Mohan Singh, Resident of Village-Akashi, P.O.-Mokar, P.S.-Agrer, District-Rohtas

.... Appellants

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
4. Abdul Bari Siddiqui, Son of Late Ali Ahmad, Resident of VillageRupaspur. Post-Dhamsain, P.S.-Alinagar, District-Darbhanga
5. Shiv Chandra Ram, Son of Shri Prabhu Ram, Resident of VillageMahua, Mukundpur, P.O.+P.S.-Mahua, District-Vaishali

.... ... Respondents

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Letters Patent of the Patna High Court-Clause 10—Constitution of India- Art.14- Concept of Negative Equality-Bihar Legislative Assembly Members Residents Allotment Rules, 2000- Rule 13-challenge to the order of writ court wherein the writ court refused to interfere with the impugned letters dated 20.09.2017 whereby and whereunder the Appellants, by virtue of cessation of their ministership in the government, were directed to vacate the quarters and to hand over the same to the concerned department -plea that there are quarters in D & E-type which have been occupied by some members of the Legislative Assembly who are not entitled to get or occupy those quarters but have been illegally and arbitrarily allotted by the department.

Held:

Appellant's plea of negative equality is not sufficient to assert their right to continue to occupy the quarters in question as the appellants are unable to demonstrate any legal right to continue with the possession of those quarters which are admittedly falling in the Central Pool and are allotted to the ministers only- writ court has already addressed the grievance of the appellants as regards the illegal and arbitrary allotment having been made to certain ineligible persons as have been claimed by the appellants-appeals dismissed. (Para 8, 11)

AIR 2009 SC 34, AIR 2010 SC 1937..... Relied upon.

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5. Shiv Chandra Ram, Son of Shri Prabhu Ram, Resident of Village-Mahua, Mukundpur, P.O.+P.S.-Mahua, District-Vaishali

.... Respondents

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Appearance :

For the Appellants	:	Mr. Abhinav Srivastava, Advocate
For the Respondents	:	Mr. Raj Ballabh Prasad Yadav- AAG11
For the Resp. No. 3 & 8	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. Kaushal Kr. Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 14-03-2018

Challenge in these two Letters Patent Appeals is to the common order dated 28.02.2018 passed by learned Writ Court in CWJC No. 14975/2017 and CWJC No. 14930/2017. The writ court has been pleased to declare that the letter dated 20.09.2017 issued individually to the writ petitioners by the Estate Officer, Building Construction Department Government of Bihar, did not require any interference by the court. The writ court however granted 15 days further to the



petitioners to vacate the quarters in question and handing over of the same to the concerned Building Construction Department of the Government of Bihar.

2. The writ court while considering the submissions of the writ petitioners that a large number of persons who are not even entitled to, have been in possession of the quarters of D & E types under Legislative Pool on the basis of arbitrary allotment made by the respondents found that there was no specific rebuttal on behalf of the respondents in respect of the contention of the petitioners regarding such arbitrary allotments being made *de hors* to the relevant rules, therefore, in the ends of justice, the Secretary, Bihar Legislative Assembly has been directed to find out such illegal allotment of quarters being made under legislative pool to the persons who are not entitled for the same and thereafter to take necessary steps in accordance with law to get vacated such quarters in order to make allotment of the same to the petitioners as per their entitlement. For this purpose the court has granted 60 days time to the concerned respondent.

3. In the changed circumstances, the learned writ court restricted the Secretary, Bihar Legislative Assembly from



examining the *inter se* entitlement of the members of the Legislative Assembly who are entitled for the same type of quarter under the relevant rules, as according to the learned writ court, the same cannot be a subject of such exercise for the simple reason that individual claim of the petitioners regarding allotment of quarters under assembly pool as per their entitlement under the relevant rules has accrued incidently, on account of cessation of their Ministership in the State Government after formation of a new coalition government in the State.

4. Mr. Abhinav Shrivastava, learned counsel representing the appellants in both the cases submits that the appellants are not claiming any right to possess the same quarter in which they are presently residing, rather the grievance of the appellants is that while the category of the E-type quarters are still available and/or being occupied by those who are not entitled for same but because of the arbitrary and illegal allotments made by the respondents, the appellants are being asked to vacate their respective quarters. Learned counsel submits that the appellants are entitled for E-type quarters in terms of the provisions contained in Rule 13 of the



Bihar Legislative Assembly Members Residents Allotment Rules, 2000 (hereinafter referred to as the "Rules, 2000") and presently they are residing in the same type of quarters.

5. Learned counsel submits that a large number of quarters belonging to category D & E have been allotted to the members who are otherwise not entitled for the allotment of such quarters in terms of the aforesaid provisions of Rule 2000. The attention of this court has also been drawn to the detailed particulars of those occupants which has been taken note of by the learned writ court in the impugned order.

6. On the other hand, Sri Lalit Kishore, learned Advocate General as well as Sri P.K. Shahi, learned Senior Advocate have opposed the submissions of learned counsel for the appellants, as according to them, the petitioners are no longer ministers in the State Government, so they have to vacate the quarters which are earmarked under Central Pool for ministers of the State Government. It is also submitted that the allotment of quarters to the members of the Legislative Assembly are not allotted by the Building Construction Department. The Court has been informed that the quarters in question are Central Pool of the Building Construction



Department and all the quarters have already been allotted to the ministers in the new coalition government.

7. Learned Advocate General as well as Sri P.K. Shahi, learned Senior Advocate contended that the grievance of the appellants that the quarters of D-type & E-Type quarters have been illegally and arbitrarily allotted to those who are not entitled for the same and that similar E-type quarters are still available cannot be allowed to be taken as a ground to continue with the possession of the quarters which are in the Central Pool earmarked for the ministers. It is submitted that the appellants do not deny the fact that they were allotted these quarters from the Central Pool only after they were sworn as ministers in the old coalition government of the State of Bihar.

8. We have considered the rival submissions at the bar. It is not in dispute that these quarters were allotted to the appellants when they were sworn as ministers in the old coalition government. The appellants, by virtue of cessation of their ministership in the government have been called upon to vacate the quarters and to hand over the same to the concerned department. The concerned department has



already allotted those quarters to the ministers in the newly formed coalition government. It is evident from the submission of learned counsel representing the appellants that they are not claiming any legal right to continue to occupy the quarters of the Central Pool which are earmarked for the ministers, their whole argument is based on the concept of what is known as negative equality. It is the contention of the appellants that there are quarters in D & E-type which have been occupied by some members of the Legislative Assembly who are not entitled to get or occupy those quarters but have been illegally and arbitrarily allotted by the department. Thus, on the plea of negative equality alone the appellants are trying to assert their right to continue to occupy the quarters in question.

9. We are reminded of the judgments of the Hon'ble Supreme Court in the case of **Videsh Sanchar Nigam Ltd. v. Ajit Kumar Kar** reported in **AIR 2009 SC 34**, the relevant part of paragraph 27 is quoted hereunder for ready reference:

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"27. It is well settled that DR is a matter of grace to the Government Servants and not a vested right and



hence a claim against the Government for the grant of such allowance at particular rate is not justiciable. The grant of DR at such rates and subject to such conditions is the prerogative of the Central Government in terms of Rule 55-A of the CCA (Pension) Rules, 1972. Rule 44 of FR to the grant of DA imposed no duty on the State to Grant it and it merely confers a power on the State to grant compassionate allowance at its own discretion and no mandamus or any other writ or direction, therefore, should be issued to compel the exercise of such a power as there is no right in the employee which is capable of being protected or enforced. [see State of M.P. V. G.C. Mandawar (AIR 1954 SC 493)].”

10. We would also take note of the another judgment of the Hon’ble Apex Court on the proposition of negative equality in the case of **Fuljit Kaur v. State of Punjab** reported in **AIR 2010 SC 1937**; the following paragraph of the Hon’ble Apex Court’s judgment are quoted thus: -

“13. The respondent cannot claim parity with D.S. Laungia (supra) in view of the settled legal proposition that Article 14 of the Constitution of India does not envisages for negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group



of individuals or a wrong order has been passed by a judicial Forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Art.14 cannot be stretched too far otherwise it would make function of the administration impossible. [vide Coromandel Fertilizers Ltd. v. Union of India & Ors., AIR 1984 SC 1772; Panchi Devi v. State of Rajasthan & Ors. (2009) 2 SCC 589: (AIR 2008 SC (Supp) 780); and Shanti Sports Club & Anr. v. Union of India & Ors. (2009) 15 SCC 705]: (AIR 2010 SC 433 : 2009 AIR SCW 6953).”

11. We have found that the learned writ court has rightly refused to interfere with the impugned letters dated 20.09.2017 issued individually to the writ petitioners by the Estate Officer, Building Construction Department, Government of Bihar. The appellants are unable to demonstrate any legal right to continue with the possession of those quarters which are admittedly falling in the Central Pool and are allotted to the ministers only. The learned writ court has already addressed the grievance of the appellants as regards the illegal and arbitrary allotment having been made to certain ineligible



persons as have been claimed by the appellants.

12. We see no reason to interfere with the judgment of the learned writ court. Both these Letters Patent Appeals, being devoid of merit, are, accordingly, dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	NA

