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LOK PRAHARI

v.

STATE OF U.P. & ORS.

(Writ Petition (Civil) No. 657 of 2004)

B

AUGUST 01, 2016

[ANIL R. DAVE, N.V. RAMANA AND R. BANUMATHI, JJ.]

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Government bungalows – Overstay by former CMs of Respondent-State in the allotted govt. bungalows after demitting the office, in absence of any special statutory provision – Respondent-State in terms of the 1997 Rules allotted govt. bungalows to former CMs for residence for life – Petitioner challenged the 1997 Rules on the ground that it was in contravention of provisions of the 1981 Act which permitted Ministers (including the CM) to retain official premises only for 15 days after demitting the office –

D *Held: The 1981 Act was enacted by Respondent-State in exercise of its power u/Art.164 r/w Entry 40, List II of VIIth Schedule of the Constitution – The Act deals with salaries and perquisites to be given to the Ministers and hence the said provisions are statutory – The 1997 Rules are not statutory rules and are only in the nature of executive instructions – The Act provides that all the ministers are*

E *entitled to official residence without payment of any rent and can occupy the said residence for 15 days after completion of tenure while the 1997 Rules permit the former Chief Ministers to occupy government bungalows for life – Hence, the 1997 Rules so far not in consonance with provisions of the 1981 Act are bad in law – The*

F *1997 Rules are also violative of Art. 14 more so when no other dignitary holding constitutional post is given such a facility – Concerned respondents shall hand over the possession of the bungalows occupied by them within two months – Ex-Chief Ministers Residence Allotment Rules, 1997 – Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 –*

G *Constitution of India – Art.164.*

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Public property – Duty of State – Allotment of government bungalows to private trusts/societies without adequate consideration, in absence of any special statutory provision – Held: State has no right to fritter away government property in favour of

private persons/bodies without any adequate consideration – Allotments made in absence of any statutory provision to be treated as cancelled – State shall take possession of such premises as soon as possible and recover appropriate rent. A

Administrative law: Variance in statutory provisions vis-à-vis executive instructions – Held: When the rules/regulations/executive instructions are contrary to any statutory provision, the statutory provision would prevail and the rules or executive instructions, so far as contrary to the statutory provisions, would fail. B

Allowing the petition, the Court

HELD: 1. The petitioner has locus standi to file the writ petition. The petitioner society have no malafide intention behind filing the present petition and none of them has any personal grudge against any of the occupants of government premises or any of the former Chief Ministers. Petitioner society is challenging the validity of 1997 Rules, whereby government bungalows have been allotted to former Chief Ministers, especially when there is an acute shortage of government premises, hence, it cannot be said that petitioner has no locus standi to file the present petition. [Para 25] [1036-C-E] C D

Fertilizer Corporation Kamgar Union (Regd) Sindri and Ors. v. Union of India and Ors. (1981) 1 SCC 568 : 1981 (2) SCR 52; S.P. Gupta v. Union of India and Anr. (1981) Supp SCC 87 : 1982 SCR 365 – followed. E

2.1. Upon perusal of Section 2 (e) of the 1981 Act, it is clear that the term “minister” includes the Chief Minister and Section 4 (1) (a) of the Act permits a Minister to retain his residence for 15 days after he/she demits his/her office. In view of such special provisions made, the Chief Minister is not entitled to privileges and protection as are available to the President and Vice-President of India, who are entitled to an official residence for life.[Para 31] [1039-C] F G

2.2. 1981 Act deals with salaries and perquisites to be given to all the Ministers, including the Chief Ministers. The said provisions are statutory, but 1997 Rules are not statutory and they are only in the nature of executive instructions. If there is any variance in statutory provision and executive instruction, H

A statutory provision would always prevail. When 1981 Act enables the Chief Minister to have residential accommodation only during his tenure and for 15 days after completion of his tenure, 1997 Rules providing for an accommodation for life to the Chief Minister cannot be said to be legal and valid. For this sole reason, validity of 1997 Rules cannot be upheld. Moreover, no other dignitary holding constitutional post is given such a facility. For afore-stated reasons, 1997 Rules are not fair, and more so, when the subject of “salary and allowances” of the ministers, is governed by Section 4 (1) (a) of 1981 Act. [Paras 34 to 36] [1040-C-F]

C *Shiv Sagar Tiwari v. Union of India* (1997) 1 SCC 444 : 1996 (10) Suppl. SCR 925 – held inapplicable.
SD Bandi v. Karnataka SRTC (2013) 12 SCC 631 : 2013 (17) SCR 1 – relied on.

D 2.3. 1981 Act is a statute enacted by Respondent-State under its power under Article 164 read with Entry 40 of List II of Seventh Schedule of the Constitution. Thus, there is a statutory provision with regard to perquisites to be given to the ministers, including the Chief Minister under Section 4 of the said Act. 1997 Rules are not statutory rules but in nature of administrative or executive instructions. The Rules are definitely in contravention of statutory provisions and thus bad in law so far as in contravention of statutory provisions. [Paras 39 and 40] [1041-D, F-G]

Case Law Reference

	1981(2) SCR 52	followed	Para 26
F	1982 SCR 365	followed	Para 26
	1996 (10) Suppl. SCR 925	held inapplicable	Para 37
	2013 (17) SCR 1	relied on	Para 38

G CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 657 of 2004.

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

Satya Narain Shukla, General Secretary, Lok Prahari, Petitioner-in-person.

H P. N. Misra, K. Radhakrishnan, Sr. Advs., Irshad Ahmad, AAG,

Abhishth Kumar, Somraj Choudhary, Ms. Sunita Sharma, Shail Kumar Dwivedi, Siddharth Krishna Dwivedi, Manish Kumar, Chandan Kumar, (For Gopal Singh), Ms. Vanshaja Shukla, Mishra Saurabh, C. D. Singh, Anshuman Shrivastava, Ms. Sandhya Goswami, Anil Nag, B. S. Banthia, Ejaz Maqbool, Jatinder Kumar Bhatia, Kishan Datta, M. C. Dhingra, Praveen Swarup, Raj Singh Rana, Shiva Pujan Singh, V. K. Verma, Ms. Mridula Ray Bharadwaj, Ms. Niranjana Singh, Adv. for the Respondents. A B

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. A short but serious and significant issue has been raised in this public interest litigation, which pertains to government bungalows occupied by former Chief Ministers of the State of Uttar Pradesh. C

2. The Petitioner is a Society registered under the Societies Registration Act with objects pertaining to public welfare, etc. and the petition has been filed through its General Secretary, who appeared in person. He is a former officer of All India Services and has ventilated grievances which are definitely serious one, touching the State exchequer and conduct of the persons who were Chief Ministers of the State of Uttar Pradesh. The main submission made in the petition is that several former Chief Ministers had occupied Government bungalows of Type VI even after demitting office of the Chief Minister for several years without any right to retain the same, which is not only immoral and illegal, but it also does not befit persons who were Chief Ministers of the State. D E

3. At the time when the petition was admitted on 13th January, 2006, this Court had passed the following Order: F

“The challenge in this petition is to the validity of Ex-Chief Ministers Residence Allotment Rules, 1997. The petitioner claims it to be illegal, malafides and colourable exercise of power. It is also claimed that the Rules, which are non-statutory, could not have been framed in the light of the provisions of the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981. G

On the other hand, it has been, inter alia, contended on behalf of the State that in the federal structure, there is no bar if provision is made for allotment of residential accommodation to ex-Chief Ministers of the State. It is also contended that the matter deserves H

A to be examined further in the light of the provisions of the President's (Emoluments and Pension) Act, 1951. The further contention is that the former Presidents and the Prime Ministers are also allotted residential accommodation after they cease to hold those positions.

B In our view, the writ petition raises important questions, which require deeper consideration. Accordingly, while issuing Rule, we direct that notice be issued to the Union of India and other State Governments/Union Territories."

C Thus, we have to examine whether the provisions of Ex-Chief Ministers Residence Allotment Rules, 1997 (hereinafter referred to as 'the 1997 Rules') are valid or contrary to the provisions of the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 (hereinafter referred to as the 'the 1981 Act').

D 4. As several former Chief Ministers had occupied government bungalows, a petition, in the nature of a Public Interest Litigation, being Writ Petition No.1313 (M/S) of 1996 was filed before the High Court of Judicature at Allahabad by Janhit Sangathan, a registered Society of retired senior Civil Servants. At the time when the said petition was filed, there were no Rules or Regulations permitting former Chief Ministers to occupy government bungalows.

E 5. In the aforesaid circumstances, the State of U.P. i.e. respondent no.1 framed the 1997 Rules during the pendency of the said petition. The 1997 Rules are not statutory Rules and they are in the nature of executive instructions. The 1997 Rules provide that former Chief Ministers should be provided government bungalows for their residence for the life and upon their death, the family members occupying the bungalow should hand over vacant possession of the bungalow within 3 months from the date of the death of the former Chief Minister and failing which they would be liable to pay penal rent. The 1997 Rules do not provide for allotment of bungalows either to the family members of the former Chief Ministers or to any Trust or Society concerned with any former Chief Minister.

G 6. As the 1997 Rules were framed during the pendency of Writ Petition No.1313 (M/S) of 1996, the aforesaid Writ Petition was amended so as to challenge the validity of the 1997 Rules on the ground that the 1997 Rules were not only unconstitutional and illegal, but were

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also violative of the provisions of Article 14 of the Constitution of India. A

7. At the time of hearing of the said petition, a statement was made by the learned Additional Advocate General appearing for respondent no.1 that only Type V bungalows would be allotted to the former Chief Ministers and the former Chief Ministers will have to make some payment of rent for occupying such bungalows. Some other provisions with regard to expenditure to be incurred for maintenance of the bungalows were also referred to by him. The learned Additional Advocate General had further submitted that possession of bungalows allotted to private trusts or organizations would be taken back by the government as there was no provision with regard to making allotment of government bungalows to such trusts/societies/organizations etc. Ultimately, the petition was disposed of on 20th August, 2001 without deciding the validity of the 1997 Rules in view of the fact that the aforesaid statements were made by the learned Additional Advocate General on behalf of Respondent no.1-State. It was also directed that the family members of the former Chief Ministers, who were occupying such premises even after the death of the former Chief Minister will have to vacate the premises within a particular period. B
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8. It further appears that in spite of the statement made by the learned Additional Advocate General, the government did not do the needful for getting possession of the bungalows occupied by the family members of the deceased former Chief Ministers and in the aforesaid circumstances, the present writ petition was filed with the following main prayer : E

“(1) declare the Ex-Chief Ministers Residences Allotment Rules, 1997 (Annexure P-4 to the WP) illegal being malafides, colourable exercise of power and against the provisions of the Constitution.” F

It has also been prayed that rent payable by the unauthorized occupants of such bungalows be recovered and those who were occupying bungalows allotted to former Chief Ministers be evicted.

9. It has also been prayed that certain private trusts or organizations or societies, who are occupying government bungalows be also directed to vacate the bungalows. G

10. It is pertinent to note that after disposal of Writ Petition No.1313 (M/S) of 1996, respondent no.1-State framed rules titled as “The H

A Distinguished Personality Trust Allotment of Houses in Lucknow under the Control of State Estate Department Rules, 2003” (hereinafter referred to as ‘the 2003 Rules’) under Office Memorandum dated 31.12.2003 to deal with lease of houses for the use of any social service trust set up in the name of a distinguished person who is known as a National hero. In addition, a policy decision dated 4th July, 2005 was taken regarding allotment of premises at Lucknow, under the administrative control of Respondent No.2 department, to certain NGOs/Trusts, Non-Government persons and employees’ Union, who were not included under the 2003 Rules.

C 11. In pursuance of the aforesaid 2003 Rules, one of the respondents had been allotted a bungalow on lease for 30 years, which was renewable for a further period of 90 years at the yearly rent of rupee 1/- by virtue of Office Memo dated 22nd January, 2004. Similarly, several other bungalows had also been allotted on lease to different bodies, by and large, on similar terms in pursuance of the aforesaid 2003 Rules.

D 12. The short submissions made by the petitioner were to the effect that after demitting the office as a Chief Minister, a person has no right to occupy any Government bungalow for his residence and yet several persons named in the petition, who were Chief Ministers of the State of Uttar Pradesh had continued to occupy Government bungalows, which are maintained by the Government by spending enormously huge amount every year. In absence of any statutory provision, according to the petitioner, continued occupation or occupation of another house after demitting the office of a Chief Minister is illegal and therefore, they should be asked to vacate the bungalows occupied by them and should also be asked to pay notional rent for the unauthorized occupation. Another submission made by the petitioner was that even if some rules and regulations are made for allotting residential bungalows to former Chief Ministers, it would be discriminatory and violative of the provisions of Article 14 of the Constitution of India for the reason that other dignitaries like the Chief Justice of the State or Principal Chief Secretary or Speaker of the Assembly etc. are not given such facilities. Giving residential bungalows to some of the persons holding constitutional position in the State, by ignoring other almost similarly situated persons would not be proper and even if there is any regulation empowering the Government to allot residential bungalows to former Chief Ministers,

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the Rules or Regulations made to that effect cannot be said to be legal and Constitutional. A

13. Another submission made by the petitioner was that the Government authorities did not act as per the real spirit with which judgment in the case of **Shiv Sagar Tiwari v. Union of India** (1997) 1 SCC 444, was delivered by this Court. As per observations made in para 72 of the said judgment, keeping in view the very high constitutional position occupied by the President, Vice-President and Prime Minister, they should be accommodated in government premises after they demit their office, so that problem of suitable residence does not trouble them in the evening of life. Observations in substance are to the effect that except the aforestated dignitaries, nobody else should be provided government accommodation after he or she demits his/her office. By not following the aforestated observations made by this Court in the matter relating to allotment of accommodation to former Chief Ministers, the Government authorities have shown a little respect to this Court and the law of the land. B
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14. Another submission was to the effect that several trusts and organizations had been allotted government bungalows without any justifiable reason. In the case of **Shiv Sagar Tiwari** (supra), this Court has observed that government bungalows should not be allotted to private organizations. Of course, the judgment delivered in the case of **Shiv Sagar Tiwari** (supra) deals with bungalows situated in Delhi but situation in Lucknow is quite similar because there is also acute shortage of residential accommodation for government employees in the said city. According to the petitioner, government employees/officers, who are entitled to government accommodation by virtue of their service conditions are not allotted residential quarters due to shortage of government premises and therefore, they are constrained to occupy private premises, for which the government has to pay a sizeable amount by way of house rent allowance to the concerned government employees/officers. According to the petitioner, on one hand there is an acute shortage of government premises and the government employees are constrained to occupy private premises for which a hefty amount is paid by the government by way of allowances and on the other hand the government bungalows are given to private trusts or organizations without getting any rent or by getting nominal rent of rupee 1/- or so per month. Thus, according to the petitioner, this adversely affects the State exchequer E
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A and therefore, possession of all bungalows which have been allotted to private organizations and trusts or such parties without charging adequate market rent must be taken back by the government in the interest of the public at large.

B 15. So as not to lengthen this judgment, we are not referring to the names of the persons/former Chief Ministers and trusts and private organizations to whom government bungalows have been given without getting adequate market rent.

C 16. The submission made by the petitioner was also to the effect that occupation of residential bungalows after expiry of the term of office of the Chief Ministers is in violation of the provisions of the Uttar Pradesh (Salaries, Allowances and Miscellaneous Provisions) Act, 1981, (hereinafter referred to as 'the 1981 Act') which pertains to salaries and other perquisites to be given to the Chief Ministers.

D 17. The 1981 Act provides that the Ministers are to be provided residence without any payment of rent throughout the term of their office and for a further period of 15 days after they demit their office. Thus, there is no provision with regard to permitting any Minister, including the Chief Minister, to retain the official premises or any other premises in their capacity as a Minister or a Chief Minister, 15 days after completion of his term as a Minister or the Chief Minister.

E 18. The petitioner also submitted that the 1997 Rules were framed in exercise of executive power and they are in violation of the provisions of Article 14 of the Constitution of India. He submitted that the Chief Ministers cannot be given different treatment in the matter of allotment of bungalows after they demit their office. If other Ministers and other constitutional functionaries like Judges and the Chief Justice of the High Court, Governor of the State, Speaker of the Assembly, etc. are not provided such accommodation after completion of their tenure, there is no justification for providing any government bungalow either free of charge or at a nominal rent to the former Chief Ministers. The action of respondent no.1 in framing the 1997 Rules is thus illegal and is a colourable exercise of power and is also violative of Article 14 of the Constitution of India as the State gives preferential treatment to the former Chief Ministers, which is not given to other constitutional functionaries.

H 19. The petitioner, therefore, prayed that the petition be allowed and the 1997 Rules be quashed and set aside as being discriminatory

and violative of the provisions of Article 14 of the Constitution of India. A

20. On the other hand, the learned counsel appearing for respondent no.1 State vehemently submitted that it is for respondent no.1 government to exercise its executive power and allot bungalows to former Chief Ministers even after they demit their office. According to him, 'former Chief Ministers' is a class of persons and therefore, it cannot be said that there is any preferential treatment given to the former Chief Ministers. He further submitted that it is for the State to decide whether to give such accommodation to former Chief Ministers and the said decision being executive decision in pursuance of a particular policy, this Court should not ordinarily interfere with the executive decision of respondent no.1-Government. B
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21. The learned counsel appearing for the State tried to explain the circumstances in which the government bungalows had been provided to the former Chief Ministers. The learned counsel also questioned the right of the petitioner to challenge the validity of the 1997 Rules. According to him, the petitioner has no locus standi to challenge the validity of the said Rules by filing a petition under Article 32 of the Constitution of India before this Court. He further submitted that the validity of the said Rules had been questioned in Writ Petition No.1313 (M/S) of 1996 and the said petition has already been disposed of, but the said Rules had not been declared to be invalid or unconstitutional by the High Court and therefore, this petition challenging the validity of the 1997 Rules is not maintainable. D
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22. The Respondents, while justifying the 1997 Rules took a stand that some of the respondents are given 'Z' plus Security by the Union of India and it is necessary to provide proper accommodation with requisite infrastructure in a secured locality. For providing such security, the State has to see that the accommodation of the concerned person is safe and therefore, it is necessary to provide a special type of accommodation to such persons. F

23. The Union of India in its affidavit dated 13th December, 2006 has contended that aspect of emoluments and pensions of former President and Vice President of India is governed by "President's Emoluments and Pensions Act, 1951" and "Vice President's Pension Act, 1997" and rules framed there-under. The facilities provided to the Prime Minister are also governed by Office Memorandum dated G
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A 6.12.1991 issued by the Government of India and he had not to say anything about the facilities to be given to the former Chief Ministers.

24. On the basis of the aforesaid contentions, the following issues arise for our consideration:

B a) Whether the writ petition filed in the public interest is maintainable and whether the writ Petitioner has locus standi to file the writ petition.

b) Whether the Ex-Chief Ministers Residence Allotment Rules, 1997 are legal and valid.

C 25. So far as the first issue is concerned, in our opinion, the petitioner has locus standi to file the writ petition. It has been submitted in the petition that the petitioner society is formed by retired civil servants, journalists and other persons who are residents of the State of U.P. and have no malafide intention behind filing the present petition and none of them has any personal grudge against any of the occupants of the government premises or any of the former Chief Ministers. In our opinion, when the petitioner society is challenging the validity of the 1997 Rules, whereby government bungalows have been allotted to former Chief Ministers, especially when there is an acute shortage of government premises, in our opinion, it cannot be said that the petitioner has no locus standi to file the present petition.

E 26. In the case of **"Fertilizer Corporation Kamgar Union (Regd) Sindri and Ors. v. Union of India and Ors. (1981) 1 SCC 568**, the Constitution Bench of this Court has held as under:

F "29.Lastly, but most importantly, where does the citizen stand, in the context of the democracy of judicial remedies, absent an ombudsman? In the face of (rare, yet real) misuse of administrative power to play ducks and drakes with the public exchequer, especially where developmental expansion necessarily involves astronomical expenditure and concomitant corruption, do public bodies enjoy immunity from challenge save through the post-mortem of parliamentary organs. What is the role of the judicial process, read in the light of the dynamics of legal control and corporate autonomy? This juristic field is virgin but is also heuristic challenge, so that law must meet life in this critical yet sensitive issued. The active coexistence of public sector autonomy, so vital to effective business management, and judicial control of

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public power tending to go berserk, is one of the creative claims upon functional jurisprudence. A

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47.Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable. B

48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But, if he belongs to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226.” C D

Similar was the view taken in S.P. Gupta v. Union of India and Anr. (1981) Supp SCC 87.

27. Looking at the law laid down by this Court and in view of the fact that the petitioner society or its members have not filed the petition with any oblique motive and as we also feel that cause for which the petition has been filed is just and proper, in our opinion, the petitioner has locus to file this petition. E

28. Now, let us examine the validity of the 1997 Rules framed by Respondent no.1-State. F

Article 164 of the Constitution of India reads as under:-

Article 164: Other provision as to Ministers:-

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor..... G

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.....” H

A 29. Therefore, in compliance with Article 164 read with Entry 40, List II of Seventh Schedule of the Constitution of India, Respondent No.1-State, in order to determine salaries and allowances payable to the Ministers, enacted the 1981 Act. In the said Act, Section 2 (e) defines the term “Minister”.

B Section 2 (e) is reproduced herein below:

 “2(e) ‘Minister’ means a member of the Council of Ministers of the Government of Uttar Pradesh and includes the Chief Minister, a Minister of State and a Deputy Minister of that State.”

C In this regard, Section 4 of the 1981 Act may also be considered, which is as under:

“4: Residence

D (1) Each Minister shall be entitled without payment of any rent to the use throughout the term of his office and for a period of fifteen days thereafter, of a residence at Lucknow which shall be furnished and maintained at public expense at the prescribed scale..”

E Upon perusal of the above provisions, it is clear that the terms and conditions of service and salaries and allowances payable to the Ministers are governed by the 1981 Act, which currently holds the field in this regard.

F 30. We may now turn to the issue whether the impugned 1997 Rules are ultra vires of Article 14 of the Constitution of India and also repugnant to the provisions of the 1981 Act. The relevant extract of the 1997 Rules is as under:-

“Rule 4: Allotment of Residence

G A residence on falling vacant will be allotted by the Estate Officer to such ex-chief minister who has given an application under these rules. There will be no right for allotment of a house outside Lucknow under these rules.

Rule 6:- Period for which Allotment subsists

H The allotment of residence to Ex-Chief ministers shall be effective only during their life time. The allotment shall be deemed to be automatically cancelled upon the death of Ex-chief minister and

family members residing therein will have to invariably hand over the possession of the concerned residence to the Estate Department within 3 months from the date of death. If the family members residing in the residence do not hand over the possession, recovery rent, damages etc. shall be taken under the provisions of UP Public Premises (Eviction of Unauthorized Occupants) Act, 1972.”

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31. Upon perusal of the above provisions, it is clear that the term “Minister” includes the Chief Minister and Section 4 (1) (a) of the 1981 Act, permits a Minister to retain his residence for 15 days after he/she demits his/her office. In view of the above special provisions made, the Chief Minister is not entitled to privileges and protection as are available to the President of India and the Vice-President of India, who are entitled to an official residence for life.

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32. The Respondents while justifying the 1997 Rules, took a stand that some of the respondents are being given ‘Z’ plus Security from Union of India and it is necessary to provide proper accommodation with requisite infrastructure in a secured locality. The afore-said contention of Respondent no.1 lacks merit and deserves to be rejected for the reason that as the said security is to be provided by the Ministry of Home Affairs, Union of India and provisions are already made for such persons as per Office Memorandum dated 17.11.1997 issued by the Government of India on the recommendations of the Ministry of Home affairs and it is the obligation of the Government of India to provide accommodation to such persons in accordance with its own guidelines and it is not for the Respondent-State to provide any accommodation and therefore, the ground put forth by the Respondents is untenable. In fact, the impugned 1997 Rules give largesse only to former Chief Ministers without any element of reasonableness.

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33. The facts on record also reflect that many of the former Chief Ministers, who are in occupation of Government Bungalows, are either serving as Members of Parliament or Governors or Cabinet Ministers in Central Government and they have already been provided another accommodation. It would, therefore, not be proper, in any case, to allot permanent residence at two places to one individual.

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34. If we look at the position of other constitutional post holders like Governors, Chief Justices, Union Ministers, and Speaker etc, all of

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A these persons hold only one “official residence” during their tenure. The Respondents have contended that in a federal set up, like the Union, the State has also power to provide residential bungalow to the former Chief Minister. The above submission of the Respondent State cannot be accepted for the reason that the 1981 Act does not make any such provision and the 1997 Rules, which are only in the nature of executive instructions and contrary to the provisions of the 1981 Act, cannot be acted upon.

C 35. Moreover, the position of the Chief Minister and the Cabinet Ministers of the State cannot stand on a separate footing after they demit their office. Moreover, no other dignitary, holding constitutional post is given such a facility. For the afore-stated reasons, the 1997 Rules are not fair, and more so, when the subject of “salary and allowances” of the ministers, is governed by Section 4 (1) (a) of the 1981 Act.

D 36. There is one more and most important reason for which the 1997 Rules cannot be said to be legal. The 1981 Act deals with the salaries and perquisites to be given to all the Ministers, including the Chief Ministers. The said provisions are statutory, but the 1997 Rules are not statutory and they are only in the nature of executive instructions. If there is any variance in statutory provision and executive instruction, the statutory provision would always prevail. This is a very well-known principle and no further discussion is required on the subject. When the 1981 Act enables the Chief Minister to have residential accommodation only during his tenure and for 15 days after completion of his tenure, the 1997 Rules providing for an accommodation for life to the Chief Minister cannot be said to be legal and valid. For this sole reason, validity of the 1997 Rules cannot be upheld.

F 37. As far as question of accommodation to the President, Vice-President and Prime Minister is concerned, there is no challenge in the writ petition to the same and is limited to the 1997 Rules framed by Respondent No.1 State, therefore, it is in-appropriate to consider the issue dealt with by this Court in “Shiv Sagar Tiwari v. Union of India” (1997) 1 SCC 444”.

G 38. This Court, in the case of “SD Bandi v. Karnataka SRTC, (2013) 12 SCC 631, in relation to occupation of government bungalows, beyond the period for which the same were allotted, observed that “it is unfortunate that the employees, officers, representatives of people and

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other high dignitaries continue to stay in the residential accommodation provided by the Government of India 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 recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorized occupants must appreciate that their act of overstaying in the premise infringes the right of another. No law or directions can entirely control this act of disobedience but for the self realization among the unauthorized occupants".

39. As stated hereinabove, there is a statutory provision which relates to salaries and perquisites to be given to the ministers, including the Chief Minister. The 1981 Act is a statute enacted by Respondent no. 1-State under its power under Article 164 read with Entry 40 of the List II (State List) of the Seventh Schedule of the Constitution. Thus, there is a statutory provision with regard to perquisites to be given to the ministers, including the Chief Minister under Section 4 of the said Act, which has been reproduced hereinabove. The said Act provides that all the ministers are entitled to official residence without payment of any rent and they are also entitled to occupy the said official residence for 15 days even after completion of their term. Thus the statutory provision is to the effect that the Chief Minister can continue to occupy the official accommodation for a further period of 15 days after completion of his/her term.

40. The 1997 Rules are not statutory rules. They are in the nature of administrative or executive instructions. They would not stand the test of legality if they are not in consonance with statutory provisions. The said Rules are definitely in contravention of the statutory provisions and therefore, the said Rules can be said to be bad in law so far as they are in contravention of the statutory provisions.

41. There cannot be any dispute that when the rules and regulations or executive instructions are contrary to any statutory provision, the statutory provision would prevail and the rules or executive instructions, so far as they are contrary to the statutory provisions, would fail.

42. In view of the aforestated clear and unambiguous position, in

A our opinion, the 1997 Rules, which permit the former Chief Ministers to occupy government bungalows for life cannot be said to be valid. In the circumstances, respondent no. 1 cannot permit any former Chief Minister to occupy any government bungalow or any government accommodation after 15 days from the date on which his term comes to an end.

B 43. So far as allotment of bungalow to private trusts or societies are concerned, it is not in dispute that all those bungalows were allotted to the societies/trusts/organizations at the time when there was no provision with regard to allotment of government bungalows to them and therefore, in our opinion, the said allotment cannot be held to be justified. One should remember here that public property cannot be disposed of in favour of any one without adequate consideration. C Allotment of government property to someone without adequate market rent, in absence of any special statutory provision, would also be bad in law because the State has no right to fritter away government property in favour of private persons or bodies without adequate consideration and therefore, all such allotments, which have been made in absence of D any statutory provision cannot be upheld. If any allotment was not made in accordance with a statutory provision at the relevant time, it must be discontinued and must be treated as cancelled and the State shall take possession of such premises as soon as possible and at the same time, the State should also recover appropriate rent in respect of such premises E which had been allotted without any statutory provision.

44. In the circumstances, for the reasons stated hereinabove, the petition is allowed. Rule is made absolute with no order as to costs and it is held that the 1997 Rules so far as they are not in consonance with the provisions of the 1981 Act are bad in law. The government bungalows F allotted to the respondents is held to be bad in law and the concerned respondents shall hand over possession of the bungalows occupied by them within two months from today and the respondent-Government shall also recover appropriate rent from the occupants of the said bungalows for the period during which they were in unauthorized G occupation of the said bungalows.

Divya Pandey

Petition allowed.