

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

% **Judgment reserved on: 17 April 2023**
Judgment pronounced on: 25 April 2023

+ **W.P.(C) 379/2016 & CM APPL. 1564/2016**

BHARAT PETROLEUM CORPORATION LTD Petitioner

Through: **Mr. Sudhir Chandra Agarwala,**
Sr. Adv. with Mr. Avneesh
Garg, Ms. Srika S. & Mr. P.
Sinha, Advocates

versus

AIRPORT AUTHORITY OF INDIA & ANR Respondents

Through: **Mr. K.K. Rai, Sr. Adv. with Mr.**
Digvijay Rai, Mr. Anshul Rai,
Mr.Sreoshi Chatterjee, Mr.
Priyesh Mohan Srivastava, Mr.
Aman Yadav & Mr. Archit
Mishra, Advocates for the
respondent/ AAI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The present petition assails the validity of the order of 11 March 2015 passed by the Appellate Tribunal acting under Section 28G of the **Airports Authority of India Act, 1994¹**. The Appellate Tribunal has in terms of the impugned order essentially held the petitioner liable to pay Rs.87,52,746/- along with simple interest @ 6% per annum from December 2005 as damages to the respondent.

¹ 1994 Act

2. The appeal itself had been preferred by the respondent assailing the order of the Eviction Officer acting under Section 28G of the 1994 Act rejecting the contention of the petitioner that the amounts which were claimed by **Airport Authority of India**² were barred by time and would not sustain in light of the judgment rendered by the Supreme Court in **New Delhi Municipal Corporation v. Kalu Ram & Another**³.

3. It was the contention of the petitioner before the Eviction Officer, and one which was also reiterated before the Appellate Tribunal, that the claim for damages was essentially laid in respect of the period relating to 2005-06 and since proceedings were drawn beyond the period of limitation which would apply, the same was liable to be negatived. Both the Eviction Officer as well as the Appellate Tribunal have held against the petitioner with reliance being placed on the judgment rendered by the Madhya Pradesh High Court in **L.S. Nair vs. Hindustan Steel Ltd., Bhilai**⁴ which while dealing with the provisions contained in Section 7(2) of the (**Public Premises Eviction of Unauthorised Occupants**) Act, 1971⁵ had following the decision of the Punjab High Court in **Kalu Ram vs. New Delhi Municipal Committee**⁶ held that a claim for damages would not be governed by the provisions of the **Limitation Act, 1963**⁷.

² AAI

³ (1976) 3 SCC 407

⁴ (1980) SCC OnLine MP 1

⁵ PP Act

⁶ 1965 SCC OnLine Punj 116

⁷ Limitation Act

4. For the purposes of considering the issues which arise, the following essential facts may be noticed. The petitioner was running two retail outlets on sites originally allotted on lease by AAI. In 2006, AAI is stated to have transferred its rights as a lessor to **Delhi International Airport Limited**⁸. The writ petitioner further asserts that in 1991, land was leased by AAI for establishment of another retail outlet near Terminal-II and in the vicinity of the **National Institute of Aviation Management and Research**⁹. It was this retail outlet which formed the subject matter of the proceedings which came to be initiated under the 1994 Act. On or about July 2004, AAI conveyed to the petitioner the approval accorded by the competent authority for relocation of the retail outlet in question situate near NIAMAR to a new location opposite the Centaur Hotel. The aforesaid approval was made subject to the condition that the petitioner would surrender possession of the old site near NIAMAR within six months of the handing over of the new location. As per the terms of the approval which was granted, it was further prescribed that if the old site was not vacated within the time indicated hereinabove, the petitioner would be liable to pay penalty @ Rs.5,000/- per square meter. Responding to the letter, the petitioner appears to have conveyed to AAI that it would surrender the old site only upon commissioning of the retail outlet at the newly allotted location. It is also stated to have submitted an undertaking to the aforesaid effect.

⁸ DIAL

⁹ NIAMAR

5. The petitioner is stated to have been handed over possession of the new site on 27 August 2004. As per the disclosures made in the writ petition, it surrendered the old site to AAI on or about 23 November 2005. It is also its case that AAI had also continued to receive rent for the aforesaid site right up to 31 March 2006. On 04 April 2006, AAI is stated to have entered into an **Operations, Management and Development Agreement**¹⁰ with DIAL and in terms thereof DIAL took over the interests in land over which the retail outlets existed. According to the petitioner, consequent to it being intimated that DIAL was taking over as the new landlord, it paid the rentals directly to it during the period 2006-2011.

6. On or about 10/16 August 2011, AAI issued two notices seeking eviction and alleged arrears of rent. While one of those notices were for the retail outlet near Terminal-I, the other was for the old site situate in the vicinity of NIAMAR. The petitioner while responding to the aforesaid notices, informed AAI that it had been regularly paying rent to DIAL and thus the allegation of it being in arrears of rent was incorrect. Ultimately and on 28 June 2012, AAI filed an application before the Recovery Officer purporting to be under Section 28G of the 1994 Act for recovery of a sum of Rs.2,20,04,095.60/- along with interest.

7. It would be relevant to note that the old site had already been surrendered by the petitioner on 23 November 2005. However, the

¹⁰ OMDA

claim for arrears came to be laid for the first time only on 28 June 2012. It is in the aforesaid backdrop, that the plea of limitation appears to have been raised.

8. It would be pertinent to note that sub-sections (1) and (2) of Section 28G are essentially *pari materia* with Section 7 of the PP Act. The petitioners had asserted that in light of the judgment rendered by the Supreme Court in *Kalu Ram*, the prescription of limitation would clearly apply and consequently the claim for damages and arrears being time barred would not sustain.

9. It is the aforesaid contention which was reiterated before this Court by Mr. Sudhir Chandra, learned senior counsel, who addressed submissions on behalf of the petitioners. According to Mr. Chandra, the decision in *Kalu Ram* is a binding authority with respect to the applicability of the principles of limitation to proceedings claiming either arrears of rent, damages or for that matter any monetary liability which is sought to be recovered. Mr. Chandra submitted that a claim for arrears of rent as well as liabilities flowing from alleged unauthorized occupation would necessarily be governed by the principles of limitation. Mr. Chandra drew the attention of the Court to the enunciation of the legal position in this respect by placing reliance on the following passages from *Kalu Ram*: -

“2. The only contention raised before us by Mr Hardy appearing for the appellant is that the High Court was wrong in holding that the amount in question could not be recovered under Section 7 because the time for instituting a suit to recover the sum had expired. Admittedly, any suit instituted on the date when the

Estate Officer made his order under Section 7(1) would have been barred by time. Mr Hardy argued that the Limitation Act only barred the remedy by way of suit and did not extinguish the right, and Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act providing a different and special mode of recovery was therefore available to recover rent in arrears beyond three years. Section 7 as it stood at the relevant time reads:

“7. Power to recover rent or damages in respect of public premises as arrears of land revenue.—(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order:

Provided that no such order shall be made until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

(3) If any person refuses or fails to pay the arrears of rent or any instalments thereof payable under sub-section (1) or the damages or any instalment thereof payable under sub-section (2) within the time specified in the order relating thereto the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.”

As would appear from the terms of the section, it provides a summary procedure for the recovery of arrears of rent. It was argued that since Section 7 did not put a time-limit for taking steps under that section and as the limitation prescribed for a suit to recover the amount did not apply to a proceeding under this section, the High Court was in error in upholding the respondent's objection. In support of his contention that a debt remained due though barred by limitation, Mr Hardy relied on a number of authorities, both Indian and English. We do not consider it necessary to refer to these decisions because the proposition is not disputed that the statute of limitation bars the remedy without

touching the right. Section 28 of the Indian Limitation Act, 1908 which was in force at the relevant time however provided that the right to any property was extinguished on the expiry of the period prescribed by the Act for instituting a suit for possession of the property. But on the facts of this case no question of a suit for possession of any property arises and Section 28 has no application. It is not questioned that a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it. But the question in every such case is whether the particular statute permits such a course. Does Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of time? Under Section 7 the Estate Officer may order any person who is in arrears of rent “payable” in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is “payable”. The word “payable” is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. “payable” generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred. Construing the expression “any money due” in Section 186 of the Indian Companies Act, 1913 the Privy Council held in *Hans Raj Gupta v. Official Liquidators of the Dehradun-Mussoorie Electric Tramway Company Ltd.* [AIR 1933 PC 63 : 60 IA 13] that this meant moneys due and recoverable in a suit by the company, and observed:

“It is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights.”

We are clear that the word “payable” in Section 7, in the context in which it occurs, means “legally recoverable”. Admittedly a suit to recover the arrears instituted on the day the order under Section 7 was made would have been barred by limitation. The amount in question was therefore irrecoverable. This being the position, the appeal fails and is dismissed with costs.”

10. The petitioner also sought to draw sustenance in this respect from the judgment rendered by a Division Bench of the Court in **G.R. Gupta vs. Lok Sabha Secretariat**¹¹ which too had held that the provisions of the Limitation Act would also apply to claims laid in terms of Section 7(2) of the PP Act. Mr. Chandra laid emphasis on the fact that the Division Bench of the Court had categorically negated the distinction which was sought to be drawn between the provisions comprised in sub-sections (1) and (2) of Section 7 and had proceeded to hold that the distinction which was sought to be advocated was clearly untenable.

11. It was also urged that the respondent had essentially placed reliance upon the judgment rendered by the Madhya Pradesh High Court in *L.S. Nair*. Mr. Chandra pointed out that the said decision was itself based upon the original judgment rendered by the Punjab High Court in *Kalu Ram* as opposed to the ultimate judgment rendered by the Supreme Court. Learned senior counsel had also laid emphasis on the observations as rendered by the Division Bench in *G.R. Gupta* which had clearly held that the provisions of the Limitation Act would clearly apply to proceedings under the PP Act. According to Mr.

¹¹ 2013 SCC OnLine Del 4832

Chandra, since Section 28G stands framed on lines identical to that of Section 7 contained in the PP Act, there existed no justification for the respondents having taken a contrary view. In view of the aforesaid, it was the submission of Mr. Chandra that the impugned order is liable to be quashed and set aside.

12. Controverting the aforesaid submissions, Mr. Rai, learned senior counsel appearing for AAI, submitted that *Kalu Ram* was essentially a decision which was rendered in the context of Section 7(1) of the PP Act. According to Mr. Rai, Section 7(1) while speaking of arrears of rent employs the word “payable”. Mr. Rai sought to highlight the distinction between sub-sections (1) and (2) of Section 7 by contending that the aforesaid expression is significantly absent in sub-section (2). It was submitted that *Kalu Ram* must consequently be understood and appreciated in the backdrop of the word “payable” as appearing in sub-section (1) and which appears to have weighed with the Supreme Court to hold that “payable” would necessarily mean that which should be paid or one which can be said to be due and recoverable in law. Contrary to the above, according to Mr. Rai, Section 7(2) is not couched in the same language. According to Mr. Rai, in the absence of sub-section (2) employing the word “payable”, it would be wholly impermissible to impute the principles of limitation to a claim of damages. Learned senior counsel submitted that the aforesaid distinction is carried forward and reiterated in sub-sections (1) and (2) of Section 28G. In view of the aforesaid, Mr. Rai contended that while arrears of rent could possibly be said to be

subject to the prescription of limitation, when the amount which is claimed is for recovery and enforcement of damages, the provisions of the Limitation Act would have no application.

13. Mr. Rai also sought to rest his submissions on the judgment rendered by the Supreme Court in **L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. & Another**¹² to contend that the aforesaid decision had unequivocally held that the provisions of the Limitation Act would not be applicable to proceedings initiated before quasi-judicial tribunals or executive authorities. Emphasis was laid on the following passages as appearing in that decision: -

“33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words “other proceedings” were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as a quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the court under Section 151 of the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the court and, thus, no question of any limitation arises. (See *Nityananda, M. Joshi v. LIC of India* [(1969) 2 SCC 199 : AIR 1970 SC 209] , *Hindustan Times Ltd. v. Union of India* [(1998) 2 SCC 242 : 1998 SCC (L&S) 481] and *Laxmibai* [AIR 1930 Nag 206] .)

34. Even no period of limitation is prescribed in relation to a writ proceeding.

¹² (2004) 11 SCC 456

35. S.N. Variava, J. in *A.K. Menon, Custodian* [(2002) 1 All MR 180] whereupon the learned Special Court has placed reliance, observed:

“19. It is thus that the said Act lays down a responsibility on the Court to recover the properties. So far as monies are concerned, undoubtedly the particular coin or particular currency note given to a debtor would no longer be available. That however does not mean that the lender does not have any right to monies. What is payable is the loan i.e. the amount which has been lent. The right which the creditor has is not a ‘right to recover’ the money. The creditor has the title/right in the money itself. An equivalent amount is recoverable by him and the title in any equivalent amount remains with the lender. Thus the property which a notified party would have is not the right to recover but the ‘title in the money itself’. Thus under Section 3(3) what would stand attached would be the title/right in the money itself. Of course what would be recoverable would be an equivalent of that money. Once the money stands attached then no application is required to be made by any parties for recovery of that money. It is then the duty of the court to recover the money. No period of limitation can apply to any act to be done by a court. Therefore in all such applications the only question which remains is whether on the date of the notification the right in the property existed. If the right in the property existed then irrespective of the fact that the right to recover may be barred by limitation there would be a statutory attachment of that property. Once there is a statutory attachment of that property the court is duty-bound to recover it for the purposes of distribution. There can be no period of limitation for acts which a court is bound to perform. In this case since the court is compulsorily bound to recover the money there can be no limitation to such recovery proceedings. To be remembered that Section 3(3) as well as Section 13 provide that provisions of the said Act would prevail over any other law. This would include the Limitation Act.”

36. We respectfully agree with the said view.”

14. It was submitted that as was found by the Supreme Court in relation to the Special Court (Trial of Offences Relating to Transactions and Securities) Act, 1992, both the PP Act as well as the

1994 Act neither adopt nor incorporate the provisions of the Limitation Act. Mr. Rai submitted that this aspect was also noticed by a Division Bench of the Punjab and Haryana High Court in **K.P. Khemka vs. Haryana State Industrial and Infrastructure Development Corporation Ltd.**¹³. In *K.P. Khemka*, the said High Court while dealing with the provisions of the **Haryana Public Monies (Recovery of Dues) Act, 1979**¹⁴ had held as follows: -

“In the light of the aforesaid judgments, we find that the Limitation Act is applicable only to the Courts or to the Tribunals having the trappings of the Court, but in respect of proceedings under any special or local Act, if there is no provision of limitation of initiation of proceedings, the same cannot be applied on the analogy of principle of Limitation Act, as the said Act will not be applicable to such proceedings in view of Section 3 read with Section 29 of the said Act. The Haryana Public Moneys (Recovery of Dues) Act, 1979 contemplates recovery of certain dues as arrears of land revenue. Section 3(1) of the Act prescribes that what is recoverable is ‘any sum’, which does not has any indication of any period of time. Similarly, under Section 32(G) of the State Financial Corporation Act, 1951, the power of recovery to the financial institution is of ‘any amount due’. Therefore, either under the Haryana Public Moneys (Recovery of Dues) Act, 1979 or the State Financial Corporation Act, 1951, where the recovery is being sought without the assistance of a Court or a Tribunal having the trappings of the Court, the period of limitation as provided under the Limitation Act, 1963 is not applicable.”

15. Mr. Rai also drew our attention to the judgment of the Supreme Court in **A.S.K. Krishnappa Chettiar & Others vs. S.V.V Somiah & Ors.**¹⁵ where the following principles relating to the application of the Limitation Act came to be laid down:

¹³ 2015 SCC OnLine P&H 1020

¹⁴ The 1979 Act

¹⁵ (1964) 2 SCR 241

“11. The next two decisions relied on are *Badraddin Khan v. Mahyer Khan* [ILR 1939 All 103] and *Managing Committee Sundar Singh Malha Singh Rajput High School, Indora v. Sundar Singh Malha Singh Sanatan Dharma Rajput High School Trust* [ILR 1945 Lahore 5] both these cases the court applied what according to it were the general principles underlying Section 15 of the Limitation Act, though the facts of these cases do not strictly fall within the purview of that section. The question is whether there is any well-recognized principle whereunder the period of limitation can be regarded as being suspended because a party is prevented under certain circumstances from taking action in pursuance of his rights. The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code. It is a piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions. Thus for instance, period of limitation for various kinds of suits, appeals and applications are prescribed in the First Schedule. A proceeding which does not fall under any of the articles in that Schedule could not be said to be barred by time on the analogy of a matter which is governed by a particular article. For the same reasons the provisions of Sections 3 to 28 of the Limitation Act cannot be applied to situations which fall outside their purview. These provisions do not adumbrate any general principles of substantive law nor do they confer any substantive rights on litigants and, therefore, cannot be permitted to have greater application than what is explicit or implicit in them. Suspension of limitation in circumstances of the kind obtaining in these appeals is neither explicit nor implicit in Section 15 upon which reliance is placed on behalf of the appellants. We are, therefore, unable to accept the first argument of Mr Sastri.”

16. Reliance was then placed on the judgment of the Supreme Court in **Uttam Navdeo Mahale vs. Vithal Dea & Others**¹⁶ and more particularly to the following observations as entered therein: -

“4. Mr Bhasme, learned counsel for the appellant, contends that in the absence of fixation of the rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in *State of Gujarat v. Patil Raghav Natha* [(1969) 2 SCC 187 : (1970) 1 SCR 335] ; *Ram Chand v. Union of India* [(1994) 1 SCC 44] and *Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim* [(1997) 6 SCC 71] . We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.”

17. Mr. Rai lastly placed for our consideration the judgment rendered by a learned Judge of the Court in **Nandram & Others vs Union of India & Others**¹⁷ where it was held that since the PP Act was a special statute, the Limitation Act would not apply to proceedings taken thereunder: -

“Besides, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is a special Act and it has provided for a period of limitation wherever it is necessary and, therefore, the provisions of the Limitation Act as such cannot be made applicable

¹⁶ (1997) 6 SCC 73

¹⁷ 2000 SCC OnLine Del 523

to such a special Act. In this connection, reference may be made to the decision of the Supreme Court in *T.K. Lakshmana Iyer and Others v. State of Madras and Others*, AIR 1968 SC 1489 and the decision in *Town Municipal Council v. Presiding Office, Labour Court, Hubli and Others*, AIR 1969 SC 1335. Reference may also be made to decision of the Madhya Pradesh High Court in the case of *L.S. Nair v. Hindustan Steel Ltd. Bhilai and Others*, AIR 1980 MP 106. In the said Division Bench decision of the Madhya Pradesh High Court delivered by the Chief Justice, G.P. Singh (as his Lordship then was), it was held that the Estate Officer is not a court and, therefore, the Limitation Act does not apply to a proceeding before him. It was further held that as Limitation Act does not apply and jurisdiction of Civil Court is entirely barred in matters governed by 1971 Act, there is no period of limitation for recovery of damages for unauthorised use and occupation of Govt. Company's quarter by its employee. I respectfully agree with the aforesaid decision of the Madhya Pradesh High Court and hold that to the proceeding under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the provisions of the Limitation Act shall not apply.”

It becomes pertinent to note that *Nandram* too essentially proceeds on the basis of the decision rendered by the Madhya Pradesh High Court in *L.S. Nair*.

18. Having noticed the rival submissions which were addressed, the Court proceeds further to deal with the merits of the challenge which stands raised. On facts, there is no dispute that the claim which ultimately came to be laid before the Eviction Officer essentially was for recovery of Rs.2,20,04,095.60/- which was claimed to be the amount outstanding and payable by the petitioner under Section 28G of the 1994 Act. The aforesaid claim which according to the petitioner could be said to have accrued in 2005-06 was ultimately sought to be raised for the first time with the initiation of proceedings in 2012. It was the case of the petitioner that any amounts due and

payable and which had accrued in 2005-06 could have been recovered only up to 2009. It was its contention that the claim in any case, could not have been taken cognizance of in 2012.

19. Although it was not seriously disputed before us that both Section 7 comprised in the PP Act and Section 28G in the 1994 Act are *pari materia* provisions, we deem it apposite to extract those provisions hereinbelow in a tabular form: -

The Public Premises (Eviction of Unauthorised Occupants) Act, 1971	The Airport Authority of India, 1994
7. Power to require payment of rent or damages in respect of public premises. (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order. (2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.	28G. (1) Where any person is in arrears of rent payable in respect of airport premises, the eviction officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order. (2) Where any person is, or has at any time been, in unauthorised occupation of any airport premises, the eviction officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments as may be specified in the order. (3) While making an order under subsection (1) or subsection (2), the eviction officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed.

	(4) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such period not being less than seven days but not exceeding thirty days as may be specified in the notice as to why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the eviction officer.
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20. It would be apposite to recall that it was the provisions contained in Section 7 of the PP Act which had directly fallen for consideration of the Supreme Court in *Kalu Ram*. While dealing with the aforesaid provision, the Supreme Court had succinctly observed that it could not possibly be accepted that Section 7 creates a right to recover arrears of rent without any prescription of limitation operating thereupon. It held that the word “payable” would mean monies dues and recoverable in law. It had significantly observed that if the amount which is sought to be recovered or if the recovery of the amount which is sought to be enforced under Section 7 is barred by the law of limitation, the Estate Officer would clearly have no jurisdiction to direct payment thereof. The Supreme Court in *Kalu Ram* held that the word “payable” in Section 7 would thus mean an amount “legally recoverable”. It then proceeded to consider the question which arose from the stand point of whether a suit to recover arrears would be maintainable. Drawing an analogy from the

aforesaid, it essentially held that since a suit to recover arrears would be barred by time, the amount in question was clearly irrecoverable. *Kalu Ram* is thus an authoritative pronouncement with respect to the applicability of the principles of limitation to Section 7 of the PP Act. Since the provisions of Section 28G are identically worded and deal with the same subject matter, we find that the principles as were propounded in *Kalu Ram* would clearly be applicable to Section 28G also.

21. Insofar as the distinction which was sought to be drawn on the basis of the word “payable” being absent from Section 28G (2), we find ourselves unable to countenance the said submission not only on account of what was held by the Division Bench in *G.R. Gupta* but additionally since it would be wholly incorrect to recognize a period of limitation applying to arrears of rent and not applying to a claim of damages. Both, recovery of arrears of rent as well as damages constitute actions for recovery of monies which are asserted to be due and payable. While Section 28G (1) speaks of arrears of rent, sub-section (2) relates to the imposition and recovery of damages on account of unauthorized occupation. While sub-section (1) may have specifically used the expression “payable”, we find ourselves unable to recognise or countenance any fundamental distinction that may be said to justifiably exist between the two claims. Both undisputedly constitute money claims for usage and wrongful occupation of property. They would thus necessarily have to be understood to be claims for amounts due and recoverable in law.

22. We note that even under sub-section (2) the competent authority is obliged to assess the damages payable on account of use and occupation of premises. Upon that assessment being made, it is empowered to draw an order requiring the person to pay damages. The acceptance of the submission addressed on behalf of the respondent would essentially result in us holding that while the prescription of limitation would apply to sub-section (1), it would not be applicable to a claim for damages under sub-section (2). It would thus clearly amount to the Court adopting two distinct principles for provisions comprised in the same section. Quite apart from the above, on a conceptual and foundational plane, we find no justification to either interpret or treat arrears of rent and damages as such dissimilar or divergent facets so as to warrant the limitation rule being applicable only to the former.

23. We also find ourselves unable to view the absence of the word “payable” in Section 28G (2) as being indicative of a legislative intent to ordain that limitation would not be applicable to recovery of damages. Damages, as was noted hereinabove, is principally a money claim for use and retention of property. Merely because Section 28G (2) does not employ the phrase “payable” cannot be viewed as empowering the authority to award damages even though it be not recoverable in law. Undisputedly, an action under Section 28G be it for arrears of rent or damages would constitute a debt which is sought to be enforced in terms of the statutory remedy which stands constructed in terms of that provision. The Section 28G (2) remedy

too is one which is aimed at enabling the recovery of a debt. That debt must necessarily be one which is enforceable in law. For all the aforesaid reasons, we find ourselves unable to accept the submission to the contrary and which was commended for our consideration by the respondents. The Court also bears in mind that in *Kalu Ram*, the Supreme Court had clearly held that principles of limitation would apply to Section 7. It made no distinction between a claim for damages and arrears of rent. In any case, the judgment of the Division Bench of our Court in *G.R. Gupta* had and in our considered opinion, correctly rejected a submission addressed on identical lines. We find no reason to strike a discordant view.

24. That takes the Court to consider the judgment rendered by the Supreme Court in *L.S. Synthetics*. It becomes relevant to note that *L.S. Synthetics* was principally dealing with the provisions of a special statute and the power of the Custodian to recover properties. It would be pertinent to note that in terms of Section 3(3) of that enactment, the moment a person came to be notified by the Custodian of being involved in an offense relating to securities, attachment of his properties was to ensue “simultaneously”. It was contended before the Supreme Court that the provisions of the said statute could not extend to recovery of time barred debts. However, it must be borne in mind that the said special statute in terms of Section 3 empowered the Custodian to notify a person involved in offences relating to transactions in securities, cancel any such contract or agreement relating to properties entered into by the notified person and deal with

the same under the provisions of the statute. In terms of Section 3(3) of the said special enactment, the moveable or immovable properties of the notified person stood attached simultaneously with the issue of a notification under that statute.

25. The powers so conferred were explained by the Supreme Court to contemplate that properties would come to be attached in terms of the power vested in the Custodian irrespective of the right of recovery being barred by limitation. The power of attachment flowed from and was a necessary corollary to the transactions coming to be declared as unlawful. It was in that sense, recognized to be a power distinct from one which could have been exercised by creditor under the ordinary laws. *L.S. Synthetics* is, thus, clearly distinguishable and the observations appearing therein must necessarily be understood in the backdrop of the language and intent of Section 3 of that enactment.

26. Insofar as the other decisions which were cited by Mr. Rai and turning upon the provisions of the Limitation Act not applying, it may only be observed that since *Kalu Ram* unequivocally holds that the Limitation Act would apply to the provisions contained in the PP Act, the same would clearly bind and be determinative of the interpretation to be accorded to Section 28G which is a pari materia provision. As was noticed by us hereinabove, *L.S. Nair* had proceeded on the basis of the judgment rendered by the Punjab and Haryana High Court. It had clearly failed to bear in mind the decision of the Supreme Court which came to be ultimately rendered in *Kalu Ram*.

27. Accordingly for all the aforesaid reasons, we find ourselves unable to sustain the impugned order. The writ petition is consequently allowed. The impugned order of 11 March 2015 shall in consequence stand quashed.

SATISH CHANDRA SHARMA, CJ.

YASHWANT VARMA, J.

APRIL 25, 2023

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