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

+ **W.P.(C) 5437/2014**

SATYA RANI BHATIA & ORS Petitioners

Through: Mr Ashish Kapur and Mr Anmol
Kapur, Advocates.

versus

UNION OF INDIA & ANR Respondents

Through: Mr Manish Mohan, Standing
Counsel with Ms Manisha
Saroja, Advocate.

AND

+ **W.P.(C) 5438/2014**

M/S ELDEE ENTERPRISES Petitioner

Through: Mr Ashish Kapur and Mr Anmol
Kapur, Advocates.

versus

UNION OF INDIA & ANR Respondents

Through: Mr Manish Mohan, Standing
Counsel with Ms Manisha
Saroja, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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09.07.2019

VIBHU BAKHRU, J

1. The petitioners have filed the present petitions, *inter alia*, praying that directions be issued to the respondents to pay the enhanced lease rent for the occupation of the ground floor and the second floor of the property bearing No. 2-A/3, Asaf Ali Road, New Delhi known as “Kundan Mention Building” (hereafter ‘the property’). The petitioner in W.P.(C) 5438/2014

(hereafter “ELDEE”) claims to be the owner of the second floor portion of the property, measuring 1338.1 sq. ft. (carpet area) of the said property, which was leased to the respondents.

2. The ground floor portion of the property measuring 1991 sq. ft., (carpet area) was owned by one Sh. Mool Chand Bhatia (since deceased) and was leased to the respondents. The petitioners in W.P.(C) 5437/2014 claim to be the only legal heirs of Late Sh. Mool Chand Bhatia. They further state Shi Mool Chand Bhatia had bequeathed all his assets, movable and immovable, including the ground floor portion of the property in favour of petitioner no.1 (his wife), in terms of Will dated 14.01.2004. Petitioner Nos. 2 to 5 – the other natural heirs of Late Sh. Mool Chand Bhatia – also affirm that they have no objection to the bequest made by their father in favour of their mother, petitioner no.1.

3. The respondents have affirmed that, on 03.05.1956, the respondents took on lease an area measuring 12,579 sq. ft. in the property (2-A/3, Asaf Ali Road, New Delhi). The Lease Agreement was also executed between the owners and respondent no.2 for the said premises on 03.05.1956.

4. It is further affirmed that in the year 1964, an area measuring 4,171 sq. ft. was released and returned to owners; resultantly, only an area measuring 8,408 sq. ft. of the leased area continued to be in occupation of the respondents. The said lease was extended from year to year and expired on 02.04.1977.

5. Although, the lease in favour of the respondents had expired on 02.04.1977, the respondents continued to be in occupation of a portion of

the property, which included an area measuring 1991 sq. ft. on the ground floor owned by Late Sh. Mool Chand Bhatia and 1069 sq. ft. on the second floor of the property that was acquired by ELDEE on 27.06.1991.

6. There is some controversy with regard to the area owned by ELDEE and occupied by the respondents. Whereas it is averred in the petition filed by ELDEE (W.P.(C) 5438/2014) that it has leased an area measuring 1338.1 sq. ft.; it is averred by the respondents that ELDEE had acquired an area measuring 1069 sq. ft. on the rear portion of the second floor of the property from one Sh. Roshan Lal Aggarwal on 27.06.1991. However, it is not necessary to address this controversy for the purposes of this petition.

7. It is not disputed that after the expiry of the term of the lease, the owners of the property in question pursued the respondents to vacate the same. However, the respondents continued to be in occupation of the ground floor of the property till 04.09.2009 and of the second-floor portion of the property till 31.10.2008.

8. The respondents claim that they could not release the property in favour of the respective owners due to acute shortage of office accommodation in Delhi. The petitioners dispute the same and claims that the second floor of the property had been kept vacant for several years.

9. The said controversy also need not detain this Court. The limited controversy to be addressed is whether the petitioners are entitled to enhanced rent for the said premises in question, as claimed by them. The petitioners rely on an Office Memorandum dated 10.02.1993 issued by respondent no.2, which sets out the procedure to be adopted for

assessment/re-assessment of rent of hired buildings.

10. In terms of paragraph 3 of the aforesaid Office Memorandum, the rents of the buildings are required to be revised every five years from the base dated on 01.09.1982. Paragraph 3 of the said Office Memorandum is relevant and is set out below:-

“3. After the rent of a buildings fixed on the basis of the above formula, it will be subject to revision on the next standard date which will be every five years from the base date of 1.9.1982. The enhancement of rent will be equal to 50% of the increase in the cost Index for building to construction maintained by CPWD over a period of five years from the date of 1.9.82 or the cost index at the time of initial hiring and the next standard date of revision, as the case may be. For instance, if the building is hired in 1983-1984, 1985 or 1986, the next date of revision will be 1.9.87 and thereafter revision will take place every 5 years on the standard dates of revision viz. 1.9.92, 1.9.97 and so on.”

11. Admittedly, the proposal for revision of rent was initiated in the year 2000. At the material time, the respondents were in occupation of the respective premises owned by the petitioners.

12. The petitioners have produced a copy of the notings of the respondents which includes a noting dated 15.11.2007 indicating the proposal to refer the matter to CPWD for revision of the rates for the portion of the premises owned by the petitioners.

13. The petitioners also rely on a noting dated 23.07.2008 by the Executive Engineer (LF), which also clearly indicates that the revision of rent was required to be made as per the assessment / reassessment of rent

policy contained in office memorandum dated 10.02.1993.

14. Admittedly, the Executive Engineer (LF) of respondent no.2 had conducted a detailed exercise for reassessment of the rent in respect of the ground floor of the premises of the said property on 05.02.2009. The petitioners have also produced Rent Reasonability Certificates issued by the CPWD (License Fee Section) from time to time.

15. The learned counsel appearing for the petitioners also drew the attention of this Court to the notices of the Accounts Section of the respondent no.2 computing the revised rents payable to the petitioners. It is claimed by the petitioners that in terms of the said calculation, a sum of ₹53,72,469/- was payable to ELDEE and a sum of ₹1,14,11,223/- was payable in respect of the ground floor portion of the premises in question.

16. Mr Mohan, the learned counsel appearing for the respondents had opposed the present petition. However, in all fairness, he did not dispute that OM dated 10.02.1993 was also applicable for revision of rent in respect of the premises owned by the petitioners. He submitted that the lease had expired in the year 1977 and, therefore, there was no existing lease for revision of the rent.

17. Plainly, the above contention is unmerited as the respondents continued to occupy the premises in question. Admittedly, they continued to pay rent for the same *albeit* intermittently. There can also be no dispute that the respondents were obliged to pay for the occupation of the premises in question. Clearly, such payment cannot be below the rent which was otherwise be payable for the premises in question.

18. Although, Mr Mohan did not contend so, it appears that the respondents had denied the benefit of revision of rent to the petitioners for the reason that the petitioners had filed proceedings for evicting the respondents from the premises in question and an interim order had been passed by the Rent Controller, directing payment of arrears of rent as well as current rent with an enhancement of 10%.

19. The filing of the proceedings before the Rent Controller or the interim order directing the respondents to deposit enhanced rent would not absolve the respondents from paying the legitimate revised rents in terms of their policy. It is also relevant to note that the eviction proceedings filed by the petitioners before the Rent Controller were withdrawn after the respondents had vacated the said premises. Thus, there was no final adjudication as to the enhanced rent payable by the respondents and any interim order passed by the Rent Controller would not finally crystallise the liability of the respondents in any manner.

20. It is also relevant to note that the respondents had sought a legal opinion from the Department of Legal Affairs which had also opined that the respondents were required to comply with the Office Memorandum dated 10.02.1993. The Department of Legal Affairs had also clarified that the orders passed by the Court for depositing enhanced rent was interim in nature.

21. In view of the above, the petitioners are entitled to arrears computed on the basis of the revised rents calculated in terms of the Office Memorandum dated 10.02.1993. In view of the above, respondent no.2 is

directed to compute the revised rents payable in respect of the premises in question for the period for which the same were occupied by the respondents in accordance with the Office Memorandum dated 10.02.1993, within a period of four weeks. The respondents shall pay the arrears to be computed on the aforesaid basis to the petitioners, within a period of four weeks thereafter.

22. The petitions are allowed in the aforesaid terms.

JULY 09, 2019
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VIBHU BAKHRU, J



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