IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.225/2019

Life Insurance Corporation of India,
A Statutory Corporation Established
Under Central Act 31 of 1956,
Having its Divisional office at
National Insurance Building,
S. V. Patel Marg, Nagpur through
its Senior Divisional Manager. .....**PETITIONER**

...V E R S U S...

Mrs. (Dr.) Shobha Grover,
aged 84 years, Occ. Medical Practitioner,
r/o C/o Dr. Archana Patel,
Opp. Tidke Vidyalaya, Katol Road,
Nagpur. ...**RESPONDENT**

Mr. A. M. Ghare, Advocate for petitioner.
Mr. S. V. Manohar, Senior Advocate assisted by Mr. A. S. Manohar, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATE OF RESERVING THE JUDGMENT : 16.07.2024
DATE OF PRONOUNCING THE JUDGMENT : 24.07.2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with consent of learned counsel for the parties.

Heard Mr. A. M. Ghare, learned counsel for the petitioner and Mr. S. V. Manohar, learned Senior Counsel assisted by Mr. A. S. Manohar, learned counsel for respondent.

2. The petitioner Life Insurance Corporation of India, (hereinafter referred to as the, “LIC”), is aggrieved by judgment dated 03.05.2017, passed by District Judge – 17, Nagpur in Misc. Civil Appeal No. 54/2012, whereby the appeal filed by the respondent is partly allowed and the claim of the LIC for damages has been rejected.

3. The LIC owns the disputed premises situated on fourth floor, admeasuring about 3000 Sq. Ft. with garage on the ground floor, admeasuring 126 Sq.Ft.. The premises were let out to the partnership firm namely, M/s. Shiv Dutta and Sons. The respondent’s husband, Mr. V. C. Grover, was one of the partners of the firm. He expired sometime on or about 25.10.2004. The respondent, however, retained possession of the premises.

4. Since the premises were governed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the, “Act of 1971”), the proceedings for eviction under the Act of 1971 were initiated by the LIC against the respondent. The Estate Officer, vide order dated 23.02.2012, passed under Section 5 of the Act of 1971, ordered the respondent to vacate the premises. The Estate Officer assigned following reasons:

> *"1. The scheduled premises were let out to M/s Shiv Dutt & Sons, a partnership firm. Opponent is not a partners thereof. Opponent has not produced documentary evidence to show change of status of M/s. Shiv Dutt & Sons, partnership firm into proprietary concern or about the legal status of Opponent as proprietor thereof inspite of ample opportunity given to her for the same.*
>
> *2. Opponent is running Pahtological Lab from a part of the scheduled premises and has thus changed the user of scheduled premises.*
>
> *3. Applicants vide Notice dated 27.2.2006 pointed out to the Opponent that her possession over Scheduled premises is unauthorised and she asked to vacate the Scheduled premises within 15 days. Since the Opponent has failed to comply with the requirements of the Notice, she is in unauthorised occupation of the scheduled premises w.e.f. 1.4.2006 and she is liable to be evicted and should be evicted."*

5. The respondent had challenged the aforesaid order by filing appeal under Section 9 of the Act of 1971. Learned Appellate Court has maintained the order of Estate Officer to the extent of unauthorised occupation of the respondent, however, rejected the claim of the LIC for damages which were granted by the Estate Officer at the rate of Rs.63,000/- per month.

6. The LIC, being aggrieved by the order of the Appellate Court to the extent of not granting damages has challenged the order.

7. Learned counsel for the LIC submits that the Appellate Court, despite taking note that the respondent is in unauthorised occupation of the premises, has not granted single pie towards damages. Following were the reasons assigned by the Appellate Court.

> *"17. In sum and substance, the appellant is occupied this premises unauthorisedly, and she never entered into an agreement to continue her position of the premises with the respondent nor the respondent recognised her as a tenant. The said premises was let out to the partnership firm and the partnership firm has not given any authorisation to the respondent that the appellant will continue her possession in the said premises. The appellant has not produced any documentary evidence that the said partnership Firm authorised her to occupy the said premises in place of Shri Grover nor the respondent gave recognition to the appellant as a tenant.*
>
> *18. While perusing the order and the evidence of the respondent, it appears that Shri Milind Kale, Charted Engineer and Valuer Shri Marodkar, Officer of the LIC had assessed the market value of the rent premises. While conducting the investigation, they submitted the report. It has come in the evidence of Milind Kale, who is the witness of the respondent that he admitted that he has not filed the Spot Inspection Report and while preparing the market rate, he has not considered the existing rate of that area. He had also not gone through then last rent was fixed by the life insurance Corporation of India of the premises. He has not prepared any document at the time of inspection report and not obtained the signature of the appellant. He was not able to define the meaning of*

> *market survey nor he had made any enquiry in nearby area in respect of determining the rent of this premises. In this way, the substantial evidence in respect of the damages is not properly calculated nor collected by the above witnesses while determining the above damages. The exorbitant amount of the damages is placed on record of the area by the concerned officials of the respondent. It seems that they did not follow the procedure to find out the exact market area and they failed to collect the monthly rent of adjoining part of the locality. Certainly, the Estate Officer has also not considered this irregularities of the officials of the respondent and imposed exorbitant rate of damages which is not based on the actual rent amount of that area. Thus, the damages awarded by the Estate Officer for this premises is based on the evasive evidence of Milind Kale – Valuer. Hence, it is not proper to determine the damages on the basis of this improper and incorrect Valuation Report. Hence, I answer to the point Nos. 1 and 2 in the affirmative and point No. 3 in the partly negative. Thus, I proceeded to pass the following order."*

8. The counsel for the petitioner submits that the Appellate Court has held that that the premises was let out to the partnership firm and the firm has not given any authorisation to the petitioner herein that respondent will continue her position in the said premises. The Appellate Court further held that the respondent herein did not produce any evidence that the firm authorised her to occupy the said premises in place of Mr. Grover nor the petitioner herein gave recognition to the respondent as

tenant. Accordingly, the Court held that the respondent is an unauthorised occupant. This finding has been not challenged by the respondent and, therefore, has attained finality.

9. On the point of damages, the Appellate Court found that the witness examined by the LIC on this point is not reliable as he did not follow the requisite procedure. The witness failed to collect information as regards monthly rent of adjoining premises and also the existing rate of this area. Accordingly, the Appellate Court rejected the valuation report.

10. Counsel for the petitioner submits that if the Appellate Court was of the view that the valuation report is not acceptable, he could have and ought to have examined the other evidence available on record and, thereafter, ought to have granted damages in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as the, "Rules of 1971"). Rule 8 reads thus.

> *"8. Assessment of damages. - In assessing damages for unauthorised use and occupation of any public premises the estate officer shall take into consideration the following matters, namely:-*
> *(a) the purpose and the period for which the public premises were in unauthorized occupation;*
> *(b) the nature, size and standard, of the accommodation available in such premises;*

> *(c) the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;*
> *(d) any damage done to the premises during the period of unauthorised occupation;*
> *(e) any other matter relevant for the purpose of assessing the damages.*

11. Learned counsel for the petitioner, submits that the Appellate Court has not considered this rule to assess the damages and has straightway rejected the claim. He further submits that in a given case, he could have relegated the matter back to the Estate Officer to assess the damages afresh. Having not done either, the counsel submits that there is apparent error on the face of the record.

12. As against, Mr. Manohar, learned Senior Counsel for the respondent, submits that though the respondent has not challenged the finding rendered by the Appellate Court as regards unauthorised occupation, the finding can be questioned while considering the issue of damages. According to him, the premises under question, though let out to the partnership firm, were let out for the purpose of residence-cum-office, to be used by one of the partners namely Mr. V. C. Grover, who continued to occupy the premises for years together. The respondent resided with him for all these years. In the circumstances, upon death of Mr. V. C.

Grover, it will not be fair to label as unauthorised, the occupation of his wife i.e. present respondent.

13. I am not inclined to accept this argument inasmuch as the order of eviction passed by the Estate Officer indicates that despite giving ample opportunity, the respondent failed to produce documentary evidence to show the change of status of the partnership firm into proprietary concern or that she had any authority to return the possession. Further, the respondent was running pathology laboratory in the scheduled premises, though in some part, and has thus changed the user of the scheduled premises. Vide notice dated 27.02.2006, the respondent was made aware of the fact of her status as unauthorised occupant and was asked to vacate the premises within 15 days. She, however, did not and continued to retain the possession till the year 2018. The possession was ultimately obtained by the LIC in execution proceeding. Thus, the respondent retained possession without any authority, rather, has changed the user of the premises by running pathological laboratory. She further made an attempt to show that M/s. Shiv Dutta and Sons was not a partnership firm but was a proprietary concern. End of the day, she failed to prove the status of the firm but the fact remains that she made an attempt to

retain possession knowing fully well that after the death of her husband she was not authorised to continue with the possession of the premises.

14. It is worth mentioning here that her husband expired on 25.10.2004. Further vide letter dated 03.01.2005, the Senior Divisional Manager, LIC requested her to let LIC know, the status of the company and accordingly the respondent was called upon to furnish within one week.

15. The LIC has not immediately after the death of Mr. V. C. Grover called upon the respondent to vacate the premises but has afforded an opportunity to her to furnish details of the company, which she failed to give. In the circumstances, it will be not proper to blame the LIC to be harsh upon the respondent. Rather, the respondent appears to have taken advantage of the situation and continued to retain the possession of the premises, which she ought to have vacated immediately after death of her husband.

16. Learned Senior Counsel submits that there is hardly any evidence of change of user by the respondent. He has invited my attention to the evidence of witness, Shri Milan Kale, the valuer of

LIC. He deposed that he, along with Shri P. S. Kasture, Manager Legal and Shri V. P. Marodkar, visited the premises on 04.08.2006. While carrying out inspection for valuation of the property, he saw that pathological instruments were kept in one room and they were in use. Learned Senior Counsel, however, submits that the respondent was a qualified pathologist and was working with the Government Hospital. After retirement, if some instruments were kept in one room, that by itself would not be a sufficient proof to jump to the conclusion that the respondent has changed the user of the premises, particularly when the premises was let out for residence-cum-office. In other words, it is suggested that the commercial use was permissible.

17. In my view, the change of user will have to be understood in the light of the activities conducted in the premises. The use of premises for the office and for pathology laboratory are two distinct uses. In that sense, the respondent was not using the premises for office purpose but has changed the user to pathology laboratory. On the point of weak evidence, I do not find merit in the arguments of the learned Senior Counsel that the evidence on this point is weak. The statement of witness that he saw pathological instruments in one room and further that they were in

use is not challenged in the cross-examination. The respondent, therefore, has accepted the said part of the version. In the circumstances, if it is the case of the respondent that after retirement, she has kept certain instruments in one room, she ought to have entered the witness box and explained the same. She has conveniently omitted to lead evidence in defence which itself speaks volumes about her conduct. The plea has been taken by her that she was not keeping good health. If that be so, she could have requested for recording evidence through Commissioner. Having not done so, she failed to prove that the pathological instruments were kept in room without any use. There is, thus, sufficient evidence to hold that the respondent has changed the user of the premises.

18. On the point of quantum of compensation, I find substance in the argument put forth by Mr. Ghare, that the Appellate Court, having found that the evidence of valuer was not reliable, ought to have assessed the valuation of the instruments under Rule 8 of the Rules of 1971, on the basis of evidence available on record. Clause (a) of Rule 8 provides that while assessing damages for the unauthorised use and occupation of any public premises, the Estate Officer shall take into consideration the

purpose and the period for which the public premises were in unauthorized occupation. In the present case, the evidence shows that the respondent has used the premises for residence as well as for running the pathological laboratory.

19. Clause (b) of Rule 8 provides that while assessing the damages for unauthorised use and occupation of any public premises, the estate officer shall take into consideration the nature, size and standard of the accommodation available in such premises. Clause (c) of Rule 8 provides that while assessing damages the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person, should be taken into consideration. In the present case, it appears that the respondent has paid rent till she was evicted. Clause (e) empowers the estate officer to take into consideration any other matter relevant for the purpose of assessing the damages. However, the Appellate Authority has failed to take recourse to clauses (a), (b), (c) and (e) of Rule 8 to assess the damages. The Appellate Court has found that the evidence of valuer is not trustworthy and, therefore, his assessment of the damages could not be relied upon. The Appellate Court has assigned valid reason for not believing the

valuer. However, he has, thereafter, reached to an erroneous conclusion that since the evidence of valuer is not trustworthy, the LIC is not entitled to damages. The Appellate Authority has given go bye to Rule 8 of the Rules of 1971 and thus committed apparent error of law in not assessing the damages. He ought to have assessed damages on the basis of evidence available on record. In a given case and as rightly pointed out by Mr. Ghare, the Appellate Authority could have relegated the matter back to the Estate Officer. He failed to exercise this option as well. Therefore, the finding on damages requires reconsideration.

20. As such, I was of the view that for assessing damages, the matter should be relegated back to the Estate Officer. However, Mr. Manohar, learned Senior Counsel for the respondent, objected to do so on the ground that the respondent is 89 years old and is suffering from multiple ailments. I find this objection to be valid and, therefore, thought it proper to assess the damages to avoid further litigation.

21. Learned Senior Counsel submits that LIC and Mr. M. C. Grover, husband of the respondents, have mutually revised the rent at Rs.3458/- per month with an increase of 10% after every

three years. The counsel for the petitioner does not dispute this status. There is further no dispute that till October, 2018, the respondent has paid rent and the last rent paid was Rs.7520/-. The possession of the premises was admittedly obtained by the LIC on or about 03.11.2018. Accordingly, Mr. Manohar submits, since the rent as agreed, has been paid, nothing more is payable by the respondent.

22. The counsel for the petitioner, however, argued that though possession was taken in October, 2018, various articles belonging to the respondent were lying in the premises which the respondent failed to remove and, therefore, the LIC was unable to use the premises till date and consequently, will be entitled to seek damages till date.

23. This argument has been rightly countered by the learned Senior Counsel by inviting my attention to Section 6 of the Act of 1971, which provides for disposal of property left on public premises by unauthorised occupation. The LIC was at liberty to invoke this option, which it failed, for which respondent cannot be made to suffer. The LIC will be, therefore, not entitled to seek damages for the period from November, 2018. Thus, the damages are payable only up to October, 2018.

24. The evidence indicates that the respondent has used premises for the purpose of residence as well as pathological laboratory. She continued to do so from April, 2004 till October, 2018. As such, I am informed that in the year 2016, the respondent left premises and started residing with her daughter. However, she did not surrender the premises, retained and kept it unused. The premises were ultimately taken over in the execution proceedings. This conduct of the respondent to not surrender the premises is something that would attract the damages in terms of clause (e) read with clauses (a) (b) and (c) of Rule 8 of the Rules of 1971. The evidence show that the respondent was running pathological laboratory in some portion of the premises. The income derived from the same was within exclusive knowledge of the respondent. She did not enter the witness box and, therefore, the LIC had no opportunity to bring on record the income derived by respondent by aforesaid user of premises. In the circumstances, the respondent is bound to pay some amount over and above the amount of rent.

25. The learned Senior Counsel has referred to the judgment in the case of ***Central Council for Research in Ayurvedic Sciences and anr. Vs. Bikartan Das and Ors., 2023 SCC OnLine SC***

996, to contend that the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, particularly when it comes to issue writ of certiorari, ought not to be exercised as an Appellate Authority of tribunal. It may not be permissible for the High Court to review or reweigh the evidence. The Supreme Court held that the High Court will be justified in invoking the extra ordinary jurisdiction to set aside the order which is without any jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of record.

26. The aforesaid cardinal principle of law is well established. In the present case, the error apparent on the record is the failure of the Appellate Court to consider Rule 8 of the Rules of 1971, particularly when the Appellate Court found that the respondent continued to retain possession of the premises unauthorisedly. As stated earlier, the Appellate Court was fully justified in not relying upon evidence of valuer, however, it failed to take recourse to the statutory rules despite requisite evidence on record, particularly on the point of the purpose and the period for which the premises under question were in unauthorised occupation. These factors read with clause (e) of Rule 8 along

with evidence available on record was sufficient to assess the damages. Having not done so, the Appellate Court committed error of law apparent on the face of record.

27. The counsel for the petitioner submits that once the possession of the respondent is held to be unauthorised, she is liable to pay damages, to be calculated at par with the mense profit. To support his contention, he relied upon judgment of the Supreme Court in the case of ***Bijay Kumar Manish Kumar Huf .Vs. Ashwin Bhanulal Desai, 2024 SCC OnLine SC 980.*** The proceedings before the Supreme Court were under the provisions of the West Bengal Premises Tenancy Act, 1997. The lease was forfeited for non payment of rent. One of the contentions on behalf of the tenants was that since no court has declared the end of landlord tenant relationship, the landlord asking the tenant to pay occupational charges as opposed to contractual rent would amount to rewriting of the tenancy agreement. The Supreme Court then considered the judgments on the point of granting mesne profit and observed thus.

> *"18. A perusal of the judgments extracted above as also other cases where Atma Ram Properties (supra) one common factor can be observed, i.e., the decree of eviction stands passed and the same having been stayed, gives rise to the question of payment of mesne profit. As observed*

above, the respondent contends that since, in the present case no decree of eviction is passed, and there is no stay awarded, the question of such payment does not arise.

19. While the above-stated position is generally accepted, it is also within the bounds of law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires. In this regard, we may refer to Indian Oil Corporation Ltd. v. Sudera Realty Private Limited, wherein this Court in para 64 observed as under:

> *"64. A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. <u>Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits.</u>"*
>
> *(Emphasis supplied)*

20. It is to be noted that the Court in Sudera Realty (supra) observed that mesne profits become payable on continuation of possession after 'expiry' of lease. In our considered view, the effect of the words 'determination', 'expiry', 'forfeiture' and 'termination' would, subject to the facts applicable, be similar, i.e., when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. Illustratively, Burton's Legal Thesaurus 3rd Edn. suggests the following words as being similar to 'expire' - cease, come to an end; 'determine' is similar to - come to a

> *conclusion, bring to an end; 'forfeiture' is similar to - deprivation/destruction of a right, divestiture of property; and 'terminate' is similar to - bring to an end, cease, conclude. Therefore, in any of the these situations, mesne profit would be payable."*

Thus, the Supreme Court has held that once the tenancy is concluded, expired, determined, etc. the mesne profit would be payable. This finding has been given in context with the provisions of the Tenancy Act.

28. In the present case, Section 7 of the Act of 1971 read with Rule 8 of the Rules of 1971 provides for complete mechanism to assess damages and, therefore, payment of damages in the form of mesne profit may not be permissible. The above authority will be of no assistance. However, for the reasons noted above, particularly in paragraph 24, the respondent is liable to pay damages over and above the rent.

29. At this stage, the learned Senior Counsel has invited my attention to the legal notice dated 27.02.2006 issued to the respondent by which she was noticed that if she does not vacate the premises, damages at the rate of Rs.300/- per day will be payable. Learned Senior Counsel submits that since the LIC itself has restricted its claim to Rs.300/- per day, nothing more than that could be awarded. He then submits that respondent has already

paid rent and the last rent paid was Rs.7520/-. Accordingly, the damages, if any, ought not to be more than Rs.1500/- per month.

30. In my view, the mindset of the respondent to retain the possession of the premises, come what may, and to use the same for pathology, would attract substantial amount as damages. However, considering the fact that the LIC has restricted its claim to Rs.300/- per day and to put an end to the litigation, the ends of justice will meet if the respondent is directed to pay Rs.300/- per day as damages. Consequently, following order is passed.

ORDER

(i) The writ petition is partly allowed.

(ii) Judgment and order dated 03.05.2017, passed by District Judge – 17, Nagpur in M.C.A.No. 54/2012 is quashed and set aside.

(iii) The respondent shall pay Rs.300/- per day with effect from 25.10.2004 till 03.11.20018 to the LIC. The Estate Officer shall calculate the amount and shall then deduct the amount paid by the respondent and, thereafter, shall communicate to the respondent the amount payable by her, which the respondent shall pay within 12 weeks from the receipt of the communication.

(iv) The communication shall be made at the address quoted in the cause title of the writ petition. In case the respondent has shifted to other place, she shall communicate the changed address to the LIC within one week from today. In that eventuality, the Estate Officer shall send a communication at the given address.

(v) Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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