

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

Date of decision: 23rd March, 2012

+ **LPA No.977/2011**

% **LIFE INSURANCE CORPORATION OF INDIA Appellant**
Through: Mr. Mohinder Singh, Adv.

Versus

DAMYANTI VERMA (DECD.)
THROUGH LRS Respondents
Through: Mr. Ahmad, Adv.

AND

+ **LPA No.978/2011**

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Through: Mr. Mohinder Singh, Adv.

Versus

DAMYANTI VERMA (DECD.)
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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 Intra-Court appeals impugn the common judgment dated 25th July, 2011 of the learned Single Judge in W.P.(C) No. 4342/2007, W.P.(C) No. 4344/2007, W.P.(C) No. 13393/2009 & W.P.(C) No. 13628/2009 preferred by the respondents herein. Of the said four writ petitions, two i.e. W.P.(C) No. 4342/2007 and W.P.(C) No. 4344/2007 were filed impugning the common judgment dated 22nd May, 2007 of the learned District Judge [exercising powers under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971] and dismissing the appeals preferred by the respondents against the order dated 18th April, 2006 of the Estate Officer of eviction of the respondents from Flat No.14/12190 and Flat No.7/10181 on the first floor of Tropical Building, H- Block, Connaught Circus, New Delhi. The other two writ petitions i.e. W.P.(C) No. 13393/2009 and W.P.(C) No.13628/2009 were preferred assailing the

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common judgment dated 29th October, 2009 of the learned District Judge dismissing the appeal preferred by the respondents against the order dated 18th April, 2006 of the learned Estate Officer assessing damages/charges for unauthorized use and occupation of the said premises by the respondents.

2. The learned Single Judge has not found any error / fault in the orders of the Estate Officer or in the orders of the learned District Judge in appeals aforesaid. The learned Single Judge has however upheld the plea of the respondents that the proceedings initiated by the appellant against the respondents under the provisions of the PP Act were in contravention of guidelines contained in the Notification dated 30th May, 2002 of the Ministry of Urban Development, Govt. of India and hence allowed the writ petitions and set aside the orders of the Estate Officer and the learned District Judge.

3. The learned Single Judge has qua the said guidelines observed/held:-

- A. that similar guidelines were issued earlier also in the year 1992;
- B. that under the guidelines the provisions of the PP Act could be invoked only to seek eviction of totally unauthorized occupants or subleetees;
- C. that the guidelines do not permit resort to the provision of the PP Act by the Government instrumentalities, with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees where such premises were in occupation of original tenants;

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- D. that the guidelines did not permit a person in occupation of any premises to be treated or declared as unauthorized merely on service of notice of determination of tenancy;
 - E. that Section 21 of the Life Insurance Corporation Act, 1956 provides for the appellant, in the discharge of its functions under the Act being guided by such directions in matters of policy involving public interest, as the Central Government may give to it in writing;
 - F. that the appellant LIC owing to Section 21 (supra) cannot take the plea of the guidelines being not binding on it;
 - G. that no reason had been cited by the appellant as to why the guidelines should be ignored;
 - H. that the predecessor of the respondent was an old tenant in the premises and the tenancy had devolved on the respondents on demise of their predecessor and the respondent were accepted as tenants by the appellant;
 - I. that the respondents had not committed any kind of default for the appellant to determine their tenancy;
 - J. that the appellant had not given any reason for determination of tenancy of the respondents and for seeking the eviction of the respondents;
 - K. that the appellant before seeking eviction from any of its premises is required to prove that it *bona fide* needs the said premises for its own use or for the use of its employees;

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- L. no such need had been established in the present case;
 - M. the Estate Officer has also not returned any finding of the premises from which eviction was sought being required by the appellant;
 - N. that every action of the appellant which is an instrumentality of the State must be fair, just and reasonable and not arbitrary, unfair unbridled or *mala fide*;
 - O. that thus the action of the appellant of seeking eviction of the respondents was not fair, honest, genuine and justified;
 - P. that the public bodies such as the appellant were permitted to secure periodic revision of rent in terms of the provision of the Rent Control Act;

4. The learned Single Judge has relied upon the judgment of the Division Bench of the Bombay High Court in *Nusli Neville Wadia vs. New India Assurance Co. Ltd* (2006) 3 MhLJ 713 upheld by the Supreme Court in the judgment in *New India Assurance Company Ltd. Vs. Nusli Neville Wadia* (2008) 3 SCC 279. Reliance was also placed on judgment of the Division Bench of Calcutta High Court in *Mitra Lina Pvt. Ltd. vs. Life Insurance Corporation of India* 1999(2) CLJ 457 holding the said guidelines to be binding on the LIC by virtue of Section 21 of the Act. Reliance was yet further placed on *Jamshed Hormusji Wadia vs Board of Trustees, Port of Mumbai* (2004)3SCC214 deprecating exorbitant increase in rent and holding the same as violative of Article 14 of the Constitution of India. The learned Single Judge also relied on his own judgment dated 20th.

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January, 2011 in W.P.(C) No. 12718/2009 titled *Kamla Bhargava Vs. LIC of India* in this regard.

5. The appellant, before the learned Single Judge had relied on *Uttam Parkash Bansal Vs. LIC of India* 2002 (100) DLT 497 where a Division Bench of this Court had rejected the challenge to the eviction order under the PP Act in that case for the reason of the said guidelines, holding that having regard to the clear and ambiguous provisions of the statute i.e. the PP Act, not following the said guidelines cannot be raised as a defence. It was further held that while the guidelines had been issued only in the year 2002, the proceedings in that case under the PP Act had been initiated in the year 1976. The learned Single Judge though ordinarily bound by the dicta of the Division Bench however did not follow the same presumably owing to the judgments of the Division Benches of the Bombay and the Calcutta High Court and the judgment of the Apex Court upholding the judgment of the Bombay High Court. The learned Single Judge though also noticed *Syndicate Bank Vs. Ramachandran* 2011 (1) SCALE 368 where the Supreme Court had observed that the said guidelines were not issued in exercise of any statutory power under the PP Act or any other statute and that the non-compliance of the guidelines could not deprive the public authority of the order of eviction, did not follow the same owing to the further observations of the Supreme Court in the said judgment that the same was not to be construed as laying down a proposition that the public sector undertakings and the financial institutions to which the guidelines were addressed could willfully ignore or violate the same.

6. We may notice that just like the position in *Uttam Parkash*

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Bansal(supra), the proceedings before the Estate Officer in the present case also had been initiated in or about the year 1997 i.e. prior to the issuance of the 2002 Guidelines.

7. The first argument of the appellant naturally is that the judgment of the learned Single Judge is liable to be set aside merely for the reason of being in defiance of the binding dicta of the Division Bench in *Uttam Parkash Bansal*. It is also the contention of the appellant that the learned Single Judge has misconstrued the dicta in *Nusli Neville Wadia*(supra). It is further argued that the respondents are the heirs of a deceased ex-employee of the appellant and have no right to continue in the premises.

8. The counsel for the respondents has argued (and also filed written synopsis of submissions) that the guidelines have statutory force and relies on another judgment of Division Bench of the Bombay High Court in *Persis Kothawalla Vs. LIC* 2004-BCR-4-610 in addition to the judgment of the Apex Court in *Nusli Neville Wadia*. It is further argued that the appellant harasses innocent, genuine and originally inducted tenants by misusing of powers under the PP Act.

9. We may notice that the judgment of the learned Single Judge in *Kamla Bhargava* (supra) has been set aside vide judgment dated 16th March, 2012 in an Intra-Court appeal, though on other grounds. We may further notice that this Court besides in *Uttam Parkash Bansal*, in *L.D. Nayar & Sons Vs. Punjab National Bank* 151 (2008) DLT 27 and in *Heera Midha Vs. ITDC* 2008 VII ADD 251 (and which were unfortunately not brought to the notice of the learned Single Judge) had also negated the

challenge to the proceedings under the PP Act for the reason of the said guidelines holding that such guidelines are administrative in nature and cannot supplant, the power to invoke a speedy remedy to evict tenants whose arrangements ended long ago and to hold otherwise would not only tantamount to fettering statutory powers on patently insubstantial grounds, but place unwarranted disabilities on a plain misreading of the guidelines. Relying on *State of UP Vs. Daulat Ram Gupta* (2002) 4 SCC 98, *Dr. S.K. Kacker v. AIIMS* (1996) 10 SCC 734 and on *Managing Director ECIL, Hyderabad Vs. B. Karunakar* (1993) 4 SCC 727, it was held that guidelines can supplement not supplant the law and statutory provisions and that the power to issue guidelines cannot control the manner of use of statutory power or its discretion. The intra-court appeal, being LPA No.350/2008 in *L.D. Nayar & Sons* was also dismissed by a Division Bench of this Court vide judgment dated 29.07.2008.

10. In view of the judgment in *Heera Midha* and *L.D. Nayar & Sons* of Single Judges of this Court and of the Division Bench in *Uttam Parkash Bansal & L.D. Nayar & Sons*, the judgments to the contrary of the Division Bench of the Bombay and Calcutta High Courts were of no avail. What therefore remains to be seen is whether the learned Single Judge was correct in ignoring the said judgments of the own Court, for the reason of the dicta of the Supreme Court in *Nusli Neville Wadia*. We may, at the outset, notice that the controversy in *Nusli Neville Wadia* was as to who should begin to lead evidence in a proceeding under the PP Act. Though the submissions made and as recorded in the judgment do not show any argument to have been raised qua the guidelines but the same were nevertheless noticed by the

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Supreme Court. However the Supreme Court in the said judgment also held:-

“issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant.”

Having observed so, the Supreme Court hastened to add that the ultimate effect of the guidelines was not being finally determined in the said judgment. We are thus of the view that the said judgment of the Supreme Court did not come in the way of the learned Single Judge being bound by the earlier dicta of larger benches of this Court holding the guidelines to be not binding.

11. Be that as it may, the Supreme Court recently in *Banatwala & Co. v. LIC of India* AIR 2011 SC 3619 has held that the guidelines (supra) dated 30th May, 2002 are not directions under Section 21 of the LIC Act. The Supreme Court further noticed the subsequent clarificatory order dated 23rd July, 2003 of the Central Government to the effect that the guidelines dated 30th May, 2002 will not apply to affluent tenants. In the face of the said dicta of the Supreme Court, the reasoning given by the learned Single Judge of the guidelines being binding on the appellant for the reason of Section 21 of the LIC Act fails.

12. We may also notice that tenancy is but a contract and a tenant has no right to continue in occupation of the premises after the expiry of the period for which the premises were so let out. Though the Rent Control Legislations in each State have substantially interfered with the contract of

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tenancy and prohibited the landlords from, notwithstanding the expiry of period for which the premises were let out, evicting the tenants but as far as the city of Delhi is concerned, substantial amendments were made to the Delhi Rent Control Act, 1958 in the year 1988 (w.e.f. 1st December, 1988). The provisions of the Delhi Rent Act were made inapplicable to the premises the rent whereof was in excess of ₹3,500/- per month. The tenants of the premises rent whereof was/is in excess of ₹3,500/- per month thus lost the protection from eviction; they could continue in occupation of the premises only for the period for which the premises were let out and no further. Even if they were tenants from month to month in the premises, the landlord is entitled to evict them by determining their tenancy notice under Section 106 of the Transfer of Property Act, 1882. The same is indicative of the legislative intent. For this reason also, the guidelines cannot be said to be coming in the way of the appellant evicting the respondents. Moreover, the provisions of the Delhi Rent Act are not available to the respondents to protect their possession of the premises.

13. The judgment of the learned Single Judge can thus not be sustained and is set aside. Resultantly the writ petitions preferred by the respondents are dismissed and the order of eviction and of damages passed by the learned Estate Officer and affirmed in appeal is confirmed. No order as to costs.

14. We may also notice that a Single Judge of this Court in *Iyer & Son Pvt. Ltd. V. LIC of India* (2007) X AD (Delhi) 643 has also held that the duty of a State agency as LIC is to ensure that it uses its premises/properties and resources within its control to sub serve the best objectives and which

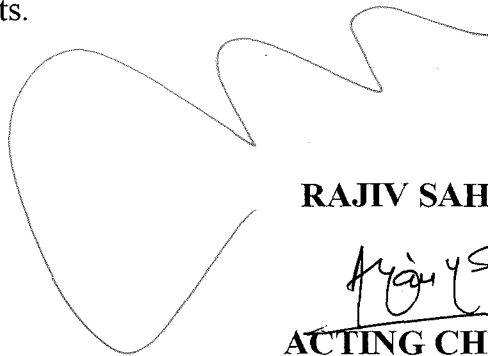
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include an obligation to ensure that it optimizes the best returns. It was thus held that nothing wrong could be seen in the want of the LIC for better returns from its properties.

15. We may also notice that the learned Single Judge whose judgment is impugned herein has also in *GKW Ltd. Vs. LIC* MANU/DE/7100/2011 and in *National Textile Corporation Vs. Punjab National Bank* MANU/DE/2095/2010 decided shortly after the judgment impugned herein held the guidelines to be not binding on LIC / PNB and not coming in the way of LIC/PNB proceeding under the PP Act.

16. We accordingly allow these appeals and set aside the judgment of the learned Single Judge; axiomatically the writ petitions filed by the respondents are dismissed.

No order as to costs.



RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 23, 2012

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- Review pet. 234/12 - for review of order dt. 23-3-12.
- C.M. no. 6569/12 - for exemption.