

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 09.08.2011

Judgment delivered on: 19.12.2011

W.P.(C) 8326/2007 & CM No.15117/2009

GKW Limited

.....Petitioner

Through: Mr. Rajiv Virmani, Sr. Adv. with Ms. Shruti
Verma, Adv.

Vs.

Life Insurance Corporation of India & Another Respondent

Through: Mr. Kamal Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the judgment dated 6th July, 2007 passed by the learned Additional District Judge whereby the appeal filed by the petitioner under Section 9 of the Public Premises

(Eviction of Unauthorized Occupants) Act, 1971 against the order of the Estate Officer dated 5.1.2004 was dismissed.

2. Brief facts which necessitated the filing of the present petition are that the petitioner had taken on lease the premises admeasuring 4587 sq.ft on the second floor of the building known as Jeevan Vihar Building, situated at 3, Parliament Street, New Delhi in February, 1963 on a monthly rent of Rs. 8,027.25 from the respondent LIC. The said lease was being renewed from time to time and lastly the same was renewed for a period of three years commencing from 1st December, 1993 till 30th November, 1996 @ Rs. 11.30 per sq.ft. per month vide lease deed dated 31st May, 1995. In terms of the renewal clause contained in the said lease deed, the petitioner sought further renewal of its tenancy for a period of 9 years but the said request of the petitioner was not conceded to by the respondent and one of the reasons for non-renewal of the lease by the respondent was that the petitioner did not agree to the proposal of the respondent to increase the rent from 11.30 per sq.ft. to Rs. 100 per sq.ft. Due to the non-renewal of the said lease by the respondent, the tenancy period of the petitioner in respect of the leased premises came to an end on 30th November, 1996, but the petitioner did not vacate the tenanted

premises on the expiry of the said lease period. The respondent LIC sent a legal notice under Section 106 of the Transfer of Property Act thereby terminating the tenancy of the petitioner w.e.f. 31st May, 1997. But as the petitioner did not vacate the premises even despite the termination of the tenancy, the respondent initiated proceedings against the petitioner under Sections 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for recovery of possession and for recovery of damages and a show cause notice under Section 4(b) (ii) & 7(3) dated 17th October, 1997 was issued by the Estate Officer. During the pendency of the proceedings before the Estate Officer, the petitioner handed over vacant and peaceful possession of the tenanted premises on 15.10.2003 but the petitioner, however, did not make any payment towards the damages, and therefore, the learned Estate officer passed an order under Sub-Section 3 of Section 7 of the Public Premises Act, requiring the appellant to pay a sum of Rs.2,91,54,728.00 vide order dated 5.1.2004. The said order of the learned Estate Officer was challenged by the appellant in appeal and vide order dated 6.7.2007, the learned Additional District Judge dismissed the appeal filed by the appellant.

Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Arguing for the petitioner, Mr. Rajiv Virmani, Sr. Advocate strongly contended that the learned Estate Officer has wrongly and illegally assessed the damages after taking into consideration the amount of rent agreed between the respondent and one Bank of Tokyo Mitsubishi Ltd. vide lease deed dated 24th April, 1997, which premises, as per the petitioner, were totally incomparable with the premises under the occupation of the petitioner. The contention raised by counsel for the petitioner was that the said Bank of Tokyo Mitsubishi Ltd. was let out an area of approximately 30/40 sq.ft. by the respondent LIC on the ground floor and, therefore, the rent settled between the parties for such a small area could not have been compared to determine the amount of damages for larger area of 4587 sq.ft. under the occupation of the petitioner that too on the second floor. Counsel thus urged that only comparable lease to assess the amount of damages payable by the petitioner could be the lease executed by the respondent LIC with CMC Ltd. dated 20th January, 2000 wherein the rate of rent for the relevant period for tenanted premises on the second floor was settled at Rs. 25 per sq.ft per

month. Counsel thus took an exception to the approach adopted by the learned Estate Officer and by the Appellate Court in assessing the amount of damages in respect of the leased premises of the petitioner @ Rs. 70 per sq.ft. Counsel for the petitioner also contended that the learned Estate Officer sought to have given a fresh notice to the petitioner before finally deciding the application filed by the respondent under sub Section 3 of Section 7 of the Public Premises Act as the petitioner remained under the bona fide belief that with the handing over of the possession of the tenanted premises on 15.10.2003, the proceedings before the Estate Officer must have come to an end. Counsel for the petitioner also argued that the petitioner was declared as a sick industry under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and in view of the provisions of Section 22 of the said Act, no recovery proceedings could lie against the petitioner. Counsel for the petitioner also submitted that the petitioner was a bonafide tenant of the respondent and by initiating eviction proceedings against the petitioner the respondent flouted the guidelines issued by the Ministry of Urban Development which prohibits eviction of bona fide tenants. In support

of his arguments, counsel for the petitioner placed reliance on the following judgments :-

1. Hari Singh (deceased) (Through LRs) -vs- S.S.Jogi Etc.102 (2003) DLT 215 (DB)
2. National Radio and Electronic Co.Limited -vs- Motion Pictures Association 122(2005) DLT 629 (DB)
3. Niader Mal Amar Nath and Others -vs- Rukmani Devi Jaipuria Charitable Trust & Others 2009 X AD(Delhi) 623.
4. Dipti Bikash Sen & Another -vs- India Automobiles (1960) Limited 1978 AIR Cal 454.

4. Opposing the present petition, Mr. Kamal Mehta, learned counsel for the respondent LIC submitted that the tenancy of the petitioner was terminated by the respondent under Section 106 of the Transfer of the Property Act and in the said notice the petitioner was called upon to pay damages @ Rs. 100/- per sq.ft. per month w.e.f. 1.6.1997. Counsel also submitted that in awarding the damages @ Rs. 70/- per sq.ft. the learned Estate Officer took into consideration the lease deed date of the relevant period executed between the LIC with Bank of Tokyo Mitsubishi Ltd. which premises leased out by the respondent in favour of the bank, if not exactly but was closely comparable to the leased premises under the occupation of the petitioner. Counsel for the respondent also refuted the contention of the petitioner that a smaller area was leased out by the respondent in favour of the said bank but in fact the premises let out in favour of the

said Bank of Tokyo Mitsubishi Ltd. was 3516 sq.ft for a period of 3 years commencing from 18.2.1997. Counsel also argued that the lease deed between the respondent LIC and CMC wherein rate of rent agreed was @ Rs. 25/- for an area admeasuring 7074 sq.ft. was as a result of mutual negotiations between the two Government bodies. Counsel also submitted that the premises let out by one Government Corporation to another Government body even had a lower rate but the same cannot create any ground to determine the same amount of rent/damages for a private body, which is engaged in profit earning and for total commercial motives. Counsel for the respondent also submitted that the petitioner also failed to adduce any evidence before the learned Estate Officer about the rate of damages and, therefore, the petitioner cannot be allowed to raise any grievance to dispute the findings of the learned Estate Officer on the determination of rate of damages, that too after having taken into consideration the amount of rent settled by the respondent with another tenant for the relevant period and for comparable premises. Counsel for the respondent also argued that the petitioner kept on dragging the matter before the Estate Officer by seeking repeated adjournments and was proceeded ex parte thrice and, therefore, the petitioner was

not entitled to any fresh notice by the learned Estate Officer as has been claimed by the petitioner in the present petition. Counsel further submitted that damages as awarded by the learned Estate Officer are on evidence and the learned Appellate Court after having gone into all the issues as have been raised by the petitioner in the present petition upheld the decision of the Estate Officer with cogent and justifiable reasons and the decision given by the learned Appellate Court can neither be termed as illegal, perverse or unreasonable in any manner warranting any interference by the writ Court. In support of his arguments counsel for the respondent placed reliance on the following judgments:-

1. Jiwan Dass -vs- Life Insurance Corporation of India & Anr 1994 Suppl (3) SCC 694
2. Iyer & Son Private Limited -vs- LIC & Anr. 2007(10) AD (Del) 643
3. Saraswati Marketing Co. Ltd. vs. LIC CM(M) 304/2003 (Delhi High Court)
4. K.T. Corporation & Another -vs- India Tourism Development Corporation and Another 2009 VI AD(Del) 115.
5. Dr.Yash Pal Dhawan vs. the Commssioner, Ferozepur Division 1983 RLR 290(P&H)
6. Life Insurance Corporation of India -vs- Narender Nath Gauba & Ors 158(2009) DLT 98.
7. Siemons Public Communication Pvt. Ltd. -vs- Union of India & Ors.AIR2009SC1204.
8. DTC vs Pradeep Kumar & Anr. 146(2008) DLT 40
9. Smt. Murli Devi Vs. UOI (LPA No.3/2010) Delhi High Court.
10. Batliboi & co. Ltd. Vs. LIC (CM(M) No.1349/2007)

5. I have heard learned counsel for the parties at considerable length and have given my thoughtful consideration to the pleas raised by them.

6. Admittedly, the petitioner is no more in occupation of the said premises leased out by the respondent in its favour in the year 1963 as peaceful possession of the same was handed over by the petitioner to the respondent on 15.10.2003 during the pendency of the proceedings before the learned Estate Officer. The only dispute raised by the petitioner before this Court as well as before the Appellate Court is with regard to the liability of the petitioner towards payment of damages for the period it remained in unauthorized occupation of the said premises. It is also not in dispute that the tenancy of the petitioner was determined in accordance with the law in terms of Section 106 of the Transfer of Property Act and the petitioner became unauthorized occupant of the said leased premises w.e.f. 1st June 1997. It is also not in dispute that the petitioner failed to lead any evidence before the learned Estate Officer to dispute or counter the documentary evidence placed on record by the respondent i.e. lease deed dated 24th April 1997 executed between the respondent and M/s Bank of Tokyo Mitsubishi Ltd to calculate the damages payable by the

petitioner. The Estate Officer in calculating the damages payable by the petitioner kept the said lease dated 24.4.1997 as a benchmark wherein the rent was approx Rs. 70/sq ft and allowed an interest of 10% p.a alongwith the said damages.

7. The guiding principle for calculating the damages under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, is Rule 8 of the of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971, which for better appreciation is reproduced as under:-

“8. Assessment of damages.- In assessing damages of unauthorised use and occupation of any public premises the estate officer shall take into consideration the following matters, namely :

- (a) The purpose and the period for which the public premises were in unauthorised occupation-,
- (b) The nature, size and standard of the accommodation available in such premises;
- (c) The rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;
- (d) Any damage done to the premises during the period of unauthorised occupation;
- (e) Any other matter relevant for the purpose of assessing the damages.”

As would be manifest from the above, the learned Estate Officer has to take into account the nature, size and standard of the premises in question and also as to what rent the premises would have fetched

had it been let out for the period of unauthorized occupation to any private party. The contention of the counsel for the petitioner herein was that the learned Estate Officer should have calculated the damages payable keeping the lease between the respondent LIC and CMC dated 20.1.2000 wherein the rent was @Rs. 25 sq ft as the area is more comparable according to the premises in question than the area being let out under the lease with Bank of Tokyo Mistubishi Ltd. Admittedly, the company CMC is not a private person and the same is also a Government Company as the respondent and, therefore, a comparison between two Government Corporations for settling the amount of rent can certainly be different vis-à-vis the amount of rent determined by a Government Corporation with a private entity. There is thus basic fallacy in the argument of counsel for the petitioner that learned Estate Officer ought to have taken into consideration the rate of rent as was settled between the respondent LIC with CMC to assess the amount of damages for the premises under the occupation of the petitioner. In my considered view the Estate officer has correctly placed reliance on the lease of the respondent with Bank Of Tokyo Mitsubishi Ltd. which is a private party and as per the principle envisaged under rule 8 of the PP Rules reproduced hereinabove. It is

no more res integra that the Government and the Government Corporations have indefeasible right to let out their premises at rent prevailing in the market so as to derive legitimate profits and earnings by letting out their premises and to ask for periodical increase in the rents. It would be useful to refer to the judgment of the Apex Court in the case of ***Jiwan Dass vs. LIC 194 Supp(3) SCC694*** which has been reiterated time and again and the relevant para of which is reproduced as under:

"An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejection of a tenant/licensee is inevitable. So the doctrine of livelihood cannot discriminately be extended to the area of commercial operation."

Thus in the aforesaid conspectus, it cannot be said that the respondent being a Government Corporation must claim the same amount of rent as they had settled with other Government bodies as it certainly has every legal right to ask for the rent, which has been agreed by a private party. In the facts of the present case, no illegality or perversity can be found in the order of the learned Estate Officer accepting the rate of rent settled between the respondents and Bank

of Tokyo Mitsubishi Ltd., for the relevant period for calculating damages and the said order of the learned Estate Officer found credence from the learned Appellate Court. The judgments on which reliance has been placed by the petitioner canvass the legal position that in case no evidence is led by the party to the claim for calculating the amount of mesne profits than the court cannot take judicial notice of the prevalent rent based on no material. There is no dispute with regard to the said legal position but in the facts of the case at hand the learned Estate Officer has based the damages on the lease between Bank of Tokyo Mitsubishi Ltd. and the respondent and is based on material evidence and hence the said judgments would not be of any help to the case of the petitioner.

8. Admittedly, the petitioner had every right to dispute the amount of damages but such course was available to the petitioner only before the Estate Officer, which is the first Court of finding of facts where it could have led evidence to demolish the case set up by the respondent before the Estate Officer. The petitioner having not availed that opportunity despite taking several adjournments cannot now reagitate to find fault with the order of the Estate Officer with regard to the assessment of damages when it failed to dispute the

same even after the grant of ample opportunities by the Estate Officer. It has not been disputed by the petitioner that before the Estate Officer it was proceeded ex parte at least thrice and now to say that the petitioner ought to have given another opportunity before passing of final order by the Estate Officer would amount to giving a premium on the negligent conduct of the petitioner. The extremely naïve contention of the counsel for the petitioner that he assumed that the proceedings before the Estate Officer had ended with the handing over the possession of the premises by the petitioner on 15.10.2003 is unrealistic and a mere pretence to prolong the proceedings.

9. Another contention raised by the counsel for the petitioner was that the guidelines of the Ministry of Urban Development stipulate that the Public Authorities should not resort to the provisions of the PP Act for the eviction of bonafide tenants. The said contention of the counsel for the petitioner cannot be acceded to in the light of the pronouncement of the Apex Court in the case of ***Syndicate Bank vs. Ramchandra Pillai 2011(1)SCALE 368*** wherein the court has held that the provisions of the PP Act cannot be set at Naught by relying upon the said guidelines which are not statutory in character.

10. The contention of the counsel for the petitioner that the operation of Section 22 of the SICA will bar any proceedings against the petitioner as it has been declared sick under the Act is devoid of any force as has been rightly held by the learned Trial Court that the eviction proceedings do not fall within the ambit of the proceedings referred to in section 22 of SICA. Reliance has been placed on the Constitution Bench judgment of the Apex Court in the case of ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, Madras (1992)3SCC1*** by the learned trial court which position has been reiterated till recently by the Apex Court in the case of ***Dunlop India Limited vs. A.A Rahna (2011)5SCC 778*** .

11. In my considered view, the learned trial Court has already minutely dealt with all the issues raised by the petitioner before this Court and after having discussed all the issues meticulously a reasoned order has been passed by the Appellate Court. The impugned order does not warrant any interference of this Court in the exercise of its writ jurisdiction when nothing perverse or illegal in the reasoning of the appellate Court or Estate Officer has been justifiably canvassed before this Court.

12. In the light of the above, there is no merit in the present petition and the same is accordingly dismissed.

December 19,2011
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KAILASH GAMBHIR, J