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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 05 January 2022**+ **W.P.(C) 15053/2021, CM APPL. 47492/2021**

**P.S. HOODA (DECEASED) THROUGH: LEGAL
REPRESENTATIVE/WIFE MRS. ANITA HOODA Petitioner
Through: Mr.Rohit Sharma, Adv.**

versus

UNION OF INDIA & ANR. Respondents

**Through: Mr.Sushil Kumar Pandey, Senior
Panel Counsel with Mr.Kuldeep
Singh, Adv. for UOI.**

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****YASHWANT VARMA, J. (ORAL)****CM APPL. 47493/2021(for exemption)**

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 15053/2021, CM APPL. 47492/2021(Stay)

1. The challenge in the present writ petition is to the order of 19 March 2021, passed by the Appellate Authority upholding the quantification of damages assessed as payable by the petitioner by the Estate Officer in terms of the order of 22 September 2020 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971¹. While passing the impugned order, the Appellate Authority has accorded relief to the petitioner to the extent of requiring the adjustment of the House Rent Allowance which had been deducted while she worked under the respondents. Since the appeal

¹ the Act



preferred by the petitioner to that extent has been allowed, it only leaves the issue of the validity of the assessment and quantification of damages to be essentially considered by the Court.

2. Admittedly, the premises in question had been allotted to the husband of the petitioner who was employed as a Director in the Ministry of Defense. The said allottee died on 15 February 2012. In terms of the policy which stood in place, the petitioner was permitted to retain the official accommodation for a period of two years. The petitioner who herself was employed as a Chief Prosecutor in the office of the Directorate of Prosecution, had sought the grant of the facility of “inter pool exchange”, that prayer was denied by the respondents. Despite no permission having been granted to her to retain the accommodation in question post February 2014, she undisputedly continued to retain the accommodation. Ultimately proceedings for her eviction were drawn and a final order under Section 4 of the Act was passed on 29 July 2015. That order was affirmed in appeal and the challenge to those orders by way of a writ petition also failed with this Court dismissing the writ petition preferred by her on 11 July 2019. That only left the issue of quantification of damages for the period during which the petitioner retained possession of the official accommodation unauthorisedly.

3. The Estate Officer by the order of 22 September 2020, had proceeded to assess the quantification of damages by invoking the “telescopic method” as embodied in the Office Memorandum of 7 September 2016² issued by the Directorate of Estates. The Estate Officer did not accept the assessment

² the O.M.



of damages made by the Department of Estate noting that they had employed the market rates applicable to Andrews Ganj Extension when in fact the premises was situate near Defense Colony/Ansal Plaza and therefore liable to be quantified bearing in mind the higher market rates which prevailed there. Aggrieved by the aforesaid order, the petitioner preferred an appeal which has come to be partly allowed in terms of the order impugned here and dated 19 March 2021. It becomes pertinent to note that while the objection of the petitioner in respect of non-adjustment of HRA has been accepted by the Appellate Authority, the quantification in other respects and based upon the O.M., has been upheld.

4. Assailing the above, Mr.Sharma, learned counsel appearing for the petitioner, would contend that the quantification of damages based on the O.M., is clearly violative of provisions made in Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971³. It was further contended that the Department of Estates had held the petitioner liable to pay the damages to the extent of Rs.19,000/- alone. According to Mr. Sharma, the damages as computed and reflected in the order impugned are wholly arbitrary and illegal. Learned counsel contends that the Estate Officer was bound to assess damages strictly in accordance with Rule 8 and by employing the telescopic method as contemplated under the O.M., a manifest illegality has been committed.

5. While Mr. Sharma has also placed reliance upon the decisions rendered in **Avijit Das v. Union Of India**⁴ and **Ran Singh Kohar v. Union**

³ the Rules

⁴ 2015 SCC OnLine Del 9817



Of India & Ors.⁵, those decisions need not detain this Court since as would be evident from a perusal of those two judgments, the submission which is addressed here neither arose directly nor was it raised or considered. In **Avijit Das**, the Court essentially held that the right to be paid HRA which flowed from a statutory rule, could not be denied on the basis of an administrative circular. It was in the aforesaid backdrop that the Court observed that administrative guidelines or orders must yield to statutory provisions. There cannot possibly be a dispute with respect to the well settled position of administrative orders being subservient to statutory provisions as articulated in **Avijit Das**. In **Ran Singh Kohar**, the Division Bench of this Court held that the Department of Estates cannot unilaterally assess the damages payable since that would be an issue to be adjudicated by the Estate Officer in accordance with Section 7 of the Act. The Court there was faced with a situation where the Department itself had quantified the damages payable. This Court finds itself unable to appreciate how **Ran Singh Kohar** would come to the aid of the petitioner especially when the facts of the present case would bear out that the Estate Officer had in fact rejected the assessment as made by the Department of Estates. The fact that it ultimately held the petitioner liable to pay much more than that recommended by the Department is a separate issue altogether. What the Court seeks to highlight is that it is the petitioner who seeks to rely on the assessment as made by the Department. It is in that backdrop that it is constrained to observe that the reliance placed by learned counsel on **Ran Singh Kohar** is clearly contradictory and self-defeating. There also cannot

⁵ 2014 SCC OnLine Del 6667



possibly be any dispute with respect to the position that the jurisdiction to rule on the question of damages stands independently conferred upon the Estate Officer in terms of Section 7 of the Act read with Rule 8 of the Rules.

6. Moving on to the submission of Mr. Sharma that the O.M. is violative of Rule 8, the Court finds itself unable to countenance the submission for reasons which follow. Firstly, it may be noted that there is no direct challenge laid to the O.M. in this petition. However, and since this was an argument which was addressed even before the Appellate Authority, the Court deems it inappropriate to non-suit the petitioner on this technical ground.

7. It becomes pertinent to recall that Section 7(2) of the Act confers the jurisdiction on the Estate Officer to levy damages for unauthorised occupation “*having regard to such principles of assessment of damages as may be prescribed....*”. Rule 8 in turn prescribes the various factors which the Estate Officer must bear in mind while assessing damages. Amongst the various factors prescribed therein, clause (a) provides for “*.....the period for which the premises were in unauthorised occupation*”, while clause (c) refers to the “*....rent which would have been realised if the premises had been let on rent...*”. It is by now well settled that rent as envisaged in Rule 8 is not connected or confined to the concept of standard or normal rent. This since damages is essentially compensatory as well as punitive. Rule 8 (e) constitutes the residual clause leaving it open to the Estate Officer to consider any other matter that may be germane for computation of damages.

8. A conjoint reading of the aforesaid provisions establishes that the W.P.(C) 15053/2021



Estate Officer while proceeding to assess damages must take into consideration various issues including the purpose and period for which the public premises were occupied unauthorisedly, the nature, size and standard of the accommodation in question and the rent that would have been realised if the premises had been let out for the period during which it was unauthorisedly occupied. The principal question which then arises is whether the adoption of the telescopic method for the purposes of assessment of damages here could be said to be violative of Rule 8.

9. The Court fails to find merit in the submission addressed on this score since the telescopic method as employed is clearly relatable and referable to the requirement of the Estate Officer necessarily taking into consideration the period for which the premises was unauthorisedly occupied as contemplated in Rule 8 (a). Bearing in mind the punitive element which imbues the levy of damages, the imposition of damages on an escalating scale cannot be said to be violative of that Rule.

10. The period between when the right to legally occupy public premises comes to an end and it is ultimately vacated is an important factor to be borne in mind while computing damages payable under the Act. The length of the period during which possession is unauthorisedly retained is clearly relevant for the purposes of assessment of damages and since it is indubitably a punitive measure, the longer the retention of the premises, the more onerous should be the burden of damages liable to be borne. The accelerated and increased rate of damages as contemplated under the O.M. finds its validation in Rule 8 itself.

11. Regard must also be had to the fact that the O.M. in a sense only guides and aids the quantification of damages based on a factor prescribed

W.P.(C) 15053/2021



by Rule 8(a). In fact, it provides an empirical scale for assessment of damages directly related to a component of Rule 8(a) rather than leaving it to the unguided discretion of an individual authority. Undisputedly, irrespective of the existence of the O.M., the Estate Officer would have in any case been obliged to consider the period for which the premises remained in unauthorised occupation.

12. The Court thus comes to the conclusion that the O.M. essentially puts in place an escalated scale for the levy of damages. It only explains and clarifies the manner in which damages may be computed. Viewed in that sense, it is evident that it only acts as an aid to the Estate Officer while exercising powers conferred by Rule 8. The adoption of an accelerated and spiralling rate of damages is entitled to be recognised as being inherent and ingrained in Rule 8(a). The Estate Officer would have, in any case, been justified to escalate damages dependent upon the period for which the premises were unauthorisedly occupied. As observed hereinabove, the O.M. merely suggests and guides the assessment of damages. This Court consequently finds itself unable to sustain the submission that the aforesaid O.M. would violate the provisions of Rule 8.

13. The Court also bears in mind the fact that both the Estate Officer as well as the Appellate Authority have taken into consideration the market rate of the premises and its market value while estimating the amount of damages that was liable to be levied upon the petitioner. They have ultimately come to conclude that the damages as recommended by the Department were lesser than that if calculated on the basis of the market rate prevailing in the area where the premises was situated.

14. The last contention of Mr. Sharma of the damages as computed by W.P.(C) 15053/2021



the Department of Estates being binding on the respondents is noticed only to be rejected since undisputedly the computation of damages is a statutory function and duty conferred on the Estate Officer and as was noted in *Ran Singh Kohar*, a quantification undertaken by the Department of Estates would not be in compliance with the scheme of the Act. The Court further records that the assessment of damages as undertaken by the respondents was assailed only on the grounds specifically noticed and recorded above.

15. Accordingly, and for all the aforesaid reasons the Court finds no merit in the challenge raised to the orders impugned. The writ petition alongwith the pending application fails and shall consequently stand dismissed.

JANUARY 05, 2022/bh

YASHWANT VARMA, J.

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