સુપ્રિમકોર્ટ-સંદર્ભ / તાત્કાલિક

ક્રમાંક:-એસસીએ/૧૦૨૦૦૪/૨૦૫૯/૪૬/(પાર્ટ-૩)/આર

ગુજરાત સરકાર,
માર્ગ અને મકાન વિભાગ,
સચિવાલય,ગાંધીનગર.
તા. /૧/૨૦૧૪.
27 JAN 2014

પ્રતિ,
અધિક મુખ્ય સચિવશ્રી/અગ્ર સચિવશ્રી/સચિવશ્રી,
સચિવાલયના સર્વે વિભાગો.

વિષયઃ સરકારી રહેણાંકના અને બિન રહેણાંકના મકાનોના સંદર્ભમાં નામદાર સુપ્રિમકોર્ટના સૂચનો (Suggestions) ધ્યાને લેવા બાબત.

શ્રીમાન,

ઉપરોકત વિષય પરત્વેના નામદાર સુપ્રિમકોર્ટના સરકારી વકીલશ્રીના તા.૬/૭/૧૩ના પત્ર ક્રમાંક:એસજી-૧૭૬૯-૨૦૦૫ની બિડાણ સહિતની ઝેરોક્ષ નકલ આ સાથે આપને જાણ તથા જરૂરી કાર્યવાહી સારૂ મોકલવામાં આવે છે. તેમજ તેમાં જણાવેલ વિગતે સીવીલ એપ્લીકેશન નંબર-૪૦૬૪ ઓફ ૨૦૦૪માં, નામદાર સુપ્રિમકોર્ટે આપેલ તા.૨૫/૭/૨૦૧૩ના ચૂકાદાની નકલ પૂરી પાડવામાં આવી છે. તેમજ તેને અનુરૂપ સુધારાઓ સંબંધિત નિયમોમાં કરવાનું પણ જણાવેલ છે. તદઅનુસાર નામદાર સુપ્રિમકોર્ટ દ્વારા સરકારી રહેણાંકના આવાસો અને બિન રહેણાંકના મકાનોના સંદર્ભ કેટલાક સૂચનો (Suggestions) કરવામાં આવ્યા છે, જે આપના વિભાગને સંબંધિત ખાતાના વડા/કચેરીના વડાઓ હસ્તકના મકાનોના સંદર્ભમાં આપના વિભાગ દ્વારા ઘડવામાં આવેલ નિયમોના સંદર્ભમાં ધ્યાને લેવા પાત્ર અને જરૂર જણાયે નિયમોમાં સુધારાની કાર્યવાહી હાથ ધરી શકાય તેવા હેતુસર ઉપરોકત નકલ જાણ તથા જરૂરી કાર્યવાહી સારૂ પાઠવેલ છે. જે વિદિત થવા વિનંતી છે.

બિડાણ:- ઉપર મુજબ

(હરેશ એમ.પરમાર)
સેકશન અધિકારી
માર્ગ અને મકાન વિભાગ

નકલ રવાના:-

(૧) સે.અ.શ્રી, સી શાખા, મા.મ.વિ, સચિવાલય, ગાંધીનગર.(બાંધકામ મેન્યુઅલના અનુસંધાને)
(૨) સે.અ.શ્રી, ન શાખા, મા.મ.વિ, સચિવાલય, ગાંધીનગર.
(૩) સે.અ.શ્રી, ન (૧) શાખા, મા.મ.વિ, સચિવાલય, ગાંધીનગર.
(૪) મા.મ.વિ. હેઠળના સર્વે ખાતાના વડાઓ, (ઉપરોકત પત્રમાં જણાવેલ વિગતો ધ્યાને લઇ, તેઓના મંતવ્યો/સુધારાના સૂચનો આ વિભાગને દિન-૧૦માં પૂરા પાડવાની વિનંતી સાથે નામદાર સુપ્રિમકોર્ટના સરકારી વકીલના ઉપરોકત પત્રના બિડાણ સહિતની ઝેરોક્ષ નકલ સહિત,જાણ અને જરૂરી કાર્યવાહી સારૂ)
(૫) સિલેકટ ફાઈલ - ૨૦૧૪.
(૬) નાયબ સેકશન અધિકારીશ્રીની સિલેકટ ફાઈલ-૨૦૧૪.

P. S. AGRI.

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(17)

Hemantika Wahi
ADVOCATE SUPREME COURT

Ch. 235, New Chambers for Lawyers
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New Delhi-110 001
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I.W.D.M.S.No. 497849
17 JUL 2013

Ref:SG-1769/2005

July 12, 2013

MOST URGENT

To
The Deputy Secretary,
Government of Gujarat
Roads & Building Department,
Block No.14,
New Sachivalaya Complex,
Gandhinagar,

માર્ગ મકાન મકાન વિભાગ
મોકલી આપવા : .....
H.C.A. 232
16 JUL 2013
મળ્યા.....

Sir,
LD. Ref: Supc/75/2004/2912/J dt. 6.9.2004.

Your letter No.Special Civil Application /102004/2059/46/R dt. 24.9.04

Re: **Unauthorised occupancy of Government Quarters.**

Ref: Civil Appeal No.4064/2004
S.D. Bandi
Versus
Divisional Traffic Officer KSRTC & Ors.

We enclose herewith a certified copy of the judgment dated 5.7.2013 for your record.

Kindly mould your procedure as per the guidelines given in the judgement.

Yours truly,

HEMANTIKA WAHI

Copy to:
The Executive Engineer,
Capital Project,
Sub Division No.1,
Patnagar Yojana,
Sector 16,
Gandhinagar

Encl: Copy of the judgment dt. 5.7.2013

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4064 OF 2004

906783

S.D. Bandi

.... Appellant(s)

Versus

Divisional Traffic Officer, KSRTC & Ors. .... Respondent(s)

J U D G M E N T

P.Sathasivam, J.

1) The instant case relates to the occupation of government accommodation by members of all the three branches of the State, viz., the Legislature, the Executive and the Judiciary beyond the period for which the same were allotted. The occupation of such government houses/quarters beyond the period prescribed causes difficulty in accommodating other persons waiting for allotment and, therefore, the Government is at a loss on the one hand in not being able to accommodate those persons who are in need and on the other is unable to effectively deal with the persons who continue to occupy unauthorisedly beyond the period prescribed.

2) Despite the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short 'the Act'), it is seen that it has not been effective enough in dealing with the eviction inasmuch as the competent Authority, i.e., Estate Officer has to first initiate proceedings and pass orders after hearing the parties and

thereafter, one statutory appeal lies to the District Judge under Section 9 of the Act. After disposal of the appeal, people resort to writ proceedings thereby enjoying the scarce government accommodation. There are cases where the occupants are so affluent that they are willing to pay the penal/market rent and continue to occupy government quarters especially in metropolitan cities where such government quarters are a luxury situated in several acres of land within the heart of the city.

3) Before proceeding further, it is useful to find out the circumstances and basis on which the matter was agitated.

One Shri S.D. Bandi filed the present appeal against the order dated 25.03.2004 passed by the High Court of Karnataka at Bangalore in W.A. No. 324 of 2002 whereby the Division Bench of the High Court while disposing of the appeal filed by the respondents herein granted time to the appellant herein to vacate the government quarter by 30.04.2004. The appellant was working as a Driver in the Karnataka State Road Transport Corporation (for short "the Corporation"), Mysore Division at Mysore. By order dated 31.05.1992, he was transferred to the Mangalore Division and for joining the place of duty, he was relieved from the duty of Mysore Division on 12.06.1997. Challenging the order of transfer, the appellant herein filed Reference No.21 of 1997 before the Industrial Tribunal, Mysore. At the same time, he did join the place of posting at Mangalore but did not vacate the quarter. On 19.07.1999, the competent officer under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 passed an order of eviction

against the appellant in KPP No.3 of 1998. Against the said order, the appellant preferred an appeal before the District Judge, which was dismissed and the order of eviction was confirmed. Being aggrieved, the appellant preferred a writ petition being W.P. No. 41762 of 2001 before the High Court of Karnataka which was allowed on 10.12.2001. In the meantime, on 03.07.2000, the Industrial Tribunal set aside the order of transfer and ordered the appellant to be restored to his original place of work at Mysore. Against the said order, the Corporation filed a petition being Writ Petition No. 3249 of 2001 in which rule *nisi* was issued and the award of the Industrial Tribunal was stayed. Thereafter, the Corporation preferred Writ Appeal being No. 324 of 2002 against the order dated 10.12.2001 in W.P. No. 41762 of 2001 which was allowed by impugned order dated 25.03.2004 and the appellant herein was also directed to vacate the quarter by 30.04.2004. Challenging the said order, the present appeal has been preferred before this Court by way of special leave.

4) By order dated 13.07.2004, after hearing all the parties, this Court dismissed the appeal and directed the competent officer of the Corporation, Mysore Division to at once evict the appellant from the quarter.

5) Pursuant to the said order, this Court, taking note of the fact that in government quarters, unauthorisedly, people are continuing for years together to the detriment of the persons who are entitled to occupy the same and also that the same is the position in most of the State capitals and Head quarters of the Union Territories,

issued notices to the Union of India, all the States and the Union Territories with a direction to furnish the list of such unauthorized occupants of government quarters in the State capitals and Head quarters of Union Territories belonging to all the three limbs of the State, viz., the Legislature, the Executive and the Judiciary. This Court further directed to furnish all the details including names of such persons, details of quarters, period of unauthorized occupancy, steps taken for vacation and its result etc., and also that in case no steps have been taken, reasons for such inaction.

6) Pursuant to the above directions, the Union of India, all the States and Union Territories were represented by their counsel. In order to eliminate the problem and frame workable guidelines in addition to the existing statutory provisions, this Court appointed Mr. Ranjit Kumar, learned senior counsel and Ms. Anjani Aiyyagari, learned counsel as *amicus curiae* to assist the Court.

7) Mr. Ranjit Kumar, learned *amicus curiae*, after highlighting various aspects, particularly, the persons in all the three wings occupying official premises/quarters/bungalows even after expiry of their term/period submitted that in addition to the statutory provisions, this Court has to frame certain workable guidelines. He took us through various provisions of the Act, Fundamental Rules (FRs) applicable to the persons working under Central Government, various State enactments similar to the Central Act, some of the provisions of the Indian Penal Code, 1860 (in short "the IPC") and earlier decisions, particularly, *Shiv Sagar Tiwari* vs. *Union of*

India and others (1997) 1 SCC 444 which dealt with the similar problem confining to National Capital Territory of Delhi.

8) We propose to deal with all these aspects in detail hereinafter.

9) Pursuant to the notice issued by this Court, Union of India and some of the States submitted their views and suggestions and others though represented by counsel, did not convey their views by filing affidavit or report which we are going to discuss after quoting the report of learned *amicus curiae*.

10) Learned *amicus curiae* in his report submitted as under:-

> "II(a) Menace of unauthorized occupation is required to be dealt with firmly and the charging of penal rent/market rent is not a sufficient alternative. In this connection, it may be stated here that the States of Orissa and Uttar Pradesh have amended Section 441 of the Indian Penal Code, 1860 (in short 'the IPC') in its application to their States by providing as under:-
>
> > ..... or having lawfully entered into or upon such property, remains there with the intention of taking unauthorized possession or making unauthorized use of such property and fails to withdraw such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served on him, is said to have committed "criminal trespass". (Orissa)
> >
> > ..... or having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorized use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit "criminal tresspass". (Uttar Pradesh)
>
> Thus, in these two States, the Governments are in a position to file criminal proceedings for the offence of criminal trespass in the case of unauthorized occupation of Government accommodation. This acts as a deterrent for any officer to live beyond the period prescribed.

(b) Though this Court in one of its Orders in these proceedings had sought the opinion of the other States as to whether they would like to make amendments on similar lines vide Orders dated 24.07.2007 and 19.09.2007, The response of the various States was as under:-

a) Union of India said 'No'
b) The Government of Bihar said 'No'
c) The Government of Haryana said they would follow if the Union of India amends.
d) The State of Andhra Pradesh said the matter was under consideration.
e) The State of Madhya Pradesh said that it will do so if need arises.
f) The State of Karnataka said that it was drafting rules for this purpose.
g) The State of Maharashtra said that it has approved the amendment.
h) The State of Uttarakhand said that the proposal is sent for amendment.
i) The State of Nagaland said that it will take steps for the amendment.
j) The State of Sikkim said 'No'
k) The State of Mizoram said that it will bring about the amendment if the Supreme Court directs.
l) The State of Manipur said that it had amended and sent it to the Union of India for approval.
m) The Union Territory of Chandigarh welcomed the amendment but was bound to follow the Union of India. The remaining other States did not respond before this Court.

III) Though the Act provides under Section 11 for offences and penalty for unlawful occupation and makes the offence cognizable under Section 11A, it has been found as a matter of practice that the Estate Officers do not ordinarily take any action under the said Section because of the proviso to Section 11(1) which reads as under:-

> "Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continues to be in occupation of such premises after such authority has ceased to be valid, shall not be guilty of such offence."

This proviso gives the window for not prosecuting a person who had been allotted a premise but continues to occupy so unauthorisedly after the authority to occupy the premises ceases to be valid. Thus, the unauthorized occupant

continues to unlawfully occupy the government accommodation without fear of any prosecution.

IV It has also been seen that even where outstanding rents including penal/market rent are there, there are persons continuing in occupation who do not pay the amounts and there is difficulty in recovering the same. In this regard, apart from the provisions under the Act, there are provisions under the Public Demand Recovery Act and Revenue Recovery Act which can be applied for the recovery of the arrears as arrears of land revenue, because if the totality of the government houses in all the States of India are taken into account, the amount due works out to several crores.

V.(a) Fundamental Rule 45-A prescribes for the Government accommodation to be occupied and details the licence fee etc. including the continued occupation/retention beyond the permissible period and guidelines have also been framed for that purpose. However, these rules and guidelines do not state anything about the eviction possibly on the premise that Public Premises Act will take care of it.

(b) The Supplementary Rules in Chapter VIII Division 26 made under Fundamental Rule 45 provide for rules for allotment of residences vide SR 311 to 316. Similarly, under Chapter 26B, the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 are provided in SR 317.

What is of significance is that while providing these rules, the government while allowing persons to continue to retain the Government accommodation does not provide for their eviction, again presumably because of the provisions of the Public Premises Act. However, as explained hereinabove on account of the proviso to Section 11(1), the Estate Officer cannot take any penal action against such unauthorized occupants except for going through the process of eviction.

It would have been useful if the Government while promulgating such rules/orders/notifications had also provided for certain undertakings to be taken from the Government officer prior to his allotment to make sure that a person does vacate the quarters as soon as his period prescribed for its retention gets over."

11) After furnishing all these materials, he suggested the following guidelines to be issued by this Court which are as under:-

(i) At the time of allotment of the Government accommodation to the three wings of the Government, viz., the Legislature, the Executive and the Judiciary, an undertaking should be taken from the allotee that he/she shall vacate the premises within the prescribed period under the rules failing which he/she will be liable to disciplinary action apart from any other liability that he/she may incur.

(ii) All arrears of rent including penal/market rent shall be recovered as arrears of land revenue.

(iii) The proviso to Section 11(1) of the Act should be declared *ultra vires* as it is in conflict with the main provisions of providing for offences and penalty for the unauthorized occupation of government houses.

(iv) Any person who is in service and continues to unauthorisedly occupy the government accommodation beyond the period of retention should be suspended immediately, pending disciplinary action as per the undertaking given at the time of taking the Government quarter.

(v) Since allotment of Government accommodation is a privilege given to the Ministers and Members of Paliament, the matter of unauthorized retention should be intimated to the Speaker/Chairman of the House and action should be initiated by the House Committee for the breach of the privileges which a Member/Minister enjoys and the appropriate Committee should recommend the same to the Speaker/Chairman for taking deterrent action.

(vi) In view of paucity of Government accommodation, all the allotments to persons belonging to categories other than the three wings of the Government should be henceforth immediately cancelled

and discontinued as such allotments are made on discretion which is mostly abused.

(vii) All government houses which have been turned into memorials should be retrieved, memorials in Government houses should be removed and no more memorials should be allowed in future.

12) Before considering the response of the Union of India, States and the Union Territories as to the suggestions of learned *amicus curiae*, let us consider the relevant provisions of the Act applicable to the persons in service. The Act was enacted to provide for eviction of unauthorized occupants from public premises. Section 2(e) of the Act defines `public premises' as under:

> "e) "public premises" means-
>
> (1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendments Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;
>
> (2) any premises belonging to, or taken on lease by, or on behalf of,-
>
> (i) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company."

Section 2(g) defines "*unauthorized occupation*" as under:

> "(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was

allowed to occupy the premises has expired or has been determined for any reason whatsoever."

Section 4 of the Act speaks about issue of show cause notice before passing an order of eviction and Section 5 deals with eviction of unauthorized occupants. Section 7 relates to direction for payment of rent or damages in respect of public premises. Section 9 speaks about appeal against the order of the Estate Officer. In terms of Section 10, the order passed by the Appellate Authority shall be final and shall not be called in question in any original suit, application or execution proceedings whereas Section 11 speaks about offences and penalty.

13) Apart from the above provisions of the Act, for the benefit of the persons working in Central service, the Central Government framed certain rules which are called "Fundamental Rules". Among other rules, FR 45, 45A and 45B are relevant which are as under:-

"F.R.45 The Central Government may make rules or issue orders laying down the principles governing the allotment to officers serving under its administrative control, for use by them as residences, of such buildings owned or leased by it, or such portions thereof, as the Central Government may make available for the purpose. Such rules or orders may lay down different principles for observance in different localities or in respect of different classes of residences, and may prescribe the circumstances in which such an officer shall be considered to be in occupation of a residence."

"F.R. 45-A I. Deleted

II. For the purpose of the assessment of licence fee, the capital cost of a residence owned by Government shall include the cost or value of sanitary, water supply and electric installations and fittings; and shall be either -

(a) the cost of acquiring or constructing the residence including the cost of site and its preparation and any capital expenditure incurred

after acquisition or construction; or when this is not known;

(b) the present value of the residence, including the value of the site."

"F.R. 45-B. I. This rule applies to Government servants other than those to whom Rule 45-A applies or than those occupying residence belonging to the Indian Railway or rented at the cost of railway revenues.

II. For the purpose of sub-clause(b) Clause III, the capital cost of a residence owned by Government shall not include the cost or value of such special services and installations (including furniture, tennis courts and sanitary, water supply or electric installations and fittings_ as it may contain; and shall be either :-

(a) the cost of acquiring or constructing the residence, including the cost of site and its preparation and any capital expenditure incurred after acquisition or construction; or, when this is not known.

(b) The present value of the residence including the value of site."

14) This Court had an occasion to consider the similar grievance/problem viz., availability of government accommodation in Delhi in *Shiv Sagar Tiwari (supra)*. In this case, taking note of the fact that Delhi being the capital of the country and is also the seat of the Central Government and that the issue applies to a large number of persons, this Court analysed the entire issue relating to government accommodation and various rules applicable. Even in that matter, Mr. Ranjit Kumar, the present *amicus curiae* assisted this Court. Though the said order was confined to the National Capital Territory of Delhi, this Court has categorized various groups, viz., 'vacated list', 'arrears list', 'change from same type', 'change to higher type', 'medical cases within the existing policy', 'medical cases outside the existing policy', '5 year category', 'infructuous cases', 'out of turn and above entitlement', 'functional grounds',

'eviction cases', 'procedure for eviction' etc. After analyzing all these categories with facts and figures as well as the provisions applicable, this Court summed up various principles and issued directions for the authorities concerned. Since we are considering the problem of such government accommodation/residential quarters/bungalows etc. at the national level, the guidelines and the ultimate decision in *Shiv Sagar Tiwari (supra)* framed for National Capital Territory of Delhi may be immensely helpful.

15) We have already referred to the suggestions made by learned *amicus curiae*; now let us consider the response of Union of India, States and some of the Union Territories. On behalf of the Union of India, Shri Manish Kumar Garg, Director of Estates, Ministry of Urban Development, Government of India, Nirman Bhavan, New Delhi has filed an affidavit on 16.11.2011. Mr. P.P. Malhotra, learned Additional Solicitor General, took us through the stand taken by the Ministry of Urban Development. Since the department concerned has expressed its views about suggestions put forward by learned *amicus*, we intend to incorporate the same which are as under:-

> "1. It is submitted that the allotment of government house to the employees/officers of the three wings of the government, the Legislature, the Executive and the Judiciary is made under the provisions of allotment of Government Residences (General Pool in Delhi) Rules, 1963 as amended from time to time. These rules provide for allotment, cancellation, retention, penalties for non-vacation of quarters within the permissible retention period. It is submitted that the applicant has to be given an undertaking in "Application Form" itself that he/she agrees to abide by the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 also in the Acceptance Form, the allottee undertakes to vacate the accommodation allotted to him/her within the stipulated period. However, because of certain unavoidable circumstances which may be beyond the control of allottee,

the allottee sometimes retains the house for a few days beyond the permissible retention period for which damages rate is charged vis-à-vis action for eviction under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Therefore, the provision of disciplinary may not be desirable. In case of unauthorized occupation, in the case of subletting, apart from charging damages (penal rent) and action is initiated for eviction, disciplinary proceedings are initiated against the unauthorized occupant. In view of these provisions already existing in the rules further undertaking may not be necessary.

2. As per the existing provisions penal/market rent is recovered from the unauthorized occupant by raising bills on the employee or his/her department. In case of retiring employees, 10% of gratuity is withheld for adjustment of outstanding dues on account of licence fee and damages. The withheld amount of gratuity is released by the employer only after the retired employee obtains a "No Demand Certificate" from the Directorate of Estates after making payment for all the dues and submits the same to his/her employer. In case some retired employees do not turn up for "No Demand Certificate", and dues on account of licence fee/damages remain unrecovered, action is initiated for recovery of dues as arrears of land revenue under the provisions of the Act.

3. It is submitted that Section 11(1) of the Act deals with three categories of unauthorized occupation - (i) A person who unlawfully occupies a public premises (ii) A person who having been lawfully in occupation of a public premises by virtue of authority etc., continues to be in occupation of such premises after such authority has ceased to be valid and (iii) A person who has been evicted from the public premises under the Act again occupies the premises without any authority. While Section 11(1) of the Act provides for punishment to unlawful occupants, the proviso of the section deals with unauthorized occupants due to expiry of licence or allotment period. Both the categories i.e., (i) and (ii) are not comparable. Therefore, the provisions meet the requirements to deal with various types of unauthorized occupants and hence cannot be declared *ultra vires*.

4. A person who is in Government service is liable to surrender Government accommodation in case of his/her transfer to an ineligible office at the same station or outside. However, with a view to enable the government servant to make arrangements for settling his family, retention is permitted upto 8 months i.e. 2 months under SR-317-B and 6 months under SR-317-B-22. In the case of retention of accommodation beyond the permissible

retention period, the employee/family is liable to be evicted from the house under the provisions of the Act and damages are charged from the concerned employee.

However, there may be a few cases where the allottee or his/her family retains the accommodation beyond the permissible period due to unavoidable circumstances, say, in the case of regularization, re-posting or severe illness for which damages is charged vis-à-vis action under the provisions of the Act. However, in the case of unauthorized occupation on account of subletting, the Directorate of Estates cancels the allotment and initiates eviction proceedings and the controlling department of the unauthorized allottee proceeds for disciplinary action including placing him/her under suspension. Therefore, the suggestion to put all serving unauthorized occupants under suspension will be too harsh and does not fall within the ambit of provisions of the Act. Moreover, suspension is resorted to under certain specific circumstances as a matter of administrative action under CCS (CCA) Rules.

5. Allotment to a Union Minister is made by the Directorate of Estates, Ministry of Urban Development as per provisions of Ministers' Residences Rules, 1962. The Ministers, on ceasing to be a Minister, are required to vacate the official accommodation within one month. Alternate accommodation, if necessary, is allotted as per their entitlement by the House Committee concerned. The allotment to Members of Parliament is made by the respective House Committees, viz., Lok Sabha House Committee, Rajya Sabha House Committee. However, in the event of unauthorized occupation, the respective House Committees refer the case to the Directorate of Estates for initiating eviction proceedings under the provisions of the Act. Allotment to Members of Parliament is also made by the Directorate of Estates from the General Pool as per laid down guidelines. Hence, such a matter does not fall within the purview of breach of privilege.

6. Allotment of government accommodation to persons belonging to categories other than the three wings of the Government, viz., Journalists, eminent Artists, freedom fighters, social workers etc. is made as per provisions in the guidelines framed as per direction of the Supreme Court in Writ Petition (C) No. 585/1984 titled Shiv Sagar Tiwari vs. Union of India. These allotments are made out of the 5% discretionary quota allowed by the Supreme Court. In view of this, cancellation of such allotments already made and discontinuation of such further allotment may not be desirable.

> 7. The government houses which have been turned into memorial were allotted on lease to respective Trusts/Societies by the Cabinet Committee on Accommodation in accordance with the guidelines framed for the purpose as per direction of the Supreme Court in C.P. (W) No. 585/1994 titled Shiv Sagar Tiwari vs. Union of India. The lease agreement has been executed between the Government of India and the respective Trusts etc. for specified period. It would, therefore, be violation of the agreement if such houses are retrieved before the lease period is over. The guidelines formulated in November 2000 put complete ban on the conversion of Government bungalows into memorials of the departed leaders. As such, the suggestion given by the *amicus curiae* has already been taken care of. The present guidelines provide for allotment of accommodation to non-Government organizations which are working for national interest or for meeting international obligations."

16) It is clear from the response submitted by the Ministry of Urban Development that in view of various provisions in the Act for taking action against unauthorized occupants, existing provisions would suffice. It is also clear that in respect of retiring employees, without clearing arrears of rent/penal/ market rent and No Due Certificate from the Directorate of Estates, the retirement benefits will not be settled and as per the provisions, 10% of the gratuity is to be withheld for adjustment of outstanding dues.

17) The Department also highlighted that for allotment to Members of Parliament, it is the "House of Committee" which controls such allotment and no further guidelines are required for the same.

18) It was also pointed out that for the persons from special categories, viz., journalists, eminent artists, freedom fighters, social workers etc., guidelines framed by this Court earlier, govern the issue and no further direction is required.

19) On behalf of the State of Sikkim, the Principal Resident Commissioner has filed an affidavit highlighting the position and the procedure that is in vogue in the State. He emphasized that the Government never allows anyone to overstay including unauthorized retention of government accommodation by the Ministers and Members of Parliament.

20) On behalf of the Government of Madhya Pradesh, Directorate of Estates has filed an affidavit wherein it is highlighted that so far as the employees of the State Government, executive and judiciary are concerned, there is no objection in taking an undertaking as suggested by this Court. However, according to the government, the houses allotted to the members of the legislative assembly, members of parliament and ministers are concerned, the matter needs to be examined after taking views of the Secretary, Vidhan Sabha. It is also pointed out that the Government of Madhya Pradesh has issued separate rules called Madhya Pradesh Government Quarters Allotment Rules, 2000 which provides effective mechanism for eviction of unauthorized persons and recovery of rent, if any.

21) On behalf of the State of Andhra Pradesh, Principal Secretary to Government, General Administration (Accomm.) Department has filed a reply affidavit furnishing information as to the position in the State and the steps that are being taken by them.

22) On behalf of the State of Jammu & Kashmir, Director, Estates Department has filed an affidavit informing about various steps being taken by them. He also submitted that the government is ready

to comply with further/additional directions being issued by this Court.

23) Union Territory of Puducherry through its Secretary (Housing) highlighted the availability of government quarters, number of unauthorized occupants and the procedure being followed for eviction of those persons. He also informed this Court that all the directions and instructions of the Government of India are being followed in the Union Territory of Puducherry.

24) On behalf of the State of Maharashtra, Deputy Secretary, General Administration Department filed an affidavit highlighting various instructions issued to the competent authority dealing with unauthorized occupants. He also furnished a statement showing the eviction cases pending with the competent authority and also the cases in which rent recovery is going on.

25) On behalf of the State of Haryana, Special Secretary Coordination from the office of Chief Secretary to Government, Haryana filed an affidavit conveying their comments on the propositions made by learned *amicus curiae*.

26) On behalf of the State of Uttar Pradesh, Assistant Estates Officer, Government of U.P. submitted his response as to the suggestions of the learned *amicus curiae*. He also highlighted that necessary amendments should be made in their allotment rules. According to him, in respect of arrears of rent and damages, the rules enable them to recover the same as arrears of land revenue. The State has also highlighted that stringent provision, viz., Section 11 of the U.P. Public Premises (Eviction of Unauthorised

Occupants) Act, 1972 is in force. As per the said provision, if any person who has been evicted from any public premises again occupies the same without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to 1 year or fine which may extend to Rs. 1,000/- or with both. He also highlighted the allotment procedure in respect of journalists, the legislature, the executive, the judiciary as well as memorials available in their State.

27) As per the details furnished by learned *amicus curiae* and various comments made by Union of India as well as some of the States and the Union Territories, it cannot be said that at present there is no machinery to check eviction of unauthorized occupants as well as recovery of arrears of rent including penal charges. However, it is not in dispute that in spite of existing provisions/rules, directions etc., the fact remains same and the persons from all the three branches either by their influence or by lengthy procedure as provided in the Act, continue to stay in the government accommodation by paying paltry amount either by way of rent or penalty. In these circumstances, we are of the view that in addition to the statutory provisions, there is need to frame guidelines for the benefit of both Union of India/States and Union Territories for better utilization of their premises.

28) The following suggestions would precisely address the grievances of the Centre and the State governments in regard to the unauthorized occupants:

Suggestions:

(i) As a precautionary measure, a notice should be sent to the allottee/officer/employee concerned under Section 4 of the PP Act three months prior to the date of his/her retirement giving advance intimation to vacate the premises.

(ii) The Department concerned from where the government servant is going to retire must be made liable for fulfilling the above-mentioned formalities as well as follow up actions so that rest of the provisions of the Act can be effectively utilized.

(iii) The principles of natural justice have to be followed while serving the notice.

(iv) After following the procedure as mentioned in SR 317-B-11(2) and 317-B-22 proviso 1 and 2, within 7 working days, send a show cause notice to the person concerned in view of the advance intimation sent three months before the retirement.

(v) Date of appearance before the Estate Officer or for personal hearing as mentioned in the Act after show cause notice should not be more than 7 working days.

(vi) Order of eviction should be passed as expeditiously as possible preferably within a period of 15 days.

(vii) If, as per the Estate Officer, the occupant's case is genuine in terms of Section 5 of the Act then, in the first instance, an extension of not more than 30 days should be granted.

(viii) The responsibility for issuance of the genuineness certificate should be on the Department concerned from where the government servant has retired for the occupation of the

exercised very reluctantly and it should be an exceptional practice and not a general rule.

(xviii) Since allotment of government accommodation is a privilege given to the Ministers and Members of Parliament, the matter of unauthorized retention should be intimated to the Speaker/Chairman of the House and action should be initiated by the House Committee for the breach of the privileges which a Member/Minister enjoys and the appropriate Committee should recommend to the Speaker/Chairman for taking appropriate action/eviction within a time bound period.

(xix) Judges of any forum shall vacate the official residence within a period of one month from the date of superannuation/retirement. However, after recording sufficient reason(s), the time may be extended by another one month.

(xx) Henceforth, no memorials should be allowed in future in any Government houses earmarked for residential accommodation.

29) It is unfortunate that the employees, officers, representatives of people and 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 directly 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. The matter is disposed of with the above terms and no order is required in I.As for impleadment and intervention.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
JULY 05, 2013.

ક્રમાંક:પરચ/૧૩૨૦૧૪/૩૧૮/મ.૩
કૃષિ અને સહકાર વિભાગ
સચિવાલય, ગાંધીનગર
તા. ૦૬/૦૩/૨૦૧૪

પ્રતિ,

વિભાગ હેઠળના સર્વે ખાતાના વડા / બોર્ડ / નિગમ / કૃષિ યુનિવર્સિટીઓ

ઉક્ત બાબતે જાણ તેમજ જરૂરી કાર્યવાહી કરવા સારૂ.

સેક્શન અધિકારી
કૃષિ અને સહકાર વિભાગ