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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 04 January 2022**+ **W.P.(C) 6075/2010****SHABBIR AHMED AND ANR.** PetitionersThrough: Mr. N. S. Dalal, Adv. for LR no. 2 of
petitioner no. 1.

Mr.Abid, Adv. for petitioner no.2.

versus

**THE SLUM & J.J.DEPARTMENT MUNICIPAL CORPORATION
OF DELHI** Respondent

Through: Mr.Ram Kumar, Adv. for DUSIB.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****YASHWANT VARMA, J. (ORAL)**

1. The Court has heard Mr. N. S. Dalal, learned counsel for the petitioner No.1, Mr. Abid, learned counsel who appears for petitioner no.2 and Mr.Ram Kumar, who appears for DUSIB.

2. The challenge in the present writ petition is to an order of 18 June 2010, passed by the respondents assessing the petitioners to damages in respect of unauthorised use of the property in question. The order itself has come to be passed pursuant to the directions issued by this Court on 21 April 2010, on W.P.(C) 2646/2010. The impugned order proceeds on the basis that although the premises in question had been allotted for residential purposes, a shoe business was being carried on from the same and thereafter a guest house also came to be established therein. Taking into

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consideration the policy decision as adopted by the respondents on 25 October 2004, the petitioners have accordingly been held liable to pay damages as computed in the order impugned. Before proceeding to notice the rival submissions which have been advanced, it would be apposite to note the following facts.

3. As per the petitioners, the premises in question was occupied by the predecessors of the present petitioners from before Independence. It is their case that their father was a tenant of the original occupants who ultimately migrated to Pakistan as a consequence of which the property came to be declared as evacuee property and came to vest in the Custodian. According to the petitioners here, on the death of the original occupant and on or about 1962, the father of the petitioners obtained tenancy rights over a portion of the premises and while occupying the same, continued to make regular payments of rent to the Ministry of Rehabilitation. According to them, the aforesaid payments of rent thereafter continued to be made to the Slum and J.J. Department of the Municipal Corporation of Delhi. On the death of the father, the petitioners here were recognised as licensees by the respondents and they continued to use the premises for selling footwear. As per their own disclosures, some time and around 1977 a portion of the premises also came to be used as a guesthouse.

4. On 18 October 1999, the respondents proceeded to issue a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, holding that the petitioners were in unauthorised occupation of the property in question. The aforesaid notice also invoked the provisions of Section 7(3) of that Act and called upon the petitioners to show cause why damages for the period between 01 January 1984 to 30 W.P.(C) 6075/2010



June 1999 and thereafter be not levied and recovered. On issuance of that notice, the petitioners are stated to have submitted their reply which has been placed on record as Annexure A-10. It is the case of the petitioners that although the Estate Officer had thereafter fixed the matter for 19 October 2000, no further orders in those proceedings were ultimately passed and they came to be dropped. The claim of the respondents of the petitioners being liable to pay damages was again revived and stands embodied in a notice which was issued on 08 November 2000. That notice called upon the petitioners to deposit a sum of Rs. 17,78,280/-. Upon receipt of that notice, the petitioners submitted their replies and questioned the quantification of damages. There is material placed on the record of these proceedings in the shape of internal notings on the files of the respondents which appears to suggest that a review with respect to the issue of payment of damages and license fee in respect of unauthorised use of premises falling in the “walled city” was engaging the attention of the respondents. The proceedings thus remained in limbo and in any case no final orders appear to have been passed in proceedings drawn under the Act.

5. The respondents then proceeded to issue another notice on 30 December 2002. In terms of this notice which forms part of the record as Annexure A-16, the petitioners were called upon to deposit the sum of Rs.2772/-. Accepting the quantification of the dues as payable by them and embodied in that communication, the petitioners proceeded to withdraw W.P. (C)No. 3481/2001 which was pending before this Court and had been preferred assailing the action of the respondents seeking to levy and recover damages. The amount as claimed as due and payable in terms of the W.P.(C) 6075/2010



communication of 30 December 2002, was admittedly paid by the petitioners. While things lay at rest thus, the claim of the respondents in respect of damages was again revived almost six years thereafter in terms of a notice issued on 01 June 2009. The petitioners aggrieved by the action so initiated ultimately preferred W.P.(C) 2646/2010 and it is pursuant to the directions issued on that writ petition that the impugned order of 18 June 2010 has ultimately come to be passed.

6. Assailing the demands as raised by the respondents, Mr. Abid, learned counsel, has contended that once the proceedings for declaration of alleged unauthorised occupation by the petitioners had been brought to a close, the claim of damages as raised by the respondents would not sustain. It was further submitted that undisputedly, the respondents themselves had proceeded to issue the communication of 30 December 2002, in terms of which the petitioners were held liable to pay a sum of Rs.2772/- only. According to Mr. Abid, the respondents have arbitrarily again included the sums which were claimed and formed part of the original notice of 08 November 2000.

7. Mr. Abid, learned counsel, has taken the Court through the terms of the policy as framed by the respondents and incorporated in the Resolution of 25 October, 2004 to submit that once the issue of damages had come to be settled and finalised by the respondents in terms of the communication of 30 December 2002, the demand impugned herein would clearly be rendered unsustainable and in any case is wholly arbitrary when viewed in the backdrop of Paragraph 3 of the Policy of 25 October 2004. Paragraph 3 of the policy decision essentially provided that those demands in respect of damages or dues towards license fee which had come to be finalised under W.P.(C) 6075/2010



the existing policy, would not be reopened in terms of the policy measures which were being adopted. According to Mr. Abid the communication of 30 December 2002, represented a final adjudication which was undertaken by the respondents with respect to damages and the same could not have been reviewed in terms of the resolution of 25 October 2004.

8. Mr. Dalal, learned counsel appearing on behalf of the petitioner No.1, on the other hand submits that undisputedly the father of the petitioners came to possess the property in question as a tenant of the original occupant. According to learned counsel, once the petitioners succeeded to the interest as existing in the property, irrespective of its vesting in the Custodian, they would continue to be recognised as tenants of that property and therefore the allegation of the respondents of the property being put to unauthorised use or being illegally occupied, is wholly illegal and cannot be sustained. Mr. Dalal, learned counsel, has also assailed the quantification of damages as embodied in the impugned order and contends that the same rests on a verification report which cannot be countenanced in law since no material has been placed on the record by the respondents which may have established that a survey of the premises on an empirical basis was ever undertaken.

9. Mr. Kumar, learned counsel appearing for the respondents, on the other hand has submitted that the records would clearly bear out that the premises which was liable to be used for residential purposes, was admittedly put to unauthorised use by the petitioners. Learned counsel contends that no permissions were sought by the petitioners from the Slum and J. J. Department of the MCD to use the premises for conduct of a commercial venture. It was further submitted that once it was established

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that the property had been put to unauthorised use, the petitioners were clearly liable to pay damages in accordance with the provisions made and embodied in the policy of 25 October 2004. Mr. Kumar further submits that although the petitioners were granted adequate opportunity to submit evidence with respect to the area being utilised for the purposes of running a guest house, they failed to avail of those opportunities and ultimately the respondents after undertaking due survey of the premises proceeded to quantify the damages which were liable to be paid in accordance with the provisions made in the policy of 25 October 2004.

10. In so far as the communication of 30 December 2002 is concerned, Mr. Kumar contends that the aforesaid demand appears to have been unauthorisedly addressed by the accountant and the same in any case did not enjoy the approval of the competent authority. Mr. Kumar submits that the assessment of damages cannot possibly be viewed as having come to be settled or finalised in terms of the communication aforesaid. Learned counsel has further apprised the Court that the accountant who issued that notice was subjected to disciplinary proceedings and also penalized for his misconduct. It was lastly submitted that the policy of 25 October 2004 itself was a review of the policy measures which stood in place and were embodied in the resolution of the respondents framed on 15th October 2001. It was submitted that the liability to pay damages for unauthorised use and occupation of residential premises was one which remained consistent and in place during the entire period when the property was unauthorisedly occupied and used by the petitioners. It was contended that only the rates and basis for calculation of damages came to be amended by the policy of 25 October 2004. It is these rival submissions which fall for W.P.(C) 6075/2010



consideration.

11. It may and at the outset be noted that the terms of the policy dated 25 October 2004 has neither been assailed nor questioned by the petitioners. The entire dispute since its inception has centered on the question of the amount of damages which the petitioners would be liable to pay in law. However since various other issues have also been raised by learned counsels for the petitioners, the Court proceeds to deal with the same hereinafter.

12. In so far as the submissions addressed by Mr. Dalal are concerned, the Court notes that no objections on the lines urged before this Court appear to have been advanced at any stage of the protracted litigation which ensued inter parties and that ultimately led to the passing of the order impugned in the present writ petition. Additionally, the Court bears in mind the fact that even while responding to the initial notices which were issued by the respondents, it was never the case set forth by the petitioners that they were liable to be viewed as tenants and that consequently they would have full rights to utilise the property for any purpose that were deemed fit. As is evident from a reading of the replies which were filed in response to the notices issued, the petitioners essentially contested the quantum of the dues claimed as payable under the head of damages. Even in the present writ petition, no foundation has been laid in support of the submission that the petitioners had the unfettered right to use the premises for commercial purposes. The onus to establish that the use of the premises as a guesthouse was authorized and permissible clearly lay on the shoulders of the petitioners. However, and since there has been an abject failure on their part to prove the same coupled with the fact that the aforementioned grounds were

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never taken or raised earlier, clearly merits rejection of the arguments addressed by Mr. Dalal.

13. Notwithstanding the above, the Court additionally notes that undisputedly, the property in question came to vest in the Custodian and was consequently placed under the administration of the Ministry of Rehabilitation. The petitioners consistently accepted their permissive occupation of the premises in question as being in accordance with the grant as made by that Ministry and its successor, namely the Slum and JJ Department of the MCD. It was never the case of the petitioners that they were entitled to use the premises for any purpose and without the requisite permissions and consents of the competent authority being obtained in that regard. The dispute that was raised stood confined to the quantum of damages as assessed by the respondents. The Court is thus of the firm opinion that it would be impermissible and wholly inequitable to permit the petitioners to urge grounds which were never raised earlier and did not even form the fulcrum of the challenge in the present writ petition. The objections taken in this respect are thus negated.

14. The Court then proceeds to answer the crucial question of whether the proceedings which came to be initiated under the Act could be said to have been accorded a closure. Having conferred thoughtful consideration on the rival contentions addressed in this regard by learned counsels, this Court finds itself unable to accept the submission of those proceedings having been brought to an end bearing in mind the undisputed fact that no final order came to be passed bringing those proceedings to a close. Although it has been urged on behalf of the petitioner that the proceedings initiated under Section 4 of the Act were placed for consideration on 19 W.P.(C) 6075/2010



October 2000 by the Estate Officer and no order was passed on that date, that by itself cannot be construed as a formal closure or dropping of proceedings which were initiated. The gap between the initiation of proceedings under the Act and the issuance of the subsequent notices claiming damages appears to be on account of the ongoing review of the entire position with respect to unauthorised use and occupation of buildings in the “walled city” which was being undertaken by the respondents and stands evidenced from the internal notings which have been placed on the record by the petitioners themselves.

15. The Court then proceeds to consider the validity of the submission as addressed by Mr. Abid, namely, of proceedings having come to be finalised in terms of the communication of 30 December 2002 and consequently, the respondents restrained from reopening the process of quantification of damages in light of Paragraph 3 of the policy of 25 October 2004. A careful reading of the demand notice of 08 November 2000 clearly establishes that the same was a communication specifically calling upon the petitioners to pay a sum of Rs. 17,78,280/- towards “damages/license fee/rent” in respect of the property in question. In contradistinction to the above, the communication of 30 December 2002 dealt specifically and only with license fee. That notice called upon the petitioner to deposit a sum of Rs.2772/- towards license fee only. Significantly, this notice scores out the word ‘damages’ as appearing therein. In fact, before this Court, it was candidly admitted by learned counsel for the petitioner no. 2 that the aforesaid communication was liable to be viewed as being referable to license fee and rent alone. Viewed in that backdrop, it cannot possibly be said that the demand for damages as raised in terms of the notice of 08 W.P.(C) 6075/2010



November 2000 came to be either finally determined or conclusively decided in terms of the communication of 30 December 2002. The communication of 2002 stands confined to the liability of the petitioners towards license fee and rent. It had no bearing on the issue of damages which stood raised in terms of the earlier notice of 2000.

16. The Court also bears in mind paragraph 3 of the Resolution of 25 October 2004 which reads thus: -

“3. The cases already decided by the depts. on licence fee basis/damages basis subject to provisional demand and the demand has already been issued for recovery of damage under the existing Policy will not be re-opened and the recovery shall continue to be effected on the earlier demanded amount. However, the further demand of licence fee/damages will be issued as per modified policy w.e.f. the date of passing the resolution by the Corporation.

The levy of damages/recovery of licence fee will be subject to further following terms & conditions: -

- (a) The damages will be charged on the basis of the FAR (Floor Area Ratio). The levy of damages is purely provisional and will not be treated for any regularisation of the property occupied by the unauthorised occupants/allottees.
- (b) The payment of damages will not entitle to unauthorised occupants/allottees to any legal rights/title to the property.
- (c) The slum & JJ. Depts./local bodies will have the power as per law to remove the unauthorised construction/ encroachment for any public purpose and the damage assessee will not be entitled for any compensation.
- (d) The past cases already decided under the earlier resolution and decision will not be re-opened in any case and the recovery of the demanded amount shall continue to be effected as per earlier decisions.
- (e) The revised rates of licence fee are applicable to all original licensees as well as legal heirs after mutation.
- (f) The Mutation charges @ Rs.200/- in each case will be charged.
- (g) The rate of licence fee will be increased by 15% after every 3 years on the existing basic rates the onus for payment of licence fee on monthly basis by 15th of each month in advance would be on the licensee. In case the licence fee is not paid continuously for a period of



6 months the licence shall be cancelled.

(h) The properties which have already been sealed by the depptt. Due to certain reasons should also be covered under the damage policy and the properties may be de-sealed after charging the dues of the damages as per policy and use of the property at site.

(i) The area of the lobby, courtyard, staircase, toilet and bathroom will not be counted towards FAR.

(j) The cases filed in the court in respect of any dispute in the occupation should also be got settled by calling the applicant in the office and may be heard by the Committee already constituted in this policy so that such cases should be settled out of court and the pending dues may be recovered from the occupier. This will enhance the recovery position as sufficient number of cases are pending in the court in respect of properties in the Walled City.

(k) The demand of the dues can also be paid in 5 monthly instalments with interest @12% p.a. on the delayed payment in the cases where the allottees/occupants are not in a position to make the payment in lump sum.”

17. As would be manifest from a reading of that particular paragraph, the respondents had resolved not to reopen those cases in which the issue of damages or payment of license fee had come to be decided or where provisional or final demands had already been issued. Paragraph 3 in essence, sought to insulate quantification of damages which may have been made in accordance with the provisions made in terms of the policy of 15 October 2001 and which admittedly held the field till its terms came to be reviewed and revised by the respondents on 25 October 2004. In order to succeed, the petitioners would have had to establish that a demand of damages had come to be finalised and closed in accordance with the policy measures which prevailed prior to 25 October 2004. However, and as was noticed by the Court earlier, the communication of 30 December 2002 clearly did not evidence or embody a decision of the respondents finalising the issue of damages and the liability of the petitioners in respect thereof. That communication related to the payment of license fee alone. The

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submissions to the contrary, thus, stand negated for reasons aforenoted.

18. While closing, the Court takes note of yet another contention of Mr. Abid raised in the course of his rejoinder submissions that damages have been quantified by the respondents by subjecting the entire area of the premises as being liable to be proceeded against for the purposes of quantification of damages. According to Mr. Abid, the first floor of the premises in question is still being used to conduct a shoe business and therefore the levy of damages on the entire area of the premises is clearly illegal. Mr. Abid, learned counsel, has also drawn the attention of the Court to the grounds taken in the present writ petition and submits that only about 75 square meters of the entire property is being utilized for the purposes of running a guest house and that the respondents have committed a manifest illegality in taking the entire area of the premises for the purposes of adjudging the amount of damages liable to be paid by the petitioners.

19. It becomes pertinent to note that apart from this ground which is taken in clause XIII of the writ petition, no other material has been placed on the record which may prove or establish the veracity of this particular assertion. It would be apposite to note that although the respondents have also placed on record the licenses obtained by them under the provisions of the Sarai Act, even these documents do not establish or lend credence to the aforesaid assertion as made by learned counsel and noted above. These documents fail to conclusively establish or prove that the first floor of the premises in question was not being used for the purposes of a guest house or that an area of 75 square meters alone fell foul of the restrictions which applied. The Court also bears in mind the fact that the quantification of damages was preceded by a survey which was undertaken by the W.P.(C) 6075/2010



respondents, and it was based upon reports drawn in terms of that exercise that the demand of damages was ultimately quantified and stands set forth in the impugned order. The Court also takes note of the objection taken by Mr. Kumar, learned counsel for the respondents who strongly denies and disputes the assertions made and contained in clause XIII of the grounds and submits that the entire premises is being used as a guest house. In any case and bearing in mind the extent of the evidence which has been placed on the record of these proceedings, the Court finds itself unable to countenance the objection to the demand taken on this score. Quite apart from a failure on the part of the petitioners to place any convincing or credible evidence on the record in support of the aforesaid submission, the contention in any case raises disputed questions of fact which would clearly not merit consideration in writ proceedings.

20. Accordingly, and for all the aforesaid reasons, this writ petition fails and shall stand dismissed. Pending application(s) also stand disposed of.

JANUARY 04, 2022
Bh/Neha

YASHWANT VARMA, J.