

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

Date of decision: 18th July, 2012

+ **LPA No. 512/2012**

% **INTERNATIONAL BUILDING & FURNISHING CO.
PVT. LTD. Petitioner**

Through: Mr. Bahar U. Barqui, Adv.

Versus

LIFE INSURANCE CORPORATION OF INDIA.... Respondents

Through: Mr. Kamal Mehta with Mr. Sudeep
Singh, Advs. for R-1.

Ms. Sweety Manchanda, CGSC for
R-2&3.

AND

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CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. These two Intra-Court appeals impugn the common order dated 1st May, 2012 of the learned Single Judge dismissing W.P.(C) No.1116/2012 and W.P.(C) No.1200/2012 preferred by the appellant. The said writ

petitions were preferred with respect to the two premises, one *ad-measuring* 801 sq. ft. on the first floor and the other *ad-measuring* 891 sq. ft. on the fifth floor, of Jeevan Bharti Building, 24, Connaught Circus, New Delhi of the respondent LIC in occupation of the appellant and impugning the notices served by the respondent LIC on the appellant of termination of tenancy of the appellant of the said two premises.

2. The challenge by the appellant to the notices of termination of its tenancy of the two premises was predicated on the following grounds:-

- (i) that the notices of termination of tenancy, with a threat, on non-compliance thereof, of proceedings for eviction and for recovery of damages for use and occupation before the Estate Officer of the respondent under the provisions of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are in contravention of the Guidelines notified on 30th May, 2002.
- (ii) that the notices are bad in the face of the offer of appellant to increase the rent by as much as 100% of the last paid rent. Reliance in this regard was placed on the judgment of the Bombay High Court in ***Parsis Kothawala v. LIC*** 2004 BCR 4 614, SLP No.22904/2004 whereagainst was dismissed by the Supreme Court, ***Nusli Neville Wadia v New India Assurance Co. Ltd.*** 2006 (3) MhLj 713 upheld by the Supreme Court in ***New India Assurance Co. Ltd. v. Nusli Neville Wadia*** (2008) 3 SCC 279.

3. The learned Single Judge dismissed the writ petitions holding –
- (a) that as far as the Guidelines notified on 30th May, 2002 are concerned, the same vide judgment dated 23rd March, 2012 of the Division Bench of this Court in ***Life Insurance Corporation of India v. Damyanti Verma*** have been held to be not of binding nature;
 - (b) that it is even otherwise open to the appellant to take all defences available to it in the proceedings under the PP Act.
4. We, besides in ***Damyanti Verma*** supra, have also had an occasion to exhaustively deal with the subject in our judgment dated 11th May, 2012 in LPA No.9/2012 titled ***Indian Institute of Public Opinion Pvt. Ltd. v. Life Insurance Corporation of India*** and in other connected matters, one of which was of the counsel for the appellant herein. In view thereof need is not felt to burden this judgment with the same matter. Suffice it is to state that clarification to the Guidelines also carves out an exception in favour of affluent tenants and in which category the appellant definitely falls.
5. The counsel for the appellant contends that Special Leave Petitions to the Supreme Court have been preferred against our judgment in ***Damyanti Verma*** (supra) and vide interim order in which SLPs, dispossession has been stayed. He contends that the present appeals be entertained to await the outcome of the decision of the Supreme Court and in the meanwhile the respondent LIC be restrained from proceeding against the appellant before the Estate Officer.

6. We are unable to agree. As far as this Court is concerned, the matter is no longer *res integra* in view of the judgments supra in ***Damyanti Verma*** and ***Indian Institute of Public Opinion Pvt. Ltd.*** Mere preferring of SLPs and issuance of notice therein does not change the position. Significantly, the interim order of the Supreme Court does not stay the operation of the said judgments. Moreover experience has shown that such occupants of public premises are able to keep the proceedings even before the Estate Officer pending for several years and for this reason also the contention of the counsel for the appellant cannot be accepted.

7. We are also of the opinion that writ petitions even otherwise were not maintainable. The respondent LIC has vide notices impugned only determined the tenancy of the appellant. The appellant even otherwise admits the term of the leases in its favour to have expired. It is not as if the respondent LIC after expiry of the term of the lease or determination of the tenancy is forcibly evicting the appellant. Resort is being taken to the provisions of the PP Act which also provides for statutory appeal against the order of the Estate Officer, if at all, against the appellant. We fail to see as to how the appellant, instead of availing of the said procedure prescribed in law can jump the gun and challenge the notices by filing the writ petitions especially when the legal position as far as this Court is concerned stands settled vide judgment ***Damyanti Verma*** and in ***Indian Institute of Public Opinion Pvt. Ltd.*** It is not as if the appellant does not otherwise want to contest the proceedings under the PP Act and is intending to challenge the same on these grounds only. Entertaining a challenge at this stage to the notice of termination when the appellant does not give up the right to

otherwise contest the proceedings before the Estate Officer would tantamount to delaying the proceedings before the Estate Officer till the decision on the said aspect.

8. The Supreme Court in ***D.P. Maheshwari v. Delhi Administration*** (1983) 4 SCC 293 has deprecated the practice of, first entertaining the challenge on preliminary objections and held that the High Courts in the exercise of their jurisdiction under Article 226 of the Constitution of India ought not to stop proceedings before the Tribunal so that a preliminary issue may be decided by them. It was further held that the jurisdiction under Article 226 of the Constitution of India ought not to be permitted to be so exploited. Even prior to the said judgment of the Apex Court, this Court in ***Shops and Commercial Workers Union v. Management of Ayurvedic and Unani Tibbia College Board*** MANU/DE/0176/1979 had expressed anguish at delay caused by entertaining such petitions. The Supreme Court again in ***National Council for Cement & Building Materials v. State of Haryana*** (1996) 3 SCC 206 commented upon the appalling situation created by entertaining such petitions at interim stage and staying the proceedings before the Tribunal. It was observed that there is no justification for a party to the proceedings to stall the final adjudication of the dispute by raising preliminary issues.

9. A Division Bench of this Court in ***Hindustan National Glass Industries v. Union of India*** 132 (2006) DLT 454 held that statutory proceedings pending at the stage of show cause notice ought not to be interfered with in exercise of discretionary jurisdiction under Article 226 of the Constitution and which proceedings ought not to be permitted to be

bypassed by resort to writ proceedings under Article 226. Another Division bench in *Pepsico Restaurants International (I) (P) Ltd. v. Municipal Corporation of Delhi* (1995) 35 DRJ 616 has also reiterated that the High Court should not entertain a writ petition against a mere show cause notice except in the case of patent lack of jurisdiction in the authority issuing the notice or violation of principles of natural justice. It was held that the High Court should leave such a hasty petitioner to pursue the remedy of showing cause against the notice raising all his contentions for the consideration of the statutory authority and then approach the High Court in the event of the result going against him. The Supreme Court also in *The Special Director v. Mohd. Ghulam Ghouse* (2004) 3 SCC 440 has deprecated entertaining the petition challenging the show cause notices.

10. Notice may also be taken of *Nopany Investments (P) Ltd. v. Santokh Singh (HUF)* (2008) 2 SCC 728 laying down that a notice to quit under Section 106 of the Transfer of Property Act is not necessary in as much as filing of an eviction proceedings under the general law itself is a notice to quit upon the tenant. The said reasoning was followed by a Division Bench of this Court in *Shri Ram Pistons & Rings Ltd. v. C.B. Agarwal Huf* MANU/DE/2381/2008.

11. As far as the offer of the appellant to increase the rent by 100% is concerned, the appellant is an old occupant of the premises at meager rent; even doubling would not bring the rent anywhere close to prevalent market rent. We have already in *Indian Institute of Public Opinion Pvt. Ltd.* held that when the premises of respondent LIC can fetch a higher rent, there is no reason for LIC to, to the advantage of a particular tenant and at its own loss,

accommodate such tenant.

12. Thus, whichever way we may look, no error can be found in the order of the learned Single Judge. The appeal is without any merits and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 18, 2012

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