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

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Date of Decision: 15th June, 2020

+ W.P.(C) 3519/2020

GAURAV JAIN

..... Petitioner

Through: Petitioner in person with
Ms.Shefali Jaiswal, Adv.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr.Anurag Ahluwalia, CGSC
for UOI.

Mr.Anuj Aggarwal, ASC with Mr.Ankit
Monga, Adv. for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

1. Proceedings of the matter have been conducted through video conferencing.
2. This public interest litigation has been preferred with the following prayers:-

“a) Issue a writ of Prohibition or any other writ or Order prohibiting the eviction of the tenants on the grounds of non-payment of rent till this crisis caused by the Pandemic lasts, or till a date this Court deems fit. In the alternative, Direct the respondents to issue appropriate orders prohibiting eviction of the tenants on the grounds of non-payment of rent till this crisis caused by the Pandemic lasts, or till a date this Court deems fit.

b. Direct the respondents to issue appropriate orders to the Delhi Police and/or MLAs and/or DMs and/or any other

ministry of respondents to engage sufficient number of patrolling vehicles mounted with loudspeakers for the task of making people aware about the orders related to the issue of rent, and make a general appeal to all the landlords to show some gentility and empathy towards their tenants by waiving off their outstanding rent instead of coercing them to pay it immediately. A further appeal can be made to the landlords and the tenants to talk with each other and come up with fresh rent-terms where the interests of both the parties are taken care of.

- c. Direct the respondents to establish an easy-to-access 'rent resolution commission' with a mandate to provide free and prompt resolution, primarily through mediation, to tenancy related issues arising between tenants and landlords due to or during the period when Disaster Management Act is in effect in India/Delhi.
- d. Direct the respondents to issue appropriate and clear orders declaring that tenants who have not been able to pay the rent for the months of April and/or May and/or June shall not be asked or coerced in any manner to pay the outstanding rent for that period. The net outstanding rent amount shall be waived off forthwith. However, if the landlord of such a tenant is able to show to the 'Rent Resolution Commission' that the tenant did not suffer any substantial loss of income during the lockdown period, then such a tenant shall not qualify for this waiver and shall pay the outstanding rent.
- e. Direct the respondents to immediately constitute a 'Rent Auxiliary Fund' with sufficient corpus and start making prompt payment of compensation to the landlord and tenants, as the case may be. An objective/subjective formula could be devised by the respondents or the 'Rent Resolution Commission' to calculate landlord's compensation amount while keeping in mind the interests of those who are primarily dependant on rent generated income for their bare survival. Similarly, another compensation formula could be devised for the tenants,

who have already paid the rent for the months of April and/or May and/or June under the fear of losing the accommodation or any other pressure/threat, and such payment has jeopardized his already weak financial condition.

- f. Issue directions to the Delhi Police to make amendments to the standard operating procedure where, if their Control Room officer receives any distress call on '100 or 112' from a tenant or a landlord, as the case may be, the officer shall connect the caller, after receiving her consent, to 'Rent Resolution Commission', if the officer concludes that the dispute largely revolves around non-payment of rent and it has not yet lead to the eviction of the tenant or commission of any violence or bodily injury or crime against women.
 - g. Issue directions to the respondents to empower the 'Rent Resolution Commission' to give a one-time amnesty to the landlords or the tenants, as the case may be, against any civil or criminal proceeding against them for lack of documents like rent agreement, lease deed or police verification form etc.
 - h. Direct the respondents to issue appropriate orders in accordance with the above prayer, with appropriate modifications suggested/permitted by this Court.
 - i. Set aside R1's Order dated 17.05.2020 issued by the Union Home Secretary, to the extent that it render R1's order dated 29.03.2020 nugatory.
 - j. Pass any other direction, order or writ as this court may deem fit in the facts and circumstances of the instant case."
3. Having heard the petitioner in person and looking to the facts and circumstances of the case, it appears that the petitioner is in search of:-
- (a) Waiver of Rent for all the tenants
 - (b) Constitution of 'Rent Resolution Commission',
 - (c) Constitution of 'Rent Auxiliary Fund'

- (d) Amendments in the Standard Operating Procedure as stated in prayer (f),
- (e) One time amnesty to the landlords or tenants, and
- (f) setting aside order dated 17th May, 2020 passed by respondent No.1/UOI.

4. This petition, filed as a public interest litigation on behalf of the tenants resident in Delhi, is thoroughly misconceived and baseless. **The general prayer for waiver of rent, cannot be granted by this Court while exercising powers under Article 226 of the Constitution of India.** The payment of rent depends on a contractual arrangement between the tenant and the landlord. The prayer in the petition in essence asks landlords to forgo the consideration for their premises already retained by the tenant. The powers/discretion for waiving of such consideration (rent) vests first with the landlords, who are contractually entitled to the same. This Court will be extremely slow in interfering with the contractual terms which have been entered into by the parties to the contract. It is not the case of the petitioner that all such contracts were entered into under coercion, fraud, mistake, undue influence etc. nor was there any compulsion, on the part of tenant to enter into such contract with landlord. Although the prayer in the petition is not limited to a particular class of tenants, even assuming the petitioner intends to espouse the cause of the poorer sections of tenants, the prayer cannot be granted in a public interest litigation of this nature. **Moreover, the persons who have to waive the payment of rent cannot be joined as party respondents when the petition is not confined to any specific cases.** Thus, in absence of all these landlords of the city of Delhi, on their behalf, this Court cannot waive the payment of rent while exercising powers

under Article 226 of the Constitution of India. Hence, we see no reason to entertain the prayer for waiver of the rent. **It ought to be kept in mind that Court cannot do charity at the cost of others. Charity beyond law is an injustice to others.** If the landlord is entitled to receive the rent/consideration in accordance with law as per the contractual agreement entered between the parties concerned, then, the Court cannot, by a general order of the nature sought by the petitioner, waive such amount.

5. The petitioner is also in search of constitution of a **'Rent Resolution Commission'** for the purpose of resolving individual cases regarding the rent to be paid during the period of lockdown. It is good to hear the party in person, at length, on the issue raised, but, we see no reason to constitute such 'Rent Resolution Commission' and provide for all the mechanism of appointment of the Members thereof, procedure for removal thereof, fixation of salary thereof etc. Arguments can be "free style", but, no "free style" order can be passed. It is submitted by the petitioner that anybody can be the member of the Rent Resolution Commission or at least those who are capable of being Mediator, can be the members of Rent Resolution Commission. It ought to be kept in mind that anyone can be a Mediator, in whom parties to the litigation have faith. Mediation is based on the consent of the parties, both at the stage of entering into the process and at the stage of resolution of the dispute. A binding adjudicatory mechanism of the kind sought by the petitioner cannot be equated with the mediation or conciliation process. No such order can be passed directing the respondents to constitute such a "Rent Resolution Commission", without considering these issues in detail. Moreover, these are not issues for the Court in writ proceedings, but matters of policy which lie in the legislative/ executive domain. The Court

cannot pass general directions which result in waiver of contractual or property rights, or establishment of adjudicatory bodies. The fallacy in the petitioner's case is further evident from prayer (d) of the petition, wherein he seeks an order placing the burden of proof on the landlord with regard to the financial situation of the tenant. The petitioner was unable to justify as to how a landlord can be asked to provide such evidence which may not be within his/ her knowledge at all. The petitioner has sought to postulate a scheme based upon his own understanding, but without sufficient thought as to the modalities or the consequences of the proposal. Since we are not inclined to entertain the prayer of the petitioner in person with regard to constitution of "Rent Resolution Commission" therefore, the prayer regarding constitution of "Rent Auxiliary Fund" and introduction of Standard Operating Procedure (SOP) in this regard does not survive.

6. It is also submitted by the party-in-person that one time amnesty should be given to the landlords or the tenants. We are not inclined to pass any such order. Varieties of factors are required to be considered, for grant of one time amnesty, which will be **a policy decision** to be taken by the respondent/Government authorities. **Court is not the maker of the law, and cannot draft a brand new law**, except where the law is silent or where some lacuna is to be filled up.

7. The Supreme Court in *V.K. Naswa v. Union of India*, **(2012) 2 SCC 542** has made the following observation in this regard:-

“6. It is a settled legal proposition that the court can neither legislate nor issue a direction to the legislature to enact in a particular manner.

7. In *Mallikarjuna Rao v. State of A.P.* [(1990) 2 SCC 707 :

1990 SCC (L&S) 387 : (1990) 13 ATC 724 : AIR 1990 SC 1251] and *V.K. Sood v. Deptt. of Civil Aviation* [1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907 : (1993) 25 ATC 68 : AIR 1993 SC 2285] , this Court has held that the writ court, in exercise of its power under Article 226, has no power even indirectly to require the executive to exercise its law-making power. **The Court observed that it is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner. The courts cannot assume to themselves a supervisory role over the rule-making power of the executive under Article 309 of the Constitution.** While deciding the said case, the Court placed reliance on a large number of judgments, particularly *Narinder Chand Hem Raj v. UT, H.P.* [(1971) 2 SCC 747 : AIR 1971 SC 2399] , where it has been held that legislative power can be exercised only by the legislature or its delegate and none else.

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18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.”

(emphasis supplied)

8. In *Dr.Ashwani Kumar vs. Union of India & Anr., 2019 SCC Online 1144*, the Supreme Court held as under:-

“13. The most significant impact of the doctrine of separation of powers is seen and felt in terms of the institutional

independence of the judiciary from other organs of the State. Judiciary, in terms of personnel, the Judges, is independent. Judges unlike members of the legislature represent no one, strictly speaking not even the citizens. Judges are not accountable and answerable as the political executive is to the legislature and the elected representatives are to the electorate. This independence ensures that the judges perform the constitutional function of safeguarding the supremacy of the Constitution while exercising the power of judicial review in a fair and even-handed manner without pressure and favours. As an interpreter, guardian and protector of the Constitution, the judiciary checks and curbs violation of the Constitution by the Government when they overstep their constitutional limits, violate the basic structure of the Constitution, infringe fundamental rights or act contrary to law. Power of judicial review has expanded taking within its ambit the concept of social and economic justice. Yet, while exercising this power of judicial review, the courts do not encroach upon the field marked by the Constitution for the legislature and the executive, as the courts examine legality and validity of the legislation or the governmental action, and not the wisdom behind the legislative measure or relative merits or demerits of the governmental action. Neither does the Constitution permit the courts to direct, advise or sermonise others in the spheres reserved for them by the Constitution, provided the legislature or the executive do not transgress their constitutional limits or statutory conditions. Referring to the phrase “all power is of an encroaching nature”, which the judiciary checks while exercising the power of judicial review, it has been observed that the judiciary must be on guard against encroaching beyond its bounds since the only restraint upon it is the self-imposed discipline of self-restraint. Independence and adherence to constitutional accountability and limits while exercising the power of judicial review gives constitutional legitimacy to the court decisions. This is essence of the power and function of judicial review that strengthens and promotes the rule of law.

29. Dipak Misra, CJ in *Kalpana Mehta's* case, under the heading *Power of judicial review* ' had examined several judgments of this Court to reflect upon the impressive expanse of judicial power in the superior courts that requires and demands exercise of tremendous responsibility by the courts. Thus, while exercising the interpretative power, the courts can draw strength from the spirit and propelling elements underlying the Constitution to realise the constitutional values but must remain alive to the concept of judicial restraint which requires the judges to decide cases within defined limits of power. Thus, the courts would not accept submissions and pass orders purely on a matter of policy or formulate judicial legislation which is for the executive or elected representatives of the people to enact. Reference was made to some judgments of this Court in the following words:

“43. In *S.C. Chandra v. State of Jharkhand*, it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in *Suresh Seth v. Indore Municipal Corpn.* is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that **it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard.** The Court further observed that this Court cannot issue directions to the legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court

referred to the decision in *Supreme Court Employees' Welfare Assn. v. Union of India* wherein it was held that **no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.**””

(emphasis supplied)

9. The petition proceeds on the presumption that tenants alone are suffering from financial hardship, or from the economic consequences of the pandemic and consequent lockdown. However, it ought to be kept in mind that even the landlords can be financially dependent on the rent, e.g. when the rented premises is given by a widow or by a retired person having no other means of income and when they are solely dependent on the rent, for their livelihood. Similarly, there are several instances where rented premises are occupied by the tenants who are running shops, malls and doing other commercial activities. Without going through specific facts of each and every case, no dispute in relation to payment of rent and eviction thereof can be decided by the Court between tenants and landlord. Thus, whenever a landlord expects eviction of the premises on the basis of non-payment of the rent, in such eventuality, the Court has to appreciate the proved facts of that particular case. For canvassing an argument of waiver of rent, proof of facts is a must. There cannot be lumpsum/general submission and that too in a public interest litigation, that rent should be waived and there can be no eviction, on ground of non-payment of the rent for tenants who are poor. Hence, this writ petition is devoid of any merits as a public interest

litigation. Nonetheless, as and when any individual approaches the Court, with proper facts and averments, the decision can be taken by the Court, in accordance with law, rules, regulations and government policies applicable to the facts and circumstances of that particular case. It is in this regard that we see no reason to interfere with the order dated 17th May, 2020, passed by Respondent No. 1/UOI.

10. If such type of general argument is accepted by this Court, that rent should be waived for all the tenants of Delhi who are poor for the month of April or/and May or/and June, it will lead to injustice. Hence also, we see no reason to entertain this Public Interest Litigation.

11. Looking at the averments made in this writ petition it appears that **this is not a public interest litigation, but, it is publicity interest litigation.**

The petitioner, who is a lawyer, has not considered the matter in the context of the role of the Courts in such proceedings, and has also not made out any arguable case in support of his prayers. The proposals made by him are ill-conceived, as he does not appear to have thought about their practicability or their effect on other stakeholders.

12. The Supreme Court in *State of Uttaranchal v. Balwant Singh Chauhan*, **(2010) 3 SCC 402** observed as under:-

“180. In our considered view, now it has become imperative to streamline the PIL.

181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

13. During the course of hearing, we had informed the petitioner that we

are not inclined to entertain the petition as we find that it is an abuse of the process of the law. We had also warned him that if he presses the petition, we would be constrained to dismiss it with costs. We cautioned the petitioner because he is a practicing lawyer. Despite that, the petitioner continued to address arguments, wasting valuable judicial time. We deprecate this conduct of the petitioner.

14. In view of the aforesaid observations of this Court, we hereby dismiss this writ petition with costs of Rs.10,000/- to be deposited with Delhi State Legal Services Authority within a period of four weeks of resumption of physical functioning of the Courts. This amount will be utilized for COVID relief and welfare measures.

15. A copy of this judgment be sent to the Member Secretary, Delhi State Legal Services Authority, Central Office, Patiala House Courts Complex, New Delhi - 110001.

CHIEF JUSTICE

PRATEEK JALAN, J

JUNE 15, 2020/‘anb’