

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

% **Date of decision: 19th July, 2018**

+ **W.P.(C) 3815/2013**

DELHI JAL BOARD

..... Petitioner

Through: Mr. Himanshu Upadhyay, Adv.

Versus

RAM SINGH

..... Respondent

Through: Mr. Vipin Kumar Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the order [dated 6th November, 2012 in PPA No.03/2012 (Unique ID No.02401C0290992012) of the Court of District Judge (West), Tis Hazari Courts, Delhi exercising powers as an Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act)] interfering with the quantum of damages for unauthorized occupation ordered by the Estate Officer and directing payment of damages by the respondent to the petitioner at four times of normal licence fee.

2. Notice of this petition was ordered to be issued and since then the petition is languishing.

3. Today also, the counsel for the petitioner mentioned the matter for adjournment, which was refused.

4. The counsels have been heard.

5. The learned District Judge, while interfering with the order of the Estate Officer fixing the damages for unauthorized use, appears to have lost sight of the fact that in discharging functions under Section 9, the

learned District Judge was not acting as a Court of law but as an Appellate Officer designated under Section 9 of the PP Act. Reference in this context can be made to ***N.P. Berry Vs. Delhi Transport Corporation*** 15 (1979) DLT 108 (DB) holding that Appellate Officer under Section 9 is not a Court but a *persona designata*. In exercise of such powers as an Appellate Officer, the District Judge was bound by the Rules and Regulations of the petitioner Delhi Jal Board qua occupation of premises allotted to employees and qua overstay therein, in the same manner as the Estate Officer was bound. The observations of the District Judge in the impugned order, that the order of imposition of damages for unauthorized occupation was quite harsh, because the wife of the respondent was not drawing HRA from her employer, is not apposite to the jurisdiction which the learned District Judge was exercising. The learned District Judge could have interfered, only if had found that the Estate Officer, while imposing/assessing/computing the damages had not complied with the Rules. The learned District Judge has also not given any reasons or basis for directing damages to be paid at the rate of four times the licence fee. It cannot be lost sight of that rate of licence fee is negligible, considering that the occupation is by virtue of employment.

6. Section 7(2) of the PP Act empowers the Estate Officer to assess damages on account of unauthorised use and occupation “having regard to such principles of assessment of damages as may be prescribed”. Section 7(2A) further empowers the Estate Officer to direct the damages so assessed, to be paid together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of Interest Act, 1978.

7. Section 18 of the PP Act empowers the Central Government to, by Notification in the Official Gazette, make Rules for carrying out the purposes of the Act, *inter alia* in respect of holding of inquiries under the Act and the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages. In exercise of the said powers, the Public Premises (Eviction of Unauthorised Occupants) Rules 1971 have been framed and Rule 8 whereunder concerns assessment of damages and is as under:-

“8. Assessment of damages.-In assessing damages for 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.”

8. A perusal of the record shows the petitioner, in its claim petition under Section 7 of the Act before the Estate Officer, to have pleaded (i) that the respondent retired from the employment with the petitioner with effect from 30th June, 2001; (ii) that the Quarter No.E-40, Type-III at

Keshopur, Staff Quarter, New Delhi was allotted to the respondent by virtue of his employment with the petitioner and was having a total area of 68.35 sq. metres; (iii) that the allotment in favour of the respondent of the said quarter was cancelled on 10th January, 2002; (iv) that an amount of Rs.1,19,275.50p was being initially claimed as damage charges from the respondent for the period w.e.f. 1st march, 2002 to 28th February, 2003; and, (iv) that the damages w.e.f. 1st March, 2003 were being claimed @ Rs.150 per sq. metres per month i.e @ Rs.10,252.50p per month.

9. It is not in dispute that the respondent ultimately vacated the aforesaid quarter only in the year 2013, having over stayed in the premises for nearly 12 years.

10. The Estate Officer accepted the aforesaid claim of the petitioner.

11. It was not the plea of the respondent, in appeal before the District Judge acting as an Appellate Officer, that the measure of damages was at a rate higher than the prevalent letting value of the premises, being the criteria prescribed in Rule 8 supra.

12. I may mention, that Section 2(12) of the Code of Civil Procedure, 1908 (CPC) also defines *mesne* profits as profits which the person in wrongful possession of property actually receives or might with ordinary diligence have received therefrom, together with interest thereon.

13. Taking judicial notice of the prevalent rents in the city of Delhi, particularly in the locality where the quarter unauthorizedly occupied by the respondent for over 12 years is situated, it cannot be said that the rate of Rs.10,252.50p per month, at which damages were claimed and

assessed, was not the prevalent letting value of the premises. Even the District Judge, acting as an Appellate Officer, has not held that the rate at which damages were assessed by the Estate Officer, was not the rent that would have been realized if the said quarter had been let on rent to a private person. The District Judge, acting as an Appellate Officer, however at his whim and fancy, reduced the rate to four times the licence fee and which, as aforesaid, the District Judge acting as an Appellate Officer was not empowered to do.

14. This Court, in ***Ratan Chand Vs. The Delhi Development Authority*** AIR 1974 Del 26, dealing with Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 which was *pari materia* to Section 7 of the 1971 Act, held (i) that the word ‘assess’ in Section 7 does not simply mean calculation or computing and the Estate Officer is empowered to fix the rate at which the damages have to be paid and to hold, that a particular rate at which the damages were being claimed, was not justified or in conformity with the prescribed principles for assessment of damages; (ii) that the order of the Estate Officer, in exercise of powers under Section 7, cannot be interfered with on the assumption that there was no evidence before the Estate Officer of the prevailing rental value in the locality; (iii) that the fact, that the rate at which damages were being claimed from the person in unauthorised occupation, was the rate at which damages were being claimed from other persons in unauthorised occupation of other properties in the locality, is borne out, if the person in unauthorised occupation has not complained of any discrimination against him in this regard.

15. It may be highlighted, that it was not the plea of the respondent also before the District Judge, that the respondent was being discriminated against in the matter of assessment of damages.

16. In *H.S. Gupta Vs. Union of India* ILR (1983) 1 Del 438, it was held that PP Act is a special legislation dealing with unauthorised occupants of government buildings and the principles of Delhi Rent Control Act cannot be invoked. It was further held that Section 7 does not prescribe the “reasonable rent” as the measure of damages and requires damages to be assessed as compensation or a punitive payment.

17. The reasoning given by the District Judge, for interfering with damages assessed by the Estate Officer, of the same being harsh, is clearly contrary to judgment aforesaid holding that there is no concept of reasonableness in assessment of damages.

18. In *Madhukar Vinayak Bhide Vs. Life Insurance Corporation of India* MANU/DE/8786/2007, this Court held that the aim and object of legislating PP Act was to ensure that the facility of providing residential accommodation to the employees is not misused by them after their retirement and that the Authorities are not compelled to have the public premises evicted by taking recourse to file a civil suit, which is long drawn and time consuming procedure. The plea, that damages could not be assessed at market rate, was held to be not available to a person in unauthorised occupation of the government accommodation inspite of ceasing to be in employment of the government. It was yet further held that if damages were to be assessed/claimed at a below market rent, no employee would vacate the premises upon retirement and instead,

continue to retain the same unauthorizedly, by paying charges far less than the market rent.

19. This is exactly what has happened in this case. The respondent, knowing that if he were to move out, will have to pay rent, much more than the damages levied by the Estate Officer, has continued in unauthorized occupation for long, depriving others from availing this benefit of employment.

20. The counsel for the respondent has argued that the long period of nearly 12 years for which the respondent was in occupation of the quarter even after the allotment in his favour had been cancelled, was under stay orders in different proceedings filed from time to time.

21. The fact remains that the respondent, even in the legal proceedings filed from time to time, may have been agitating a right to continue in the quarter, has not been found to be so entitled and has ultimately been evicted from the premises as an unauthorised occupant. The interim orders of stay of eviction during pendency of the said legal proceedings, would not relieve the respondent from the liability for damages for unauthorised occupation.

22. For the reasons aforesaid, the impugned order of the District Judge, exercising powers as an Appellate Officer under the PP Act, is found to be in exercise of jurisdiction not vested in him.

23. Before parting, I may however mention that the Supreme Court, very recently, in *Life Insurance Corporation of India Vs. Nandini J. Shah* 2018 SCC OnLine 142, has held that though described as an Appellate Officer, the District Judge, for deciding appeal under Section

9, can and is expected to exercise the powers of a Civil Court. However, the benefit of the said judgment was not available at the time of the impugned order and for other reasons aforesaid, the order as aforesaid remains.

24. Resultantly, the petition succeeds and the impugned order dated 6th November, 2012 is set aside and the order of the Estate Officer is restored.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 19, 2018

‘gsr’/pp..