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

+ LPA 370/2013

SHRI G R GUPTA

..... Appellant  
Through: Mr. Sunil K. Mittal, Advocate with  
Mr. Kshitij Mittal and Mr. Anshul  
Mittal, Advocates.

versus

LOK SABHA SECRETARIAT ..... Respondent

Through: Ms. Maninder Acharya, Senior  
Advocate with Mr. Yashish Chandra,  
Advocate.

Reserved on : 22<sup>nd</sup> October, 2013

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Date of Decision: 29<sup>th</sup> November, 2013

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J:**

1. Present Letters Patent Appeal has been filed challenging the judgment and order dated 14<sup>th</sup> May, 2013 passed by learned Single Judge in W.P.(C) 538/2012 whereby the appellant's writ petition was dismissed.
2. The admitted facts of the present case are that the appellant, a retired IPS officer, was allotted Bungalow No. 16, Talkatora Road, New Delhi from Lok Sabha Secretariat Pool. The appellant was posted on deputation with the Lok Sabha Secretariat from 14<sup>th</sup> February, 1979 to 26<sup>th</sup> July, 1982. However, the appellant continued to occupy the aforesaid house even after his repatriation from the Lok Sabha Secretariat.

3. The appellant superannuated from the Government Service on 31<sup>st</sup> December, 1993. Subsequently, on 15<sup>th</sup> May, 1996, the appellant was appointed as Member of Consumer Disputes Redressal Forum, Delhi, which position he continued to hold till his retirement on 11<sup>th</sup> December, 2000.
4. The Lok Sabha Secretariat vide letter dated 27<sup>th</sup> August, 2001 asked the appellant to vacate the aforesaid premises. By the same letter, the appellant was informed that his occupation of the aforesaid house was unauthorized from 26<sup>th</sup> September, 1982 as the appellant could have retained the aforesaid house maximum for two months from the date of his repatriation to his parent department. The appellant was also asked to deposit rent at the market value w.e.f. 26<sup>th</sup> September, 1982 till the vacation of the house. This was followed by two more reminders. Appellant finally vacated the aforesaid house on 27<sup>th</sup> September, 2001.
5. On 22<sup>nd</sup> October, 2001, a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'PP Act, 1971') was issued to the appellant. Another notice under Section 7(2) of the PP Act 1971 was also issued with respect to damages to be paid by the appellant for unauthorised occupation of government premises.
6. Vide order dated 24<sup>th</sup> November, 2003, the Estate Officer held that appellant's occupation of the premises till his retirement from his government service, i.e., 31<sup>st</sup> December, 1993 was not unauthorised. Consequently, the appellant was held entitled to retain the house for another eight months, i.e., till 31<sup>st</sup> August, 1994. The Estate Officer also took note of the fact that no action had been initiated by the Lok Sabha Secretariat to get the premises vacated for a long period. The Estate Officer held that since

the appellant never requested the Consumer Disputes Redressal Forum to deduct licence fee from his emoluments, the appellant was liable to pay licence fee at the normal rates from 01<sup>st</sup> January, 1994 to 31<sup>st</sup> August, 1994 and double the normal rate for the period 01<sup>st</sup> September, 1994 to 27<sup>th</sup> September, 2001.

7. The Lok Sabha Secretariat, being aggrieved by the Estate Officer's order dated 21<sup>st</sup> November, 2003, preferred an appeal before the District Judge, Delhi. The District Judge decided the appeal vide order dated 13<sup>th</sup> September, 2010 wherein it was held that the appellant's occupation after the expiry of two months from the date of his repatriation to his parent department was unlawful and unauthorised. However, the District Judge took the view that no damages could be recovered from the appellant till the date of superannuation as no proceedings had been initiated by the Lok Sabha Secretariat for as many as nineteen years and that, had the Lok Sabha Secretariat asked the appellant to vacate the house, he would have had sought allotment of some other accommodation from his own department. However, the appellant was held to be an unauthorised occupant from 01<sup>st</sup> January, 1994 to 27<sup>th</sup> September, 2001. The District Judge remitted the matter back to the Estate Office to assess the quantum of damages as no evidence had been led by the Lok Sabha Secretariat with regard to the same.

8. The District Judge's order dated 13<sup>th</sup> September, 2010 was impugned by way of a writ petition, being, W.P.(C) 114/2012.

9. During the pendency of the said writ petition, the Estate Officer re-assessed the quantum of damages to be paid by the appellant. The order of the Estate Officer was challenged by appellant before the District Court. By order dated 28<sup>th</sup> November, 2011 District Judge dismissed the appeal.

10. Since the order dated 28<sup>th</sup> November, 2011 had not been challenged in the W.P.(C) No.114/2012, the same was disposed of by the learned Single Judge after granting liberty to appellant to file a fresh writ petition challenging both the orders dated 13<sup>th</sup> September, 2010 and 28<sup>th</sup> November, 2011 passed by the District Judges. Thereafter, W.P.(C) No. 538/2012 filed by the appellant was dismissed by learned Single Judge by the impugned order.

11. Mr. Sunil K. Mittal, learned counsel for appellant submitted that the learned Single Judge had erred in holding that the appellant was in unauthorised occupation of the premises in question. He stated that appellant was lawfully inducted into the premises in question and remained so even after his repatriation from Lok Sabha. According to Mr. Mittal, appellant's occupation of the premises could be said to be unauthorised, only if he had refused to vacate the premises despite being served an eviction notice. He, therefore, contended that at no point of time the occupation of the appellant of the premises was unauthorized.

12. Mr. Mittal further submitted that the learned Single Judge had erred in not appreciating that the respondents had failed to lead any evidence to prove as to what rent could have been realized if the house in question had been let out to a private person during the period of alleged unauthorised occupation.

13. Mr. Mittal also submitted that the office memorandums relied by the Estate Officer in assessing the damage had been issued by the Central Government regarding the revision of rates of damages for unauthorised occupation of General Pool accommodation. He stated that the said office memorandums did not apply to houses in Lok Sabha Secretariat pool.

14. Mr. Mittal lastly submitted that the learned Single Judge had failed to appreciate that the law of limitation is equally applicable to proceedings before the Estate Officer under the PP Act, 1971. In support of his submission, Mr. Mittal relied upon the judgment of the Supreme Court in *New Delhi Municipal Committee Vs. Kalu Ram and Another*, (1976) 3 SCC 407 as well as judgment of High Courts in *Lakhanlal Rawat Vs. Union of India*, 2010 (2) M.P.H.T. 14 and *M/s. Automobile Association of Eastern India and Ors. Vs. The Board of Trustees of the Port of Kolkata and Ors.*, (2010) 4 CALLT 591 (HC).

15. On the other hand, Ms. Maninder Acharya, learned senior counsel for respondent relied upon the findings of the learned Single Judge and submitted that the appellant had rightly been held to be in unauthorised occupation of the premises. She stated that appellant could not have stayed in the aforesaid house after his repatriation from the Lok Sabha Secretariat.

16. Ms. Acharya, learned senior counsel contended that the Estate Officer had rightly relied upon office memorandums issued by the Central Government from time to time for fixing the rate of damages for unauthorized occupation of General Pool residential accommodation. She submitted that these rates are fixed by the Government after carrying out surveys in various localities to assess the prevailing market rentals.

17. Ms. Acharya submitted that the PP Act, 1971 is a special Act and the provisions of the Limitation Act, 1963 (for short Act, 1963) cannot be extended to such special Act. According to her, there cannot be any period of limitation for recovery of damages for unauthorized use and occupation of Government premises by its employee. She submitted that the Supreme Court's judgment in *New Delhi Municipal Committee vs. Kalu Ram and*

**Another** (supra) was clearly inapplicable as it dealt with a case of Section 7(1) and not Section 7(2) of PP Act, 1971. In support of her submission, she relied upon **L.S. Nair vs. Hindustan Steel Ltd., Bhilai and Ors. AIR 1980 Madhya Pradesh 106** wherein it has been 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 S.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 S. 7 (i) of the Public Premises Act, 1958, and construed them to mean "rent legally recoverable by a suit." The case has no application for construing S. 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, S.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.”*

18. Ms. Acharya lastly submitted that as the District Judge's order dated 13<sup>th</sup> September, 2010 had attained finality, appellant could not raise the plea of limitation as by the said order the matter had been remanded back to the Estate Officer only for determination of quantum of damages for the period when appellant was in unauthorised occupation in question, that means from 1<sup>st</sup> January, 1994 to 27<sup>th</sup> September, 2001.

19. Upon a perusal of the paper book this Court finds that learned Single Judge with regard to appellant's first submission that appellant was not an unauthorised occupant of the premises in question, has held as under:-

*"6. ....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 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,.....to pay damages for use and occupation of the house in question for the period from 26.10.1982 to 31.12.1993.*

*8. ....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 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.....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.....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."*

20. This Court is in agreement with the aforesaid reasoning of the learned Single Judge. Failure of the respondent to initiate eviction proceedings against the appellant does not confer any right upon the appellant to continue to occupy the Government accommodation. We are of the opinion that the appellant occupied the premises even after his superannuation in blatant disregard of all rules, regulations and proprietary.

21. In so far as the computation of the quantum of damages is concerned, it has to be seen whether the damages have been computed in accordance with the principles enumerated in the rules prescribed under the PP Act, 1971. The learned Single Judge in the impugned order has held as under:-

*"9.....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..... 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.....”*

22. This Court is in agreement with the view of the learned Single Judge that the office memorandums issued by the Central Government with respect to revision of rates of damages for unauthorised occupation of general pool accommodation have rightly been relied upon by the Estate Officer while calculating the damages. The rates as mentioned in the office memorandums issued by the Central Government are relevant as they have been arrived at by the Government after undertaking a market survey.

23. The contention of the appellant that the office memorandums would not be applicable for assessment of damages as the premises in question did not fall in the general pool of the Directorate of Estates is untenable. The assessment of the prevailing market rent of a government accommodation would depend on factors like its type, structure, size, location etc. and not whether the said premises is in general pool or any other pool. This Court takes judicial notice of the fact that identical accommodation on the same road is normally allotted to different pools and different institutions like Lok Sabha Secretariat pool, High Court pool, Ministry of Defence etc.

24. However, we are of the opinion that the law of limitation applies to proceedings initiated before the Estate Officer under the PP Act, 1971. The Supreme Court in *New Delhi Municipal Committee Vs. Kalu Ram and Another* (supra) has held as under:-

"..... If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist

that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time-barred. Construing the expression "any money due" in section 186 of the Indian Companies Act, 1913 the Privy Council held in *Hans Raj Gupta and others v. Official Liquidators of the Dehradun Mussorie Electric Tramway Company Ltd.*(1) that this meant moneys due and recoverable in suit by the company, and observed:

It is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights.

We are clear that the word "payable" in section 7, in the context in which it occurs, means "legally recoverable." Admittedly a suit to recover the arrears instituted on the day the order under section 7 was made would have been barred by limitation. The amount in question was therefore irrecoverable. This being the position, the appeal fails and is dismissed with costs."

(emphasis supplied)

25. In view of the aforesaid authoritative pronouncement by the Supreme Court, this Court is of the opinion that the distinction sought to be drawn by the respondent between proceedings under Sections 7(1) and 7(2) of the PP Act, 1971, is untenable in law. The reliance of the respondent on the judgment of the Madhya Pradesh High Court in ***L.S. Nair vs. Hindustan Steel Ltd., Bhilai and Ors.*** (supra) is also misplaced as the same did not deal with or refer to the aforesaid Supreme Court's judgment in ***New Delhi Municipal Committee Vs. Kalu Ram and Another*** (supra). In fact, in ***L.S. Nair vs. Hindustan Steel Ltd., Bhilai and Ors.*** (supra), the Madhya Pradesh High Court has dealt with the judgment of the Punjab High Court in ***Kalu***

***Ram v. New Delhi Municipal Committee (1965) 67 Pun LR 1190*** and not the Supreme Court's judgment.

26. It is settled law that a judgment of one High Court is not binding on the other, but in view of Article 141 of the Constitution of India, the Supreme Court judgment is binding on all High Courts. Consequently, the finding of the learned Single Judge that the limitation prescribed under the Act, 1963 has no application to recovery of damages under Section 7(2) of the PP Act, 1971, is not correct.

27. Even though we have held that the Act, 1963 applies to proceedings under the PP Act, 1971, yet the question that arises for consideration is whether the right to claim damages under Section 7(2) of the PP Act, 1971, was barred on the date the proceedings were initiated by the Lok Sabha Secretariat.

28. Article 112 of the Act, 1963 reads as under:-

| <i>“ Description of suit</i>                                                                                                                                                                                                              | <i>Period of limitation</i> | <i>Time from which period begins to run</i>                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------|
| <i>112. Any Suit (except a Suit before the Supreme Court In the exercise of its original Jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir.</i> | <i>Thirty years</i>         | <i>When the period of limitation would begin to run under this Act against a like suit by a private person.</i> |

29. It is pertinent to mention that the Act, 1963 grants extended limitation of 30 years only to Central and State Governments and not to statutory authorities like NDMC and Calcutta Port Trust. In any event, in

none of the judgments cited before us the import and significance of Article 112 of the Act, 1963 has been considered. In fact, in *The Union of India and Another Vs. The District Judge Amritsar and Another*, 1985 P.L.J. (67) 120 (Punjab & Haryana High Court) it has been held that “*The damages are being recovered in the present case by the Estate Officer on behalf of the Central Government. Therefore, under Section 7 of the Act damages for a period of 30 years prior to the initiation of proceedings under the said provision could be claimed and recovered.*” Consequently, as the proceedings for recovery of damages for the period 01<sup>st</sup> January, 1994 to 27<sup>th</sup> September, 2001 had been filed in 2001 i.e. within 30 years of cause of action having arisen, the respondent’s claim for damages was within limitation.

30. Consequently, the present appeal being bereft of merit, is dismissed.

**MANMOHAN, J**

**CHIEF JUSTICE**

**NOVEMBER 29, 2013**

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