

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th March, 2012

+ **LPA No.218/2011**

% **LIFE INSURANCE CORPORATION OF
INDIA & ANR**

....Appellants

Through: Mr. Ravinder Sethi, Sr. Adv. with
Mr. Gaurav Mahajan, Mr. M.L.
Mahajan & Mr. Puneet Sharma,
Advts.

Versus

KAMLA BHARGAVA & ORS.

..... Respondents

Through: Mr. L.K. Singh, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 20th January, 2011 of the Learned Single Judge allowing W.P.(C) No.12718/2009 preferred by the respondents. The said writ petition was filed by the respondents impugning the order dated 21st August, 2009 of the Learned Addl. District Judge exercising powers under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and dismissing the appeal preferred by the respondents against the order dated 28th January, 2004 of the Estate Officer of their eviction from Flat No.8, Tropical Building, H-Block, Connaught Circus, New Delhi. The respondents in

pursuance to the said eviction order had been dispossessed from the premises on 21st October, 2009. Accordingly the Learned Single Judge also directed the appellant LIC to put back the respondents into possession of the said premises.

2. Notice of this appeal was issued and the operation of the impugned judgment stayed. The counsels have been heard.

3. The husband and father respectively of the respondents was a tenant in the aforesaid premises under the appellant LIC; he died on 18th April, 1983; the appellant LIC vide notice dated 12th /27th January, 2001 under Section 106 of the Transfer of Property Act, 1882 terminated the tenancy of the respondents and initiated proceedings for their eviction under PP Act. As aforesaid an order dated 28th January, 2004 of eviction was passed by the Estate Officer. The Estate Officer also held the respondents liable for damages @ ₹25,887.50p per month w.e.f. 1st March, 2001 till vacation.

4. It was the plea of the respondents in appeal before the Learned Addl. District Judge that they had not been served with any notice of the proceedings; that the wife of the respondent no.2 Shri Vikramaditya Bhargava, who initially appeared before the Estate Officer had strained relations with the respondents and was not authorized to so appear and had also subsequently stopped appearing resulting in the *ex parte* order of eviction; that the respondents had in the meanwhile approached the Rent Negotiation Committee of the LIC for accepting them as tenants on fresh terms and which had been accepted; that the tenancy of the respondents thus stood renewed for a period of ten years w.e.f. 1st March, 2002; that the

respondents had moved an application before the Estate Officer disclosing the said fact but the Estate Officer erred in passing the order of eviction and damages.

5. The Learned Addl. District Judge found that the tenancy of the respondents had been duly terminated; that the respondents were duly served with the notice of the proceedings and the wife namely Smt. Nutan Bhargava of the respondent no.2 had appeared on a number of dates before the Estate Officer; that similarly the Advocate who represented the respondents before the Learned Addl. District Judge had also appeared before the Estate Officer but had subsequently stopped appearing which had resulted in the *ex parte* orders of eviction and damages; that though there were some negotiations but no fresh tenancy was ever created between the respondents and the appellant LIC and the status of the respondents remained that of unauthorized occupants after termination of their tenancy. Accordingly the appeal against the eviction order was dismissed but the rate of damages was reduced from that of ₹25,887.50p per month awarded by the Estate Officer to ₹4,500/- per month which had been agreed during the discussions for renewal of lease.

6. The Learned Single Judge has set aside the order of the Learned Addl. District Judge for the reason that the appellant LIC having agreed to renew the tenancy of the respondents w.e.f. 1st March, 2002 to 28th March, 2012 and the respondents having made payments thereafter at the said rate, could not have evicted the respondents notwithstanding the fact that no fresh lease deed as was contemplated to be executed had been executed. It was further held that once the appellant LIC had taken a decision to regularize the

tenancy of the respondents on revised rates of rent, then in all fairness the appellant LIC should have dropped the proceedings initiated by it under the PP Act. The Learned Single Judge further held that non execution of the fresh lease deed could not nullify the decision of the Rent Negotiation Committee more so when it was fully accepted and acted upon by the respondents. Thus the respondents who had been evicted on 21st October, 2009, were directed to be put back into possession.

7. The senior counsel for the appellant LIC has urged that the negotiations with the respondents were 'without prejudice'. Attention is invited to the reply dated 25th November, 2003 of the appellant LIC to the application of the respondents before the Estate Officer and wherein also the appellant LIC had stated that the tenancy was never renewed and the amount paid by the respondents had been kept in suspense account to be adjusted against damages after adjudication of the proceedings.

8. We may notice that the Learned Single Judge has held the proceedings under the PP Act to be bad also for the reason of the guidelines dated 30th May, 2002 issued by the Ministry of Urban Development & Poverty Alleviation. In fact it was for the said reason that this appeal was taken up for hearing along with other matters concerning the said guidelines. However the counsel for the respondents during the hearing has stated that he is not relying on the guidelines and is supporting the judgment of the Learned Single Judge on the eviction being in contravention of the decision of the appellant LIC to renew the lease of the respondents. We, for this reason are writing a separate judgment in this appeal and without

adverting to the aspect of guidelines, which issue is being dealt with in the other matters.

9. What has immediately struck us is that even as per the judgment of the Learned Single Judge, the right of the respondents to remain in the premises is till 28th March, 2012 only. The arguments in the appeal were heard on 16th February, 2012. We had as such asked the counsel for the respondents as to what purpose would be served even if the judgment of the Learned Single Judge were to be upheld and in accordance therewith the respondents were to be put back into the possession of the premises, in as much as, as per their own case they are entitled to remain therein only till 28th March, 2012 i.e. barely for a month. The counsel for the respondents also does not dispute/controvert that the right of the respondents to remain in the premises is till 28th March, 2012 only. He has however contended that upon being so put into possession, the appellant LIC to take back possession from them would be required to again terminate the tenancy and to initiate proceedings for eviction and which the respondents would have a right to contest on the grounds as may then be available to them.

10. We are unable to appreciate the said attitude. None is entitled to take advantage of the inherent delays in legal proceedings. The Supreme Court recently in *Indian Council for Enviro-Legal Action Vs. UOI* (2011) 8 SCC 161 has reiterated that no litigant can derive any benefit from the mere pendency of a case in a Court of law and litigation cannot be permitted to turn into a fruitful industry so that unscrupulous litigants are encouraged to invoke the jurisdiction of the Court. It was also held that litigation cannot be permitted to confer any advantage on a party by delayed action of Courts.

The respondents cannot thus be heard to urge that though under the law they are entitled to remain in the premises till 28th March, 2012 only but are entitled to delay delivery of possession thereafter taking advantage of the delays in the legal proceedings.

11. The counsel for the respondents has also urged that the appellant LIC has by evicting the respondents from the premises on 21st October, 2009 deprived the respondents of use thereof for about 2½ years till 28th March, 2012.

12. The remedy if any of the respondents therefor would be for damages. We are also constrained to observe that what was for adjudication in the appeal under Section 9 of the PP Act and in writ petition in exercise of powers of judicial review of judgment therein, was the validity of the eviction order and not refusal of the appellant LIC to grant fresh lease to the respondents. The respondents were well aware, if not earlier at least from the reply dated 25th November, 2003 (supra) of the appellant LIC before the Estate Officer, that the appellant LIC was refusing to honour the alleged agreement of renewal of lease. The remedy of the respondents, if aggrieved therefrom, was to challenge the said decision or to seek specific performance of the agreement claimed by them of renewal of lease. The respondents chose not to seek any such relief. No error can be found in the order of the Learned Addl. District Judge in holding that in the absence of any fresh lease, the order of eviction could not be faulted with. The Learned Single Judge in exercise of powers of judicial review over the order of the Addl. District Judge has travelled beyond the jurisdiction in judging the actions of the appellant LIC of non-renewal of lease and which were not

subject matter of the proceedings before the Estate Officer. However we refrain ourselves from commenting further on the said aspect and clarify that these observations are not intended to influence the claim if any preferred by the respondents for damages as aforesaid against the appellant LIC.

13. We accordingly allow this appeal and set aside the judgment dated 20th January, 2011; resultantly the writ petition filed by the respondents is dismissed. However in the facts, we do not impose any costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 16, 2012

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