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**IN THE COURT OF SH. SUDHANSHU KAUSHIK :
ADDITIONAL DISTRICT JUDGE-02 & WAQF TRIBUNAL :
PATIALA HOUSE COURTS : NEW DELHI**

**CIVIL SUIT NO.151/2023
CNR NO.DLND01-003653-2023**

**RAGHAV CHADHA
VS
RAJYA SABHA SECRETARIAT**

Present : Sh. Prashant Manchanda, Counsel for plaintiff.
Sh. Sandeep Kumar Mahapatra, CGSC (Standing Counsel, Rajya Sabha) with Sh. Sugam Kumar Jha, Ms. Osheen Verma, Ms. Kritika Sharma, Sh. Harsh Raj and Sh. Raghav Tandon, Counsels for defendant.

1. By this order, I shall dispose of a review application filed by the defendant under Order XLVII Rule 1 of CPC seeking review of the order dated 18.04.2023. By means of this application, defendant Rajya Sabha Secretariat has sought directions that the order dated 18.04.2023 may be recalled.
2. The brief facts giving rise to the present application are; Plaintiff Raghav Chadha is an elected member of Rajya Sabha. He filed the present suit for declaration and permanent injunction along with an application under Order XXXIX Rule 1 & 2 of CPC. The plaint was accompanied with an application under Section 80 (2) of CPC whereby plaintiff sought liberty to institute the suit without complying with the mandate of Section 80(1) of CPC. In terms of the suit, plaintiff challenged the letter dated 03.03.2023 whereby the accommodation allotted to him by the defendant was canceled. Plaintiff also prayed for an ex-parte ad-interim injunction. He claimed in the suit that defendant

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is hellbent to dispossess him from the allotted accommodation. He mentioned that he would suffer irreparable injury, in case, injunction is not granted.

3. Plaintiff's case, as disclosed in the plaint, is that he was allotted Bungalow No.C-1/12, Pandara Park, New Delhi on 06.07.2022 and this accommodation falls under the category of Type-VI Bungalow. Thereafter, on 29.08.2022, plaintiff made a representation to the Chairman, Rajya Sabha requesting for the allotment of Type-VII accommodation. The said representation of the plaintiff was considered and on 08.09.2022, in lieu of earlier accommodation, he was allotted Bungalow No.AB-5, Pandara Road, New Delhi (*hereinafter referred to as 'the accommodation'*) from Rajya Sabha Pool. Plaintiff accepted the allotment and started residing therein along with his parents after carrying out renovation work. It was disclosed in the plaint that plaintiff took the physical possession of the bungalow on 09.11.2022 and the allotment made in his favour was notified in the official gazette vide notification No.62594. Plaintiff mentioned that he came to know that the allotment made in his favour has been canceled arbitrarily and this fact was communicated to him vide letter dated 03.03.2023. Plaintiff sought a decree of declaration in respect of letter dated 03.03.2023 issued by Sh. D.K.Juneja, Director, Rajya Sabha Secretariat to the effect that the same may be declared illegal, non-est and void-ab-initio. He also sought a permanent injunction to the effect that defendant and its associates may be restrained from taking any further action in consequence of letter dated 03.03.2023 and may also be restrained from allotting the bungalow to some other person. Apart from this, plaintiff

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sought damages to the tune of Rs.5,50,000/- from the defendant for causing mental agony and harassment.

4. Record reveals that the suit was instituted on 17.04.2023 and it came up for hearing before this court on 18.04.2023. On the said date, detailed arguments were heard on the maintainability of the suit and thereafter, summons were issued to the defendant along with the notice of the application under Section 80(2) of CPC and at the same time defendant was restrained till the next date of hearing from dispossessing the plaintiff from the allotted accommodation without following the due process of law. The relevant part of the order reads as under:

“(d) I have perused the record in the light of arguments advanced on behalf of plaintiff.

(e) The Public Premises (Eviction of Unauthorized Occupants) Act provides for the eviction of unauthorized occupants from public premises and for certain incidental matters. Plaintiff was allotted the residential accommodation in his capacity as the Member of Parliament. The allotment was made by the Rajya Sabha Secretariat vide letter dated 06.07.2022. In the application under Order XXXIX Rule 1 & 2 of CPC, plaintiff has sought reliefs that; (a) The effect & operation of letter dated 03.03.2023 may be stayed and (b) Defendant should be restrained from dispossessing the plaintiff without due process of law. At this stage, I do not deem it expedient to comment on the arguments raised by the plaintiff that the allotment once made by the Secretariat cannot be canceled under any circumstances during the entire tenure of a Member of Parliament. However, I do find force in the second limb of argument advanced on behalf of plaintiff that a person cannot be dispossessed except by following the due process of law. Since, plaintiff is occupying an accommodation, which falls under the category of a public premises, defendant is obligated to follow the due process of law. It has been submitted on behalf of plaintiff that defendant

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is acting in haste and there is a strong likelihood that he might be dispossessed without due process of law. In view of these circumstances, a prima-facie case is made out for issuing directions to the effect that plaintiff shall not be dispossessed from the Bunglow No.AB-5, Pandara Road, New Delhi without due process of law. The balance of convenience also lies in favour of the plaintiff as he is residing in the accommodation along with his parents. Plaintiff would indeed suffer irreparable injury, in case, he is dispossessed without the due process of law. Accordingly, till the next date of hearing, defendant is directed not to dispossess the plaintiff from Bunglow No.AB-5, Pandara Road, New Delhi without due process of law. Notice of the application under Section 80 (2) of CPC be issued to the defendant to show cause in respect of the relief claimed in the suit.

(f) Issue summons of suit as well as notice of the applications (a) under Order XXXIX Rule 1 & 2 of CPC and (b) under Order XI Rule 12 of CPC to the defendant upon filing of PF/RC returnable on 02.05.2023.

(g) Plaintiff is directed to comply with the mandate of Order XXXIX Rule 4 of CPC.”

5. Summons were duly served on the defendant. Defendant appeared through counsel and filed the review application along with another application seeking stay on the operation of the order dated 18.04.2023. Thereafter, defendant filed an application under Order VII Rule 11 of CPC. Plaintiff filed separate replies to these applications. Written Statement of the defendant is on record.
6. Arguments were heard.
7. The sum & substance of the defendant's arguments is that there is an

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apparent error in the order dated 18.04.2023 and the same should be recalled. It has been submitted by the defendant's counsel that in terms of the said order, the court granted the interim relief to the plaintiff without following the procedure contemplated under Section 80(2) of CPC. Counsel has argued that Section 80(1) of CPC stipulates the precondition of giving two months notice prior to the institution of a suit against a Government or a Public Officer. He mentioned that although an exception to the general rule has been carved out under Section 80(2) of CPC but it specifically provides that the court shall not grant any relief in the suit whether interim or otherwise without giving a reasonable opportunity to the Government or a Public Officer in respect of the relief prayed for in the suit. He has argued that in view of the statutory mandate, it is imperative that a hearing is required to be given to both the sides before granting the leave under Section 80(2) of CPC.

8. Counsel for defendant submitted that in the present matter only notice of the application under Section 80(2) of CPC was issued to the defendant but simultaneously, the court granted the interim relief to the plaintiff that he would not be dispossessed from the bungalow without following the due process of law. He has mentioned that there is nothing on record to demonstrate that the leave under Section 80(2) of CPC was granted to the plaintiff. He has submitted that in view of the settled proposition of law, unless, the leave is granted, the suit cannot be regularized and no relief can be granted. He has argued that there is no concept of deemed leave under Section 80(2) of CPC. He mentioned that there was no urgency in the present matter and the plaintiff wrongfully sought an urgent relief. He mentioned that the notice of

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cancellation of allotment was issued on 03.03.2023 whereas the suit was instituted on 18.04.2023. He mentioned that this goes on to demonstrate that no urgent relief was required in the matter for which the leave was sought by the plaintiff.

9. Counsel for defendant further argued that plaintiff has no vested right in the allotted accommodation which was rightfully canceled by the competent authority. He mentioned that plaintiff has sought a declaration as if he has a title in the allotted accommodation. He mentioned that no declaration can be granted to a person who does not have any title in the property. He contended that plaintiff concealed material facts in the plaint that he was not entitled to the accommodation allotted to him. He mentioned that a decision to change the accommodation of the plaintiff was taken as per the rules & procedures and conduct of business in the Council of State (Rajya Sabha) framed under Article 118 of the Constitution of India and being so, the same cannot be challenged by virtue of the provisions contained in Article 122 of the Constitution of India. He mentioned that the suit filed by the plaintiff is not maintainable and the same is liable to be rejected.
10. Counsel for defendant mentioned that the Directorate of Estate (DoE), Ministry of Housing & Urban Affairs is the allotting body for all bungalows/flats in Lutyens Bungalow Zone. He stated that all such bungalows and flats form part of the General Pool, which is the Mother Pool. He stated that within this General Pool, separate pool/quotas are maintained for specific categories of Central Government employees

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and others. He mentioned that Rajya Sabha is one such pool and Directorate of Estate places certain number of flats/bunglows as per their guidelines for the exclusive allotment to Member of Parliaments (MPs). He mentioned that initially, plaintiff was allotted Type-VII bungalow, which was higher than his entitlement. He stated that plaintiff was allotted Flat No.C-1/12, Pandara Park, New Delhi and the same was accepted by him on 08.07.2022. He mentioned that the said allotment was made by the Chairman, Housing Committee. He stated that thereafter, plaintiff was allotted Bungalow No.AB-5, Pandara Road, New Delhi on vacation basis. He mentioned that subsequently, the allotment was canceled and plaintiff was allotted Flat No.501 & Servant Quarter No.17 & 18, SWAJAS DELUX, New Delhi. He mentioned that the accommodation was allotted pursuant to the decision of Chairman, Housing Committee, which was rectified by the Housing Committee. He mentioned that the decision of the Chairman, Housing Committee has due sanctity and it is protected under Article 122 of the Constitution of India. He contended that the decision of the Chairman of Housing Committee, which stands rectified by the Housing Committee, cannot be subjected to the judicial review. He contended that the suit is barred by the provisions of Section 34 & 38 of the Specific Relief Act.

11. In order to support his arguments, counsel for defendant relied on the decisions in the matters of “*State of Tripura & Ors. Vs. Sajal Kanti Sengupta*” AIR 1982 Gauhati 76, “*State of Orissa & Anr. Vs. Ganeshjew Mahapravu & Ors.*” AIR 1986 Orissa 134, “*State of Orissa & Ors. Vs. Orissa Oil Industries Ltd. & Ors.*” AIR 1982 Orissa 245, “*M/s. Basic Tele Services Ltd. Vs. Union of India & Anr.*” AIR 2000

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Delhi 1, “Bajaj Hindustan Sagar & Industries Ltd. Vs. Balrampur Chini Mills Ltd.” (2007) 9 SCC 43, “State of Kerala & Ors. Vs. Sudhir Kumar Sharma & Ors.” (2013) 10 SCC 178.

12. On the other hand, counsel for plaintiff argued that the order dated 18.04.2023 does not call for any interference. He contended that the court took into account the urgency of the matter and passed directions that plaintiff shall not be dispossessed from the accommodation without following the due process of law. He argued that there was due compliance of the procedure contemplated under Section 80 of CPC. He mentioned that defendant does not fall under the definition of Government. He argued that the provision of Section 80 of CPC applies only to Government or Public Officer. He mentioned that Rajya Sabha or Rajya Sabha Secretariat is constituted under Article 98 of the Constitution of India and it does not come under the definition of either Government or Public Officer. He contended that the term ‘Government’ has been defined under Section 3 (23) of the General Clauses Act, 1879 to mean either Central Government or State Government but it does not include Parliament or Secretariat of Parliament. He mentioned that since, defendant does not fall under the definition of Government, therefore, the rigor of Section 80 of CPC pertaining to the prior notice does not apply.
13. Counsel for plaintiff argued that the power of granting injunction is subject to Order XXXIX of CPC and the said power cannot be restricted by Section 80 of CPC. He mentioned that Order XXXIX of CPC grants power to the court to grant ex-parte injunction depending upon the

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urgency and the facts of a particular case. He stated that the said power has not been restricted or diluted under Section 80 of CPC. He argued that although, defendant does not fall under the definition of Government or Public Officer but as an abundant caution, plaintiff filed the application under Section 80(2) of CPC. He mentioned that the acts of the defendant cannot be considered as affairs of the Parliament and no immunity from the judicial review can be claimed.

14. Counsel for plaintiff argued that the accommodation was provided to the plaintiff under the procedure prescribed in Rule 4.18 of the Handbook for the Members of Rajya Sabha. He mentioned that plaintiff is entitled to the category of accommodation provided to him. He argued that the accommodation was canceled arbitrarily without providing any hearing to the plaintiff. He mentioned that the concerned authority has canceled the accommodation without assigning any reason and justification. He mentioned that the impugned letter dated 03.03.2023 was against the principles of natural justice. He contended that the allotment was made to the plaintiff vide allotment letter dated 08.09.2022. He argued that the circumstances under which the allotment could have been canceled were mentioned in the allotment letter itself. He argued that the allotment, once made to a Member of Parliament, cannot be canceled except for the reasons enumerated in the letter of allotment. He contended that there are various other persons who are similarly placed but their allotment has not been canceled. He argued that defendant was acting in haste and there was a strong apprehension that plaintiff might be forcibly dispossessed from the accommodation. He contended that the court took note of these urgent circumstances and restrained

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defendant from dispossessing the plaintiff without due process of law. He mentioned that the power of the court to grant injunction flows from the provisions contained under Section 94 read with Order XXXIX Rule 1 & 2 of CPC. He mentioned that the provisions of Section 80 of CPC cannot be interpreted in such a manner so as to curtail the power of the court to grant injunction in appropriate cases. He mentioned that the object of Section 80 of CPC is to advance justice and the provisions need to be interpreted accordingly.

15. Counsel for plaintiff argued that the scope and ambit of Article 12 of the Constitution of India cannot be brought and imported into the provisions of Section 80 of CPC. He mentioned that in case, gross illegality or violation of constitutional provisions is shown, judicial review will not be inhibited in any manner by Article 122 & 212 of the Constitution of India. He contended that in case, the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in the court of law. He mentioned that the judicial scrutiny of Parliamentary privileges is not excluded where a fundamental right is violated or a gross illegality occurs or there is a violation of constitutional provisions as distinguished from mere irregularity of procedure in view of Article 122 (1) of the Constitution of India. He mentioned that the court kept extending the injunction order on the subsequent dates and it can be safely presumed that the leave under Section 80(2) of CPC was granted by the court.
16. Counsel for plaintiff has relied on the decisions in the matters of “*V.Padmanabhan Nair Vs Kerala State Electricity Board*” AIR 1989

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Ker 86, "State of AP & Ors. Vs Pioneer Builders, AP" AIR 2007 SC 113, "Y.Savarimuthu Vs State of Tamil Nadu & Ors." 2019 (13) SCC 142, "Anil Kumar Komal Chand Vs Kashinath Balkrishna Patel & Ors." 1982 MPLJ 460, "Raja Ram Pal Vs Lok Sabha" 2007 (3) SCC 184, "Ramdas Athwale Vs UIO" 2010 (4) SCC 1, "Kalpana Mehta Vs Union of India" 2018 (7) SCC 1, "Sri Rajendra Singh Rana & Ors. Vs Swami Prasad Maurya & Ors." 2007(4) SCC 270, "Pashupati Nath Sukul & Ors. Vs Nem Chandra Jain & Ors." MANU/SC/0216/1983, "Yashod Kumari & Ors. Vs MCD & Ors." MANU/DE/1356/2003, "Balwant Singh & Ors. Vs Union of India & Ors." 2000(55) DRJ 22, "Girdhari Lal Vs Zorawar Singh", "V.Padmanabhan Nair Vs Kerala State Electricity Board" AIR 1989 Ker 86, "State of AP & Ors. Vs Pioneer Builders, AP" AIR 2007 SC 113, "Y.Savarimuthu Vs State of Tamil Nadu & Ors." 2019 (13) SCC 142, "Anil Kumar Komal Chand Vs Kashinath Balkrishna Patel & Ors." 1982 MPLJ 460 and "Ashish Shelar & Ors. Vs The Maharashtra Legislative Assembly & Anr." (Writ Petition (Civil) No.979 of 2021).

17. I have perused the record in the light of respective arguments.
18. The sole ground taken in the review application is that there has been a non-compliance of the mandatory provisions of Section 80 (2) of CPC. The arguments were addressed by the counsels on various aspects and some of them touched upon the merits of the suit as well as the relief claimed by the plaintiff but the scope of the present review revolves around the non-compliance of Section 80 (2) of CPC. I have gone through the provisions of Section 80 of CPC. It provides that a notice

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has to be issued before a suit could be instituted against a Government or a Public Officer. Section 80(1) of CPC stipulates the precondition of giving two months notice prior to the institution of suit against Government or a Public Officer. However, Section 80(2) of CPC carves out an exception whereby leave of the court could be sought for institution of a suit without giving such notice. The relevant part of Section 80(2) of CPC reads as under:

“(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).”

19. The implication of Section 80 of CPC and the interplay between Section 80(1) and 80(2) of CPC was enumerated by the Supreme Court of India in the matter of “*State of Andhra Pradesh & Ors. Vs Pioneer Builders, AP*” AIR 2007 SCC 113. The court observed in the matter as under:

“16. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a Public Officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such

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leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a Public Officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit.

17. Having regard to the legislative intent noticed above, it needs little emphasis that the power conferred in the Court under sub-section (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case. More so when want of notice under sub-section (1) is also made good by providing that even in urgent matters relief under this provision shall not be granted without giving a reasonable opportunity to the Government or a Public Officer to show cause in respect of the relief prayed for. The provision also mandates that if the Court is of the opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in sub-section (1).”

20. The procedure to be adopted and the manner in which the application under Section 80 (2) of CPC should be dealt with was laid down by the Supreme Court of India in the matter of “*State of Kerala & Ors. Vs Sudhir Kumar Sharma & Ors.*” 2013 (10) SCC 178. The Supreme Court observed in this matter that the court has to hear both the parties so as to satisfy itself about the existence of grave urgency which requires filing of the suit without serving notice contemplated under Section 80(1) of CPC. It was held that the court would pass order on

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application under Section 80(2) of CPC only after being satisfied about the urgency. It was further held that mere filing of an application under Section 80(2) of CPC is not sufficient to raise presumption regarding grant of leave. In this matter, the court reiterated the earlier observations in the matter of *Pioneer Builders' case (supra)* and observed as under:

“24. It is an admitted fact that no order had been passed on the application filed under Section 80(2) of the CPC whereby leave of the court had been sought for filing the suit without complying with the provisions of Section 80(1) of the CPC. In our opinion, a suit filed without compliance of Section 80(1) cannot be regularized simply by filing an application under Section 80(2) of the CPC. Upon filing an application under Section 80(2) of the CPC, the Court is supposed to consider the facts and look at the circumstances in which the leave was sought for filing the suit without issuance of notice under Section 80(1) to the concerned Government authorities. For the purpose of determining whether such an application should be granted, the court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision. By mere filing of an application, by no stretch of imagination it can be presumed that the application is granted. If such a presumption is accepted, it would mean that the court has not to take any action in pursuance of such an application and if the court has not to take any action, then we failed to understand as to why such an application should be filed.

25. It is an admitted fact that no order had been passed on the application filed under Section 80(2) of the CPC. Till a final order is passed granting the said application, in our opinion, the irregularity in filing of the suit continues. If ultimately the application is rejected, the plaint is to be returned

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and in that event the application filed on behalf of the appellants under Order VII Rule 11 is to be granted. If the application filed under Section 80(2) is ultimately granted, the objection with regard to non issuance of notice under Section 80(1) of the CPC cannot be raised and in that event the suit would not fail on account of non- issuance of notice under Section 80(1) of the CPC.

26. We reiterate that till the application filed under Section 80(2) of the CPC is finally heard and decided, it cannot be known whether the suit filed without issuance of notice under Section 80(1) of the CPC was justifiable. According to the provisions of Section 80(2) of the CPC, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under Section 80(1) of the CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under Section 80(2) of the CPC. We, therefore, come to the conclusion that mere filing of an application under Section 80(2) of the CPC would not mean that the said application was granted by the trial court.

27. In the aforesaid circumstances, we hold that the trial court had wrongly rejected the applications filed by the appellants under Order VII Rule 11 of the CPC. The trial court ought to have heard and decided the application filed under Section 80(2) of the CPC before hearing the applications under Order VII Rule 11 of the CPC.”

21. In view of the preposition of law laid down in the aforesaid judgments, there remains no scope for doubt that a suit cannot be regularized till a

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final order is passed on the application under Section 80(2) of CPC and the leave sought by the plaintiff is granted. Coming back to the present matter, the argument that it should be presumed from the record that the application under Section 80(2) of CPC was considered and allowed by the court does not hold ground. It was argued on behalf of the plaintiff that this court observed in the order dated 18.04.2023 that defendant is acting in haste and there is strong likelihood that plaintiff might be dispossessed without due process of law. Counsel for plaintiff has argued that these observations indicates that the court applied its mind to the fact & circumstances of the case before granting the interim relief and therefore, it can be safely presumed that the leave, as contemplated under Section 80(2) of CPC, was granted. I do not agree with the said line of reasoning. I have perused the order dated 18.04.2023. In the said order, submissions of the plaintiff were recorded to the effect that defendant was acting in haste and there is a strong likelihood of his dispossession without due process of law. These submissions cannot be equated with the observations of the court. Similar arguments about deemed leave under Section 80(2) of CPC were raised in the matter of *Sudhir Kumar's case (supra)* but the same were negated by the Apex Court. The Apex court categorically held in the said matter that such a presumption cannot be raised. It was held in this matter that it cannot be presumed by any stretch of imagination that the application is granted merely because the same has been filed along with the suit. The Apex Court has observed that the court is supposed to give hearing to both the sides and consider the nature of suit and urgency of the matter before taking a final decision of granting or rejecting the leave.

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22. Record shows that vide order dated 18.04.2023, notice of the application under Section 80(2) of CPC was issued to the defendant. This goes on to show that the leave of the court was not granted for otherwise, there was no point in issuing notice to the defendant. This fact substantiate the argument of defendant that the leave as contemplated under Section 80(2) of CPC was not granted on the day when the interim orders were passed. It has been observed in the matter of '*Pioneer Builders*' case (*supra*) that Sub-Section 80(2) of CPC prevents the court from granting any relief unless a reasonable opportunity is given to the Government or Public Officer to show cause in respect of the relief prayed. The observation made in para-14 of the said matter specifies the implication of Section 80(2) of CPC. It reads as under:

“15. Thus, in conformity therewith, by the Code of Civil Procedure (Amendment Act, 1976) the existing Section 80 was renumbered as Section 80(1) and sub-sections (2) and (3) were inserted with effect from 1.2.1977. Sub-section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a Public Officer unless two months' notice has been served on such Government or Public Officer. The provision mitigates the rigors of sub-section (1) and empowers the Court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a Public Officer. But, the Court cannot grant relief under the sub-section unless a reasonable opportunity is given to the Government or Public Officer to show cause in respect of the relief prayed for. Proviso to the said sub-section enjoins that in case the Court is of the opinion that no urgent and immediate relief should be granted, it

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shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigor of sub-section (1).”

23. It was also argued on behalf of the plaintiff that there has been a substantial compliance of the requirement contemplated under Section 80(1) of CPC. Counsel for the plaintiff has mentioned that Section 80(1) of CPC postulates a notice in advance so that Government is informed about the issue and given sufficient time of two months to rectify. He has contended that after the cancellation of accommodation, plaintiff wrote a letter dated 14.03.2023 to the defendant highlighting therein that the accommodation has been canceled arbitrarily. Counsel has submitted that this letter amounts to a notice under Section 80(1) of CPC. I do not find force in these submissions. Section 80(1) of CPC specifies categorically that the notice should contain the cause of action, the name, description and the place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such a notice has been so delivered. The letter dated 14.03.2023 cannot be treated as a notice under Section 80 of CPC. On the one hand, plaintiff himself sought a leave from the court under Section 80(2) that the suit may be regularized as the same has been filed without serving notice required under Section 80(1) of CPC while on the other hand, arguments have been advanced that there was substantial compliance of Section 80(1) of CPC in view of letter dated 14.03.2023. It is not possible to reconcile this contradictory stand. Similarly, the argument that defendant does not fall under the definition of a Government or

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Public Officer cannot be appreciated. Plaintiff moved an application under Section 80(2) of CPC claiming that he may be granted leave for instituting the suit but subsequently changed this version and started claiming that no notice under Section 80(1) of CPC was required to be served as the defendant does not fall under the definition of Government. The same is not permissible in view of the doctrine of approbation and reprobation. Accordingly, these arguments deserve to be rejected.

24. It has been argued on behalf of defendant that there was no urgency in the matter and the leave under Section 80(2) of CPC need not be granted. In order to support this argument, counsel for defendant has pointed out that the suit has been filed more than a month after the allotment was canceled. Counsel has mentioned that the notice of cancellation of allotment was issued on 03.03.2023 whereas the suit was instituted on 18.04.2023. He has contended that this goes on to show that there was no urgency in the matter. Counsel has further pointed out that defendant was contemplating proceedings against the plaintiff under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 as he became an authorized occupant of the bungalow. He has argued that in the garb of seeking injunction, plaintiff intends to preempt and injunct any action that may be contemplated to evict him. On the other hand, counsel for defendant has argued that accommodation was canceled arbitrarily without providing any hearing to the plaintiff. He mentioned that the concerned authority canceled the accommodation without according any reason and justification. He mentioned that the letter of cancellation dated 03.03.2023 is against the principle of natural

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justice. He addressed arguments that defendant was acting in haste and there was strong apprehension that plaintiff may have been forcibly dispossessed from the accommodation. He mentioned that there were various other persons who were similarly placed but their allotment was not canceled. He contended that it was in view of these circumstances that the interim orders were passed.

25. In order to counter the arguments about the violation of the principle of natural justice, defendant relied on the decision in the matter of “*Ambika Soni Vs Union of India*” 2015(222) DLT 195 wherein it has been held by the High Court of Delhi that the question of giving an opportunity of hearing before cancellation of accommodation does not arise, when an opportunity to contest the cancellation is available before the Estate Officer. The court observed in the matter that there cannot be two rounds of hearing, one as to the validity of notice of cancellation which is akin to the notice under Section 4 of the PP Act and thereafter during the proceedings under the PP Act. The court further observed in the said order that if it were to be held that an opportunity of hearing has to be given before canceling the allotment also, then no person, who may be in wrongful occupation of public premises would be ejected therefrom for a long period of time, as grating of hearing at that stage would have its corollary of challenge to the outcome of the hearing. Counsel for defendant has also relied upon the observation made in the matter of “*S.D.Bandi Vs Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors.*” 2013 (12) SCC 631 wherein it was observed that the allotment of Government accommodation is only a privilege given to the Member of Parliament. In respect of the

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submissions made by the plaintiff that he has been single out while no cancellation of allotment has been done in respect of other persons who are similarly placed, it has been argued by the counsel for defendant that these allegations are baseless. He has mentioned that even otherwise, this ground needs to be rejected in view of the observation made in *Ambika Soni's case (supra)* wherein it was held that Article 14 of the Constitution does not permit negative equality.

26. Defendant has mentioned that the plaintiff's accommodation was canceled after request was received from DoE to place the higher type of accommodation in General pool. Counsel for defendant has mentioned that defendant was well within its right to cancel the accommodation and place the same in General pool. He has mentioned that plaintiff was allotted an accommodation which was higher than his entitlement in terms of the guidelines of allotment. He mentioned that plaintiff, being first time MP of Rajya Sabha and being a former Member of State Legislature, was only entitled to Type-VI bungalow but he was allotted Type-VII bungalow which was higher than his entitlement. Counsel has mentioned that defendant received a letter dated 23.02.2023 from DoE requesting for placing three higher types of accommodation from Rajya Sabha pool to the General pool. He has mentioned that in view of these circumstances, the Chairman, Housing Committee undertook the review of the allotment made to the Member of Rajya Sabha and canceled the allotment of plaintiff as he was occupying an accommodation to which he was not entitled. He has mentioned that in terms of the cancellation, plaintiff has been allotted Flat No.501 along with servant quarters, SWAJAS, New Delhi. He

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stated that in a similar manner, the accommodation allotted to Dr. Radha Mohan Das Aggarwal, who was also a first time Member of Parliament, has been canceled. Counsel has contended that in view of these circumstances, plaintiff has no case and there was no urgency in the matter. On the other hand, counsel for the plaintiff has argued that the accommodation once made by the Secretariat cannot be canceled under any circumstances during the entire tenure of the Member of Parliament.

27. The argument that once DoE has placed an accommodation of a General Pool in the Rajya Sabha pool of accommodation cannot be taken back were considered and rejected by the High Court of Delhi in the *Abhimka Soni's case*. The relevant part of the judgment reads as under:

“37. That brings me to the argument, of the DoE having once placed a General Pool Accommodation in the Rajya Sabha Pool of Accommodation, being not entitled to take back the accommodation before the period for which it was so transferred to the Rajya Sabha Pool of Accommodation and being not entitled to cancel the allotment made by the respondent No.4 RSS. As informed by the senior counsel for the respondent No.4 RSS, there are no rules or documents creating Rajya Sabha Pool of Accommodation. The senior counsel for the petitioners also was unable to show that the accommodation in the Rajya Sabha Pool of Accommodation was administered any differently than from the accommodation in the General Pool of Accommodation. In this view of the matter, merely because of the DoE having placed the subject houses in the Rajya Sabha Pool of Accommodation for onward allotment by the respondent No.4 RSS, cannot be said to be taking away the rights of the DoE, which is otherwise vested with the administration of Government Houses of taking requisite action with respect to the said two houses.”

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28. In view of the above, the argument that the accommodation once made to a Member of Parliament cannot be canceled under any circumstances during the entire tenure of Member of Parliament deserves rejection. It may also be added that plaintiff has no vested right in the accommodation and his status is akin to that of a licensee, which can be revoked by the competent authority at any time. Plaintiff cannot claim that he has an absolute right to continue to occupy the accommodation during his entire tenure as a Member of Rajya Sabha. The allotment of Government accommodation is only a privilege given to the plaintiff and he has no vested right to continue to occupy the same even after the cancellation of allotment.

29. In the light of the discussion made in the afore said paras, I have reached a conclusion that the application for review needs to be allowed. On going through the provisions of Section 80(2) of CPC in the light of the interpretation given by the Supreme Court of India in the matters of '*State of Andhra Pradesh Vs. Pioneer Builders A. P.*' (Supra) & '*State of Kerala & Ors. Vs Sudhir Kumar Sharma & Ors.*' (Supra), it is an inescapable conclusion that for the purpose of determining whether an application should be granted under Section 80(2) of CPC, the Court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision and till a final order is passed granting the said application, the irregularity in filing of the suit continues. Section 80(2) of CPC categorically provides that although, a suit to obtain an urgent and immediate relief against the Government or Public Officer may be

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instituted with the leave of the Court without serving any notice as required under Section 80(1) of CPC but the Court shall not grant relief in the suit whether interim or otherwise, except after giving to the Government or Public Officer, a reasonable opportunities of showing cause in respect of the relief prayed for in the suit. It can be seen from the record that in terms of order dated 18.04.2023, notice of the application under Section 80(2) of CPC was issued to the respondent and simultaneously interim relief was granted to the plaintiff that he would not be dispossessed from the accommodation without due process of law. This is certainly an error apparent on the face of the record and the same needs to be corrected. Accordingly, the order dated 18.04.2023 stands recalled and the interim order stands vacated.

30. Further, after hearing the parties, I find that plaintiff has failed to demonstrate that any urgent or immediate relief needs to be granted in the present matter for which leave could be granted under Section 80(2) of CPC. Plaintiff's allotment was canceled on 03.03.2023, whereas, the suit was instituted on 17.04.2023. The accommodation granted to the plaintiff falls under the definition of a Public Premises. Counsel for defendant submitted during the course of arguments that an action under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is being contemplated and the appropriate proceedings are going to be initiated. As observed in the preceding paras, the accommodation allotted to the plaintiff is only a privilege given to him as a Member of Parliament. He has no vested right to continue to occupy the same after the privilege has been withdrawn and the allotment has been canceled. The argument that the plaintiff was not given hearing before the

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cancellation of allotment stands rejected as no such notice was required under the Law. Since, no urgent or immediate relief needs to be granted in the present suit, therefore, the plaint is returned for presentation after complying with the requirement of Section 80(1) of CPC.

31. Ahlmad is directed to return the plaint after necessary compliance.

**Announced in the open court on
05.10.2023**

**(Sudhanshu Kaushik)
Addl. District Judge-02 & Waqf Tribunal
New Delhi District, Patiala House Courts,
New Delhi**