

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

% Judgment reserved on : 09.05.2013
Judgment pronounced on : 14.05.2013

+ W.P.(C) 538/2012

G R GUPTA Petitioner
Through: Mr Sunil K. Mittal, Mr Kshitij Mittal
and Mr Saurabh Balwani, Advs.

versus

LOK SABHA SECRETARIAT Respondent
Through: Ms Maninder Acharya, Sr. Adv with
Mr Yashish Chandra, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The petitioner before this Court was allotted Bungalow No. 6, Talkatora Road, New Delhi, while on deputation with Lok Sabha Secretariat from 14.02.1979 to 26.07.1982. The petitioner was repatriated from Lok Sabha Secretariat on 25.07.1982, but he continued to occupy the aforesaid house. The petitioner superannuated from Government service on 31.12.1993. On 15.05.1996, he was appointed as a Member of Consumer Disputes Redressal Forum, Delhi, where he continued to work till 11.12.2000. Vide communication dated 27.08.2001, Lok Sabha Secretariat informed the petitioner that the

aforesaid house could have been retained by him only up to 02 months from the date of his repatriation and, therefore, his occupation with effect from 26.09.1982 was unauthorized and the allotment was deemed to have been cancelled with effect from that date. He was accordingly required to vacate the house and deposit market value with effect from 29.09.1982 till the vacation of the house. This was followed by reminders dated 10.09.2001 and 20.09.2001. The house came to be vacated by the petitioner on 2.09.2001 and intimation in this regard was given by the petitioner to Lok Sabha Secretariat on 08.10.2001.

2. On a reference made to him by Lok Sabha Secretariat, the Estate Officer of Lok Sabha Secretariat issued notice to the petitioner under Section 4 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 followed by a notice under Section 7(3) of the said Act. Vide order dated 21.11.2003, the Estate Officer held that since normal licence fee continued to be deducted from the salary of the petitioner up to 31.12.1993, and thereafter, he was entitled to retain the house for another 08 months, and also taking note that nobody asked the petitioner to vacate the house till 15.05.1996, the date on which he was appointed as a Member of Consumer Disputes Redressal Forum where he continued to

work till 11.12.2000, held that the petitioner had overstayed in the said house from 01.09.1994 to 27.09.2001 for which he could be charged licence fee at normal rate for the period from 01.09.1994 to 31.08.1994 and double of the licence fee for the remaining period from 01.09.1994 to 27.09.2001.

3. Being aggrieved from the order passed by the Estate Officer on 21.01.2003, the Lok Sabha Secretariat preferred an appeal before the learned District Judge, Delhi. The said appeal came to be decided vide order dated 13.09.2010. The learned District Judge held that the occupation of the petitioner, after expiry of two months from his repatriation from Lok Sabha Secretariat, was unlawful and unauthorized. However, noticing that no proceedings were initiated by the respondent against the petitioner for as many as 19 years and further observing that had he been asked to vacate the aforesaid house, he would have sought allotment of some other accommodation from his Department, the learned District Judge was of the view that the petitioner was liable to pay damages only for the period commencing 08 months after his superannuation. As regards quantum of damages, finding that no evidence had been led by the respondent to prove the exact damages to be

paid by the petitioner, he remitted the matter back to the Estate Officer to assess the damages which the respondent was liable to pay for the aforesaid period.

4. The order passed by the learned District Judge was impugned by the petitioner before this Court by way of W.P(C) No.114/2012. In the meanwhile, the Estate Officer, in compliance of the order dated 13.09.2010 passed by the learned District Judge, held that the petitioner was required to pay damages in terms of recovery statement prepared by Lok Sabha Secretariat which satisfied all the conditions enumerated in Rule 8 of Public Premises (Eviction and Unauthorized Occupants) Rules. The petitioner preferred an appeal against the order passed by the Estate Officer on 13.12.2010. The said appeal came to be dismissed by the learned District Judge vide order dated 28.11.2011. W.P.(C) No. 114/2012 filed by the petitioner was disposed of by this Court, pursuant to the statement made by his counsel that he would be filing a fresh writ petition challenging the order dated 28.11.2011 passed by the learned District Judge. Now, this writ petition has been filed challenging the orders dated 13.09.2010 and 28.11.2011 passed by the learned District Judge.

5. Two questions primarily arise for consideration in this writ petition. The first question is as to whether the possession of the petitioner with effect from 01.01.1994 was unauthorized and the second is as to what would be the quantum of damages payable by the petitioner in case it is held that his possession of house in question was unauthorized on or after 01.01.1994.

6. It is not in dispute that the house in question was formed part of Lok Sabha Secretariat pool when it was allotted to the petitioner. It is also not in dispute that the petitioner came to be repatriated from Lok Sabha Secretariat on 26.07.1982. As per Supplementary Rules particular SR 317-B-11, a person, who is on deputation and is allotted an accommodation by the borrowing department, is entitled to retain such an accommodation only for a period of two months from the date of his repatriation. Admittedly, no permission as given by Lok Sabha Secretariat to the petitioner to continue to occupy the house in question on expiry of two months from the date of his repatriation. Consequently, the possession of the petitioner with effect from 26.09.1982 became unauthorized.

7. The petitioner has placed on record copies of correspondence exchanged between Directorate of Estate and Lok Sabha Secretariat which would show that there was a proposal to exchange house in question with some other accommodation in General Pool, but, there is no material on record to show that any such exchange had actually taken place. There is no order passed by the Lok Sabha Secretariat placing house in question in General Pool and the Directorate of Estate passing an order placing another accommodation of the same type, in the pool of Lok Sabha secretariat. Therefore, the petitioner had no legal authority to continue in occupation of house in question after 25.09.1982. Thereafter, he could have applied to his parent department for allotment of official accommodation to him, but he could not have continued occupation of house in question, without prior permission from Lok Sabha Secretariat. Be that as it may, as the learned District Judge vide his order dated 16.09.2010 held that since the respondent did not write to the petitioner asking him to vacate house in dispute, the petitioner is not required to pay damages till the date of his superannuation, i.e., 31.03.1993 and the said order dated 16.09.2010 was not challenged by the respondent, no order can now be passed, directing the petitioner to pay damages for use and

occupation of the house in question for the period from 26.09.1982 to 31.12.1993.

8. Under the Rules, a Government servant, on superannuation is entitled to retain Government accommodation for a maximum period of eight months. The learned District Judge has taken a view that for 08 months from the date of his superannuation, i.e., 01.01.1994 to 31.08.1994, the petitioner is not required to pay damages for use and occupation. Therefore, the only question which requires consideration is as to whether the petitioner was unauthorized occupant for the period from 01.09.1994 to 27.09.2001 and if so what should be the amount of damages which he is required to pay for unauthorized occupation of the house during the aforesaid period. As noted earlier, the occupation of the petitioner, after 25.09.1982 being without permission of Lok Sabha Secretariat was unauthorized and even thereafter, the Lok Sabha Secretariat never permitted the petitioner to continue to occupy house in question, it can, therefore, hardly be disputed that the possession for the period from 01.09.1994 to 27.09.2001 was also unauthorized and unlawful. The case of the petitioner is that he was appointed as a Member in District Consumer Disputes Redressal Forum on 15.05.1996,

a post he continued to hold up to 11.12.2000 and since a retired Government servant is also entitled to retain official accommodation for 08 months from the date of superannuation, without payment of damages, he is not required to pay any damages for the period up to 10.08.2001. I, however, find absolutely no merit in this contention. The petitioner having superannuated from Government service on 31.12.1993 and having been appointed as a Member in District Consumer Disputes Redressal Forum only with effect from 15.05.1996, he was not a Government servant during the intervening period and consequently had no legal right to retain the Government accommodation during the said period. Therefore, on the date of his appointment as a Member in District Consumer Disputes Redressal Forum, the petitioner was occupying house in question, without any authority in law and, therefore, it is not open to him to say that he is not liable to pay damages for the aforesaid period. There is absolutely no permission as given to the petitioner by Lok Sabha Secretariat to continue to occupy house in question. Admittedly, no order was passed by Government of Delhi either permitting the petitioner to continue to occupy house in question during his tenure as a Member of District Consumer Disputes Redressal Forum. The house in question is a

house placed by Directorate of Estate, Government of India in the pool of Lok Sabha Secretariat. An employee of Government of India has no legal right to continue to occupy the accommodation belonging to Directorate of Estate/Lok Sabha Secretariat, without prior permission from the Directorate of Estate/Lok Sabha Secretariat. If a Member of District Consumer Disputes Redressal Forum, is entitled to allotment of accommodation by the State Government, he can apply to the State Government for allotment of an official accommodation to him, but he has no right to continue to occupy the accommodation which does not belong to the State Government. Even if the accommodation belongs to the State Government, he cannot continue to occupy the same, without permission of the State Government unless the Rules framed by the State Government permit him to continue to occupy the accommodation belonging to such Government. In fact, even if he is entitled to accommodation from the State Government, he has no legal right to occupy or continue to occupy an accommodation which the State Government has placed in a specific pool. Therefore, the possession of the petitioner during the period in question, i.e., 01.09.1994 to 27.09.2001

was clearly unauthorized and unlawful for which he is required to pay damages to the respondent.

9. Section 7(2) Public Premises (Eviction of Unauthorized Occupants) Act, 1971 provides that where any person is, or has at any time been, in unauthorized occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order. Rule 8 of Public Premises (Eviction and Unauthorized Occupants) Rules reads as under:-

“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.

The contention of the learned counsel for the petitioner is that no evidence was led by the respondent before the Estate Officer to prove as to what the rent that would be realized if the house in question had been let out on rent for the period of unauthorized accommodation to a private person and, therefore, there was no material available to him to assess the damages. He also contended that the statement prepared by Lok Sabha Secretariat calculating the amount of damages on the basis of office memorandums, issued by Government of India from time to time could not have been the basis for assessment of damages. I, however, find no merit in this contention. Clause (e) of Rule 8 enables the Estate Officer to take into consideration any material which would be relevant for the purpose of assessing the damages and the office memorandum, issued by Government of India from time to time, fixing the rate of damages for unauthorized occupation of General Pool residential accommodation certainly cannot be said to be a matter irrelevant for the purpose of assessing damages in terms of the said Rule. As submitted by the learned

counsel for the respondent, the rates of damages for unauthorized occupation of Government accommodation are fixed by the Government after carrying out survey in various localities to assess the market reference, prevailing from time to time and in fact such rates fixed by the Government are less than the actual market rates. The purpose of fixing rates of damages for unauthorized occupation of Government is to enable the Estate Officer to quantify damages for such occupation, without the Government undertaking the exercise of collecting and producing evidence for the purpose of such assessment. The Government having already undertaken such an exercise in the form of market surveys before fixing such rates, it would neither be necessary nor practicable for the Estate Officer to undertake such an exercise. Therefore, in my view, the Estate Officer was fully justified in quantifying damages on the strength of the office memorandums, issued by Government of India from time to time, fixing the rates of damages for unauthorized occupation of General Pool accommodation. In fact, the market rates prevalent in respect of house in question would be more than rates of damages fixed by the Government of India from time to time since the house which remained in unauthorized occupation of the petitioner is situated in a prim locality

falling in Lutyen Zone. It would be unrealistic to say that the market rates in such prime locality would be less than the rates of damages fixed by the Government from time to time. In any case, the Estate Officer having accepted the rates notified by Government of India from time to time for assessment of damages for unauthorized occupation of house in question and the learned District Judge having dismissed the appeal filed by the petitioner, there no good reason for this Court, while exercising jurisdiction under Article 227 of the Constitution, to interfere with the finding recorded by the Estate Officer and accepted by the learned District Judge.

10. The learned counsel for the petitioner, in support of his contention that before levying damages, the occupant has first to be adjudged as unauthorized occupation of the public premises in question, has relied upon the decision of Supreme Court in **Shangrila Food Products Ltd. v. Life Insurance Corporation of India** 1996(2) RCR 221. There is no quarrel with the proposition of law espoused by the learned counsel for the petitioners. But, in the case before this Court, the petitioner has been found to be in unauthorized occupation of house in question since he continued to occupy the said house beyond two months from the date of

his repatriation on 26.07.1982 and even after expiry of 08 months from the date of his superannuation from Government service on 31.12.1993.

11. The learned counsel for the petitioner has referred to the decision of this Court in Smt. Indrawati Kapoor etc. v. U.O.I. 1984 RLR 241 in support of his contention that the respondent was required to prove, before the Estate Officer, the rent which house in question would have fetched had it been let out to a private person during the period the petitioner remained in its occupation. A perusal of the judgment would show that in the aforesaid case, the learned Additional District Judge had taken the view that the market rent of property in question could be at least Rs 700/- per months and the Estate Officer had leniently assessed the matter. A perusal of the judgment would show that the plea of the appellant before the Estate Officer was that he had not been supplied the details as to how the rent or the so called damages had been calculated. It was noted by this Court that there was no record that the property in dispute would have fetched the rent for which damages had been assessed and the Additional District Judge had relied on his own personal assessment that similar properties could have fetched the rent of Rs 700/-. This Court was of the view that such personal assessment by the learned

District Judge was a sheer conjecture which could not be accepted as the basis for imposing damages. It was, in these circumstances, that the Court held that since the Government had not proved the actual damages which had been suffered by it, the appellant should pay twice the standard licence fee towards damages. However, in the case before this Court, neither the Estate Officer nor the District Judge has assessed damages on the basis of their own estimate or opinion. The rate of damages fixed by the Estate Officer and accepted by the learned District Judge are based upon office memorandums, issued by Government of India from time to time fixing the rate of damages for unauthorized occupation of Government accommodation. No such office memorandums were produced by the Government in the case of Smt. Indrawati Kapoor (*supra*). Therefore, this judgment does not help the petitioner before this Court.

12. It was lastly contended by the learned counsel for the petitioner that the Estate Officer has no legal right to recover damages which had become time barred on the date reference was made to him by Lok Sabha Secretariat. In support of his contention, he has relied upon the decision of Supreme Court in New Delhi Municipal Committee vs. Kalu Ram and

Anr. (1976)3 SCC 407. A perusal of the above-referred judgment would show that the Court was dealing with a matter of assessment of rent under sub-section (1) of Section 7 of Public Premises (Eviction of Unauthorized Occupants) Act and not a matter relating to recovery of damages for unauthorized occupation of any public premises, under sub-section (2) of the said Section. Therefore, the aforesaid judgment does not apply to the case before this Court. It would be seen from a careful examination of Section 7 of the Act that the expression “arrears of rent payable”, is used in sub-section (2) and it was the expression “payable” used in sub-section (1) which was interpreted by the Apex Court to mean that it should be paid and it was in this context that the Apex Court observed that if the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws and if the recovery of any amount is barred by limitation, it is difficult to hold that the Estate Officer should still insist that the said amount was payable.

The learned counsel for the respondent, on the other hand, has drawn my attention to the decision of a Division Bench of Madhya Pradesh High Court in L.S. Nair v. Hindustan Steel Ltd., Bhilai and Ors.

AIR 1980 Madhya Pradesh 106, where the Court, *inter alia*, held as

under:-

“10. It was also submitted that the recovery of damages for a period beyond 3 years was time barred. The Limitation Act has no application to proceedings before the Estate Officer who is not a Court. Learned counsel for the petitioner relied upon the case of *Kalu Ram v. New Delhi Municipal Committee*, (1965) 67 Pun LR 1190 in support of his submission. There is nothing in Section 7(2) which authorises the Estate Officer to assess the damages on account of the use and occupation of the premises and by order require the person to pay the damages, to show that there is any rule of limitation by which the Estate Officer is governed. As the Limitation Act has no application to proceedings before the Estate Officer and as the jurisdiction of Civil Court is entirely barred in matters governed by the Public Premises Act, it is difficult to accept the argument that there is any period of limitation for recovery of damages. The Punjab case on which reliance was placed, construed the words "rent payable" as they occurred in Section 7 (1) of the Public Premises Act, 1958, and construed them to mean "rent legally recoverable by a suit." The case has no application for construing Section 7(2) of the Public Premises Act, 1971, which deals with the power to assess and order payment of damages and where the language used is entirely different. Further, Section 15 of the 1971 Act now bars a suit and the remedy under the Act is

the only remedy which can be availed of. In such a situation, the Limitation Act cannot be inferentially applied to proceedings before the Estate Officer.”

I am in full agreement with the reasoning given by the Madhya Pradesh High Court and, therefore, hold that the limitation prescribed under Limitation Act, 1963 has no application to recovery of damages under Section 7(2) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

13. Vide office memorandum dated 31.03.1993, Government of India revised the rate of damages to Rs 50 per square metre for type V and above accommodation. The said damages were revised to Rs 80 per square metre with effect from 01.06.1995, Rs 95 per square metre with effect from 01.11.1997, Rs 110 per square metre with effect from 01.11.1999. The computation sheet prepared by Lok Sabha Secretariat which was applied by the Estate Officer and accepted by the learned District Judge is based upon the same rates. Therefore, no fault can be found with the aforesaid calculation sheet which shows that a sum of Rs 1,6,11,823/- was payable by the petitioner towards damages after deducting the amount which he had already paid.

14. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. There shall be no order as to costs.

V.K.JAIN, J

MAY 14, 2013
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