

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

**Reserved on: April 01st, 2016
Date of decision: May 02nd, 2016**

+ W.P.(C) 248/2015

UNION OF INDIA

.....Petitioner

Through: Mr. Ajay Digpaul, Advocate.

versus

SMT. DEEPA SHARMA

.....Respondent

Through: Mr. Prakash Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

J U D G M E N T

VED PRAKASH VAISH, J.:

1. The present petition is directed against the order dated 22nd August, 2014 passed by the learned District and Sessions Judge, New Delhi in PPA No.8/2014 whereby the Order dated 6th January 2014 passed by the Estate Officer of the petitioner was set aside.

2. Briefly recapitulating the facts leading to the filing of the present petition are that late Cdr. S. K. Sharma, husband of the respondent herein, was allotted Ministry of Defence pool accommodation bearing No.D-II/274, Chanakya Puri, New Delhi while he was posted at Naval Headquarters w.e.f. 27th December, 1991. It is stated that on his posting out of Naval Headquarters to Mumbai w.e.f. 22nd June 1992 he was permitted to retain accommodation upto 31st March, 1993 on the ground of his children

education.

3. It is stated that as per the Ministry of Defence Accommodation Rules the officer was required to vacate the accommodation by 31st March, 1993. The Officer unauthorisedly overstayed beyond the permissible period and hence was liable to be evicted from the public premises and charged damages for the period he overstayed in accordance with the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 'PP Act'). It is stated that the flat was required by the respondent, widow of late Cdr. S.K. Sharma, who at that time was serving as Judge, Labour Court, Delhi and she requested to transfer the aforesaid accommodation in her name.

4. It is further stated that the matter was reported in the Estate Officer, Ministry of Defence for initiating action for eviction and charging of damages/ rent, however, the proceedings could not be progressed in view of an interim stay order dated 3rd May, 1993 by this Court wherein it was directed that penal rent should not be charged till further orders.

5. The respondent had filed a petition bearing W.P.(C) No.2250/93 for transfer of the Ministry of Defence accommodation No.D-II/274, Chanakya Puri in her name. Request for exchange of pool accommodation was made to the Department of Estates to explore the possibility of inter pool exchange of accommodation. However, the Department of General Pool Residential accommodation refused to inter change the flat and also clarified that the respondent was too junior to be allotted a Type-V accommodation.

6. It is stated that inspite of denial to permit the inter pool exchange, the respondent and her husband late Cdr. S.K. Sharma continued to occupy the

Ministry of Pool accommodation over a long period of approximately thirteen years. It is further stated that after being posted back to Delhi w.e.f. April, 1994 to May, 2005 the husband of the respondent never applied for allotment of any accommodation of the Ministry of Defence Pool after 31st March, 1993. It is further stated that respondent's husband was posted to Vishakhapatnam w.e.f. June, 2005 and was eligible for allotment of accommodation by Headquarter ENC, Vishakhapatnam. Thus the respondent has no reason to seek exchange of accommodation or retain the same accommodation to her husband's posting to another station.

7. The writ petition bearing W.P.(C) No.2250/93, filed by the respondent was partly allowed by this Court on 1st October, 2004 with certain directions. Pursuant to the order dated 1st October, 2004, the respondent made an application to the competent authority for transfer of the Ministry of Pool Accommodation in her name, which was duly forwarded by the then District & Sessions Judge, Delhi. However, no decision was taken by the competent authority. The respondent preferred an LPA No.1092/2004 which was dismissed by the Division Bench vide order dated 13th March, 2006.

8. The Ministry of Defence pool accommodation No.D-II/274, Chanakya Puri, New Delhi was vacated by husband of the respondent on 7th April, 2006. The Estate Office issued a show cause notice dated 10th October, 2006 to the husband of the respondent and pursuant to this notice, proceedings started before the Estate Officer.

9. It is stated that during the pendency of the proceedings, husband of the respondent Cdr. S.K. Sharma expired on 1st April, 2008. As a result, proceedings were initiated under Section 13 of the Public Premises (Eviction

of Unauthorised Occupants) Act, 1971 which seeks to impose liability on the heirs and legal representatives of the deceased person. The Estate Officer issued show cause notice under sub-Section (2) of Section 13 of the PP Act for charging damages of Rs.12,68,256/- from 1st April, 1993 to 7th April, 2006.

10. Thereafter notice was issued to the respondent through the heir/legal representative of the deceased Cdr. S.K. Sharma. The Estate Officer vide order dated 6th January, 2014 directed the petitioner to pay Rs.12,68,255/- as damages on account of unauthorized occupation of the pool accommodation of Ministry of Defence.

11. The respondent challenged the order of the Estate Officer by filing an appeal before the learned District Judge, New Delhi. The learned District Judge, New Delhi vide order dated 22nd August, 2014 allowed the appeal and set aside the order dated 6th January, 2014 passed by the Estate Officer.

12. The petitioner challenged the order dated 22nd August, 2014 passed by the learned District Judge, New Delhi in the present writ petition by contending that the same is wholly illegally, arbitrary, without jurisdiction, discriminatory and passed without appreciating the facts and provisions of the Act and the Rules.

13. Learned counsel for the petitioner contended that the learned District & Sessions Judge did not appreciate the fact that notice under Section 13(2) was issued by the Estate Officer to determine the amount of damages and sufficient opportunity was provided to the respondent for making submissions. It is further argued that the notice dated 28th May, 2012 was issued to the legal heir of late Cdr. S.K. Sharma well within the limitation

period. Learned counsel further stated that failure to bring any one of the legal heir on record will not affect the proceedings under the PP Act against them.

14. While placing reliance on the judgment reported as '**G.R.Gupta Vs. Lok Sabha Secretariat**', **204 (2013) Delhi Law Times 694 (DB)**, learned counsel for the petitioner argued that limitation prescribed under the Limitation Act does not apply to recovery of damages under the PP Act. Reliance is also placed on the judgment of the learned Single Judge of this Court in the case '**Union of India and Anr. vs. Anil Bhatt**', W.P.(C) No.3454/2012 decided on 14th May, 2015.

15. The respondent opposed the petition vehemently. It is contended on behalf of the respondent that the learned District Judge has correctly appreciated the material on record and passed a well reasoned order. It is argued by learned counsel for the respondent that the appellate court duly considered the legal proposition and rightly came to the conclusion that the claim by the petitioner is time barred.

16. Learned counsel for the respondent further contended that the deceased husband of the respondent is also survived by one daughter and the said fact was brought to the notice of the Estate Officer. However, the Estate Officer did not take any steps to implead the daughter in the proceedings thereby the proceedings before the Estate Officer were bad in law and for non-joinder of necessary party.

17. Learned counsel further stated that the assessment of damages were made suo moto by the petitioner and the respondent was neither afforded any opportunity to deal with the assessment. The petitioner imposed the arrears

of rent/damages against the respondent from the period 1st April, 1993 to 7th April, 2006 wherein the amount deducted towards license fee from the salary of the deceased husband was not acknowledged or adjusted; much less the respondent failed to consider the fact that neither the respondent nor her husband claimed any HRA on account of possession of the official accommodation.

18. I have carefully considered the submissions made by learned counsel for the parties. I have also carefully gone through the material on record.

19. Admittedly, proceedings against the respondent were revived by the petitioner by sending communication dated 29th May, 2012 which was issued by the petitioner by exercising powers under Section 13(2) of the Public Premises Act wherein the respondent had been asked as to why order for recovery of arrears of Rs.12,68,355/- be not passed against her. For ready reference Section 13(2) of the PP Act reads as under:-

“13 (2). Any amount due to the Central Government or the [statutory authority] from any person whether by way of arrears of [rent or damages or costs of removal referred to in section 5A or expenses of demolition referred to in section 5B or interest referred to in sub-section (2A) of section 7 or any other cost] shall, after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.”

A bare reading of the aforesaid Section clearly indicates that the liability of legal heirs and legal representatives is limited to the extent of assets of the deceased in their hands. Thus by reading this provision, the very issuance of the aforesaid communication is misconceived inasmuch as

no order could have been passed against the legal heirs of the deceased/public servant/allottee and they can only be arrayed/substituted in exercise of power under Section 13(2) of the PP Act.

20. The material available on record clearly shows that the deceased husband of the respondent Cdr. S.K. Sharma is also survived by his daughter, who was not impleaded as a party in the entire proceedings. The findings of the learned District Judge qua the substitution of the legal heirs are as under:-

“11. In the present case perusal of the Lower Court Record shows that no application U/o 22 rule 4 CPC or U/s 13 (2) of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for substituting the legal heirs/legal representatives is filed by respondent no.2 Union of India, Ministry of Defence before the Estate Officer/respondent no.1 for substituting their names in place of deceased Cdr. S.K. Sharma within the stipulated period.

12. The name of the present appellant coming on the record after the death of Cdr. S.K. Sharma is without any application for substitution which otherwise means that her name is coming on the record as she has filed the Writ before the Hon'ble High Court of Delhi. It is not out of place to mention here that name of the present appellant should have been arrayed or substituted in exercise of the powers Under Section 13(2) of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the material available on record also shows that Cdr. S.K. Sharma is survived by his daughter who is alive but she is not impleaded as one of the legal heir/party in the present proceedings.....”

21. The petitioner claimed damages to the tune of Rs.12,68,255/- for the period 1st April, 1993 to 7th April, 2006. The deceased husband of the respondent Cdr. S.K. Sharma expired on 1st April, 2008 and the claim

against the legal heirs should have been filed within the limitation period. The petitioner issued notice under Section 13(2) of P.P. Act on 28th May, 2012 which itself shows that it is beyond the period of limitation. It is a settled law that recovery under the provisions of PP Act ought to be made within the period of limitation, which is three years. The learned District Judge has rightly held that there is no special right granted under Section 13(2) of The Public Premises Act to claim the said amount without following the principle of limitation. Reliance is placed on the judgment of the Supreme Court titled as '**NDMC vs. Kalu Ram**', AIR 1976 SC 1637, wherein it is observed as under:-

“.....It is not question that a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it. But the question in every such case is whether the particular statute permits such a course. Does Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of time? Under Section 7 the Estate Officer may order any person who is in arrears of rent 'payable' in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and , if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is 'payable'. The word 'payable' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. 'Payable' generally means that which should be paid. 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. 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 realization of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred.”

22. The present writ petition is primarily based on the averments made by the petitioner to the extent that the period of limitation instead of being three years would be 30 years for the proceedings under PP Act available to the Government and to substantiate the said averment, reliance has been placed on the judgment reported as **Shri G.R. Gupta** (supra). Learned counsel for the respondent informed this Court that the said judgment has been stayed by the Supreme Court in SLP (Civil) No.279/2014. Thus reliance placed on the said judgment is of no help to the petitioner and the law as pronounced in the judgment in NDMC’s case (supra) would apply and the limitation is only three years for any recovery proceedings under the PP Act.

23. Section 7 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 empowers the Estate Officer to require payment of rent or damages in respect of public premises. Sub-section (3) of Section 7 stipulates that no order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer. This Section provides for giving of a notice to the party from whom a recovery is sought to be made. Nothing of that sort has been done in the present case, which vitiate the proceedings before

the Estate Officer. In this regard reliance can be placed on the judgment of the Division Bench of J&K High Court in the case reported as '**Dr. Yash Paul Gupta vs. Dr. S.S. Anand And Ors.**', AIR 1980 J&K 16, in terms of which it was stipulated that any proceedings which does not follow the mandate of the provisions of PP Act and the Rules framed thereunder, are vitiated in law. Reference may also be drawn from the judgment of the learned Single Judge of this Court reported as '**Sudhir Goel vs. MCD and Ors.**', (2004) IV AD (Delhi) 493 wherein similar view was taken.

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.

25. The respondent had been staying along with her deceased husband at Premises No.D-2/II/274, Chanakya Puri, New Delhi, which admittedly stood vacated on 07.04.2006. It is also to be noticed that the respondent, who was a judicial officer, had not been getting any House Rent Allowance (HRA) as her husband had already been allotted official accommodation by Ministry of Defence. As late Cdr. S.K. Sharma was sent out of Delhi on transfer, therefore, it became necessary for the respondent to seek government accommodation in her own right and it is on record that Ministry of Defence had given its No Objection to her retention of the said accommodation provided the Ministry of Urban Development give its No Objection. Writ Petition (Civil) No.2250/1993 was initiated by the respondent before this Court, wherein interim order was passed restraining the charging of penal rent/damages by the petitioner. The said writ petition remained pending till October 2004 before this Court which eventually disposed of the same by passing a direction enabling the respondent to make suitable application for allotment in her favour which she was entitled to and it was further provided that if the respondent was entitled to Type-V residential flat, then, the Competent Authority making such allotment shall offer exchange of such accommodation to the Competent Authority in the Ministry of Defence/Estate, as the case may be, in which case the Authority Competent to permit the pool exchange shall examine the request for such exchange with the policy prevalent on the date of such consideration and pass appropriate orders, in accordance with law, uninfluenced by the impugned letters dated 27.07.1992 and 29.01.1993. In terms of Para 11 (ii) and (iii) of the order dated 1.10.2004 it was further provided that the question of liability of any penal rent would be decided in the light of the decision, which was to

be taken in para 11 (i) and (ii) of the said judgment dated 1.10.2004. The respondent had accordingly in compliance with the said order applied for allotment through proper channel.

26. It is an admitted position on record that the concerned department did not comply with the direction under Para 11(i) and (ii) of the order dated 01.10.2004 of this Court inasmuch as case of the respondent for entitlement was not processed by the claimant Ministry of Defence. In the meantime, Late Cdr. S.K. Sharma had come back to Delhi on re-transfer and had moved out to another premises. Accordingly, there was no cause and/or occasion for the petitioner to have even attempted to claim any penal rent/charges, which are otherwise exorbitant, in view of the fact that the interim order passed by this Court in W.P.(C) No.2250/1993 continued till 01.10.2004. Between 01.10.2004 to March 13, 2006 when the order was passed in LPA No.1092/2004 there was no compliance by the petitioner to the directions as contained in Para 11(i) and (ii) of the judgment dated 01.10.2004. Hence, the petitioner cannot be permitted to take advantage of its own wrong and is thus legally stopped from claiming any penal rent.

27. It is on record that the respondent herein, on account of allotment being in the name of her deceased husband did not claim or get HRA. It is further an admitted position that during the concerned period provisional license fee was being debited from the salary of the deceased on account of use and occupation of the said demised premises starting from July, 1995 onwards. The factum of deduction of the provisional license fee itself tantamounts to an admission that the occupation by the respondent was not being treated as unauthorized.

28. It is also worth mentioning that the deceased Cdr. S.K. Sharma, while being away from Delhi did not claim any other accommodation outside Delhi during the tenure of his posting till such time when he came back to Delhi around 1996. Thus asking for the penal/market rent only on account of the retention of the premises, till such time, the deceased shifted to the new premises, on being re-transfer to Delhi, is illegal, arbitrary, unjust and contrary to the true spirit of the orders passed by this Court.

29. Even the stand of the petitioner that there was no policy of exchange of pool during the relevant period is also denied. It is to be noted that during the course of proceedings before this Court, a list was filed by the respondent giving names of all such officers, who were given the said accommodation by exchange of pool. It was the respondent who however was discriminated.

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.225093. 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.

33. The writ petition is, accordingly, dismissed. No costs.

34. The record of appeal be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

MAY 02nd, 2016
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