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

+ **LPA 467/2016**

*Date of Decision: 19.09.2016*

**UNION OF INDIA**

.....Appellant

Through : Ms. Aditi Bansal for Mr. Ajay Digpaul,  
Advocates.

versus

**DEEPA SHARMA**

....Respondent

Through : None.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

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

**: Ms.G.ROHINI, CHIEF JUSTICE**

**CM APPL. No. 30790/2016**

For the reasons explained in the application, the delay in filing the present appeal is condoned.

Application stands disposed of.

**LPA No. 467/2016**

1. This appeal is preferred against the judgment rendered by the learned Single Judge dated 02.05.2016 in W.P.(C) No. 248/2015. Union of India, the unsuccessful petitioner, is the appellant before us.

2. The material available on record shows that the late husband of the respondent, Cdr.S.K. Sharma, was allotted Ministry of Defence pool accommodation bearing No. D-II/274, Chanakyapuri, New Delhi while he

was posted at Naval Headquarters. He was then posted out of Naval Headquarters to Mumbai w.e.f. 22.06.1992 but was permitted to retain accommodation upto 31.03.1993 on the ground of education of his children. The accommodation was vacated on 07.04.2006 pursuant to the judgment of the Division Bench of this Court in LPA No.1092/2004.

3. On 10.10.2006, the Estate Officer issued a show cause to the husband of the respondent alleging that he was in unauthorized occupation of the premises in question from 01.04.1993 to 07.04.2006 and calling upon to show cause as to why damages should not be charged for the said period. Unfortunately, the husband of the respondent expired on 01.04.2008 during the pendency of the proceedings. Thereafter, by notice dated 28.05.2012 the respondent herein was informed that a sum of Rs.12,68,255/- was due and payable by Cdr.S.K. Sharma towards damages for unauthorized occupation of public premises from 01.04.1993 to 07.04.2006 and calling upon her to show cause as to why the same should not be recovered from her since she is the legal representative of Cdr.S.K. Sharma. Though the respondent submitted the explanation opposing the recovery sought to be made, by order dated 06.01.2014 the Estate Officer directed the respondent to pay damages of Rs.12,48,255/- on account of unauthorized occupation.

4. The respondent challenged the said order of the Estate Officer dated 06.01.2014 by filing an appeal before the District Judge, New Delhi and vide order dated 22.08.2014, the appeal was allowed and the order of the Estate Officer dated 06.01.2014 was set aside. Aggrieved by the same, the appellant herein filed W.P. (C) No. 248/2015, which was dismissed by the learned Single Judge by the order under appeal dated 02.05.2016.

5. Assailing the said order, it is contended by the learned counsel for the appellant that the learned Single Judge committed an error in concluding that the impugned order dated 06.01.2014 is barred by limitation. It is also contended that it is not mandatory to implead all the legal heirs of the deceased in the proceedings under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'P.P. Act').

6. Admittedly, the husband of the respondent died during the pendency of the proceedings initiated by the Estate Officer for recovery of the damages for the unauthorized occupation of the public premises. By order dated 06.01.2014, the respondent was directed to pay the damages assessed at Rs.12,68,255/- purportedly in exercise of the powers conferred by Section 7(2) read with Section 13(2) of the P.P. Act. It is no doubt true that as per Section 13 of P.P. Act where any person against whom any proceeding for assessment of damages has been taken dies during the pendency thereof, the proceedings may be continued against the legal representatives of that person. However, in the present case, no steps were taken for substitution of the respondent as party to the proceedings after the demise of Cdr.S.K. Sharma. Though there was no assessment of the damages by the date of death of the husband of the respondent, the Estate Officer had chosen to issue the notice dated 28.05.2012 calling upon the respondent to pay the damages assessed @ Rs.12,68,255/- followed by the order dated 06.01.2014. Having regard to the fact that the respondent was never substituted as the legal representative of the deceased by filing an appropriate application and moreover the respondent is not the only legal representative of Cdr.S.K. Sharma, the learned District and Sessions Judge allowed the appeal of the respondent and set aside the order of the Estate Officer dated 06.01.2014

holding that the claim made by the Estate Officer vide notice dated 28.05.2012 was beyond the period of limitation of three years. Upholding the said order and thus dismissing the writ petition filed by the appellant herein, the learned Single Judge held:

“30. It is a clear case where the department is also guilty of lapse, delay and inaction on the request of the respondent, which request was never processed and, therefore, the respondent cannot be made to suffer. The contention of the petitioner that the deceased Cdr. S.K. Sharma and/or the present respondent had remained unauthorized occupant of the demised premises from 01.04.1993 to 07.04.2006, is factually wrong and misconceived, when seen in the factual context of the present case and also in the light of the order dated 1.10.2004 passed by this Court in W.P.(C) No.2250/93. Even the quantum claimed is manifestly unjust and contrary to the rules. There has been no adjustment of the amount already received towards the licence fee and also towards the amount of HRA which was never given to the respondent.

31. It is settled position of law that once the appellate court after considering the entire material, documents and facts of the case has passed a reasoned order, the same cannot be questioned under the writ jurisdiction. Reference in this regard may be made to the judgment reported as **‘Veerappa Piliyai vs. Raman and Raman Ltd.’**, AIR 1952 SC 192, wherein it was held that the writs referred to in Article 226 of the Constitution of India are intended to enable the High Court to issue them in grave cases where the subordinate tribunal or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission or error excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

32. The court below has passed a detailed and reasoned order. I find no illegality and/or perversity in the impugned order passed by the appellate court. Hence no interference is warranted under Article 226 of the Constitution of India.”

7. Having taken note of the fact that there was no specific show cause notice as required under Section 7 of the P.P. Act either to the husband of the respondent or to the respondent and that the entire proceedings were based on the show cause notice issued under Section 4 of the P.P. Act for eviction from the public premises, the learned Single Judge also held that the very continuation of the proceedings was vitiated in law and the order dated 06.01.2014 of the Estate Officer directing the respondent to pay the damages of Rs.12,68,255/- was rightly set aside by the appellate court. Para 24 of the order under appeal wherein the learned Single Judge had considered this issue may be reproduced hereunder for ready reference:

“24. It is to be noted that the entire proceedings in the past appears to have been initiated only on the basis of show cause notice dated 10.10.2006 which was issued to the deceased Cdr. S.K. Sharma. A perusal of the said notice shows that the said notice was purported to be for seeking eviction of Cdr. S.K. Sharma from the public premises. It is strange that even though in the said show cause notice it is stated that Cdr. S.K. Sharma had vacated the premises on 07.04.2006, yet the show cause notice under Section 4 of the PP Act had been issued. Needless to say that the provisions of Section 4 of PP Act, only relate to an order of eviction from the public premises. Thus, the body of the said show cause notice dated 10.10.2006 does not tally with the provisions of law under which the said show cause notice has been issued. Accordingly, in the absence of any specific show cause notice under Section 7 of the PP Act, the format, as required, either to Cdr. S.K. Sharma and/or to the present respondent, the very continuation of the proceedings was vitiated in law and were rightly dropped by the appellate court below. It is settled law that what was illegal from the very inception of the

proceedings, no subsequent developments, can cure that illegality.”

8. Having bestowed our thoughtful consideration to the controversy involved in the matter, we entirely concur with the conclusion of the learned Single Judge that the claim made against the respondent was not only barred by limitation but the entire proceedings culminating in the order of the Estate Officer dated 06.01.2014 were vitiated on the ground of non-substitution of legal representatives of Cdr.S.K. Sharma and also for want of specific show cause notice under Section 7 of the P.P. Act.

9. For the aforesaid reasons, the appeal is devoid of any merit and the same is accordingly dismissed.

**CHIEF JUSTICE**

**SANGITA DHINGRA SEHGAL, J**

**SEPTEMBER 19, 2016 /gr/pmc**