



**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) PIL No. 17/2020
CM No. 3100/2020
(Through Video Conferencing)

Prof. S. K. Bhalla ...Petitioner(s)

Through: Mr. S. S. Ahmed, Advocate.
(On video conferencing from office at Jammu)

v/s

The Union Territory of Jammu and
Kashmir and others Respondent(s)

Through: Mr. Aseem Sawhney, AAG
(On video conferencing from office at Jammu)

CORAM:

HON'BLE THE CHIEF JUSTICE

(on Video Conference from residence at Jammu)

HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

(on Video Conference from residence at Jammu)

ORDER

05.12.2020

1. In the instant case, we are considering the matter of continuation of occupancy of official residences by former Chief Ministers/former Ministers/MLAs/MLCs/Political Persons/MPs/Bureaucrats, etc. who have long retired. The Report dated 2nd October 2020 filed by Mr. Aseem Sawhney, Id. AAG on behalf of the Estates Department, have cited the following instances of former advocates and prosecutors which includes Ch. Mohd. Shabir, Advocate, 572 TSK; Ajaz Ahmad Tak, Public Prosecutor; Mr. Shamim Ali, Advocate, Qtr. No.J-52, Jawahar Nagar; and Mr. Javid Ahmad Mir, Advocate, Qtr. No.5-D. S. F. Road.

2. It has been submitted by Mr. Aseem Sawhney, Id. AAG that the matter of persons who have been given protection on account of their security perspective are also occupying official accommodation.



3. In response to our query, we are informed that there is no requirement in law for the government to provide accommodation as well to a person who is being provided a security cover.
4. In any case, even if accommodation was required to be provided in exceptional circumstances, the accommodation of a former chief minister/minister or a retired bureaucrat cannot be the same after his ceasing to occupy the office as he was occupying when he was in office.
5. The list which has been enclosed is hopelessly incomplete inasmuch as it does not inform the date on which the persons cease to occupy the position/office which entitle them to occupy accommodation.
6. The respondents also do not disclose whether these persons are paying occupancy charges/licence fee/lease money.
7. We are also not told as to whether these persons are bearing the costs; paying the electricity/water bills for the premises which are occupied.
8. Judicial notice can be taken of the fact that the accommodation which is given to a chief minister would be of much larger sizes keeping in view the needs of the office than what such person would occupy privately. The security cover of maintaining official accommodation would therefore be much larger than what would be needed for providing security in a private house.
9. The respondents shall inform this court about the monthly security expenses which have been incurred on the property which is under continued illegal occupation after demitting office by the persons whose lists are enclosed.
10. The respondents shall also inform this court the amount which has been incurred by the govt. of provision of electricity and water.



11. The respondents shall in the tabulation also enclose details of the expenses incurred and shall be informed as to whether farash/servant/gardner/supervisor etc has been provided at these residences; the numbers thereof and the monthly expenses incurred on provisions of such facilities to these persons.

12. We may once again remind the respondents of the judgments of the Supreme Court reported at *(2018) 6 SCC 1, Lok Prahari through its General Secretary v. The State of Uttar Pradesh & others*; where similar issue came up for consideration before Hon'ble the Supreme Court. It was observed thus:

“38. Natural resources, public lands and the public goods like government bungalows/official residence are public property that belongs to the people of the country. The ‘Doctrine of Equality’ which emerges from the concepts of justice, fairness must guide the State in the distribution/allocation of the same. The Chief Minister, once he/she demits the office, is at par with the common citizen, though by virtue of the office held, he/she may be entitled to security and other protocols. But allotment of government bungalow, to be occupied during his/her lifetime, would not be guided by the constitutional principle of equality”.

13. In the aforesaid judgment, even the attempt made by the State Legislators to legalize the allotment of government accommodation to the former chief minister by enacting law was set at naught by the Supreme Court as the provision was struck down.

14. The judgment of Division Bench of this Court in *2019 (5) JKJ[HC] 190, Thakur Randhir Singh v. State of J&K* and others, and *LPAOW No.08/2018* titled as *Ajay Kumar Sadhotra v. State of J&K and others*, decided on 24.04.2018 authored by one of us (R. Bindal, J), it has been observed thus:

“17. In the case in hand, the appellant has not been able to refer to any Act, Rules or Guidelines in terms of which he was allotted the accommodation in question or can retain the possession thereof. Hence, no right as such has been established.



18. *The argument raised regarding equity considering the age of the appellant and his wife also has to fail in the court of law. It is well known that 'hard cases make bad law'. In case, any direction is issued in the case in hand for allowing the appellant to continue in possession of the residential accommodation in question that would be laying down law. The petitioner may raise one ground but once the gate is opened, there may be numerous grounds on which such a claim could be made. Such a course has already been deprecated by Hon'ble the Supreme Court. Reference can be made to recent judgment of Hon'ble the Supreme Court delivered on 29.08.2019, in Civil Appeal No.6669 of 2019, titled as [The State of Tamil Nadu and others v. G. Hemalathaa and another](#). Relevant paras therefrom are extracted below:*

"10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In [Umesh Chandra Shukla v. Union of India](#), Venkataramiah, J., held that:

"13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

11. Roberts, CJ. in [Caperton v. A.T. Massey](#) held that:

"Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under [Article 142](#) of the Constitution which shall not be treated as a precedent also does not appeal to us."

(Emphasis supplied)



19. Hence, this court would be violating the law in case any direction is issued merely on equity, which runs contrary to law.

20. It had transpired at the time of hearing that the appellant has three daughters, who were well settled in life in India and abroad and his wife retired as Principal of Government College for Women, Jammu. Hence, there are well off in life.

21. For the reasons mentioned above, we do not find any merit in the present appeal. The same is accordingly dismissed. However, considering the age of the appellant, we find it reasonable to grant six months' time to the appellant to handover vacant physical possession of the flat in dispute to the competent authority.

22. Before parting with the order, we hope and expect that the authorities in the State shall abide by the statement made by the then learned Advocate General, as referred to above and get all the houses vacated, which are in possession of the persons not entitled thereto. This will build confidence of the people in the Rule of Law.

23. A copy the order be sent to the Chief Secretary of the State of Jammu and Kashmir for information and compliance.”

15. We are informed by Mr. B. A. Dar, Sr. AAG that some of the occupants are occupying the premises under shield of interim orders of stay obtained by them from different courts. Any stay order which is in violation of the pronouncement of the Supreme Court in **Lok Prahari** (*supra*) cannot be of any benefit to the occupants. The law laid down by the Supreme Court binds all courts and all persons and would prevail over any interim order which may have been passed in the proceedings initiated for protecting illegal and unauthorized occupancy of govt. accommodation.

16. Mr. Aseem Sawhney, Id. AAG has brought to our attention the provisions of the Jammu and Kashmir Estates Department (Allotment of Government Accommodation) Regulations, 2004. These regulations do not



enable any person to continue to occupy official accommodation after they cease to be in office.

17. We shall consider passing appropriate orders regarding recovery of the charges for the unauthorized occupancy, electricity, water, elaborate security services necessitated at these offices/residences; expenses incurred on the manpower which had been deployed at these official accommodations.

18. The respondents shall file a separate tabulation giving the names of the person in occupation; property and also the charges of maintenance, repairs, white-washing which have been incurred on each of these premises after these officers have demitted office.

19. Public money has been expended in violation of any possible tenet of law by these unauthorized occupants. The accommodation is badly needed for occupation by serving officers. This is a completely intolerable situation.

20. All the details which we have sought above shall be furnished on affidavit within a period of two weeks from today.

21. Mr. B. A. Dar, Sr. AAG and Mr. Aseem Sawhney, Sr. AAG shall provide complete details of all cases wherein the occupancy of govt. property has been protected. The details shall be filed on our record and also furnished to the Registrar Judicials who shall ensure that all these petitions are also listed along with present writ petition after obtaining orders on the administrative side.

22. The respondents shall serve a copy a copy of the report dated 2nd October 2020 and copy of this order on all the persons who are in illegal occupation of the government accommodation.



23. The service of this order and report dated 2nd October 2020 shall be treated as service of notice upon the occupants.

24. List on 22nd December 2020.

(RAJESH BINDAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
05.12.2020
Raj kumar

