



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

% Reserved on : 02.04.2025
Pronounced on : 03.07.2025

+ **W.P.(C) 11163/2019, CM APPL. 45963/2019**

M/S COTTAGE ARTS EMPORIUMPetitioner
Through: Mr. Amandeep Singh, Mr. Pradeep
Desodiya and Mr. Dilip K. Niranjana, Advocates

versus

INDIAN TOURISM DEVELOPMENT CORPORATIONRespondent
Through: Mr. Deepak Thakral and Mr. Nikhil
Goyal, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present petition, the petitioner is assailing the impugned judgment dated 11.12.2018 passed by the Ld. ASJ in PPA No.189/16.
2. Vide the impugned judgement, while disposing of petitioner's appeal under section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 'PP Act'), the Court dismissed the petitioner's objection that the PP Act proceedings initiated by the respondent were barred by limitation and the matter was remanded back to the Estate Officer to decide afresh the quantum of damages and interest by way of a reasoned order.



3. The background facts, as gathered from the records, are that the petitioner was given *Shop No. 05, 1st Floor, Ashok Hotel, 50-B, Chanakyapuri, New Delhi* (hereinafter referred to as 'The Shop') on license for the period from 15.02.1989 to 31.03.1992 at a license fee of Rs.4,92,562.50. The said license was subsequently renewed for the period of 01.04.1992 to 31.03.1995. Thereafter, on expiry of the aforesaid license period, negotiations were held between the parties and the respondent vide letter dated 07.03.1997, agreed to renew the license for a period of three years i.e., from 01.04.1995 to 31.03.1998 at the license fee of Rs. 2,88,000 per annum. As per the respondents case in the impugned proceedings, the last renewal however, could not fructify on account of the non-payment of the license fee.

4. Consequently, on 25.03.1998 the respondent initiated recovery proceedings against the petitioner under Section 7 of the PP Act for recovery of Rs. 3,32,136/- along with interest @ 24% p.a. The petitioner challenged the said proceedings before this Court in WP(C) 3615/1998 and vide order dated 08.06.1998, the abovementioned recovery proceedings were stayed. This writ petition was finally dismissed vide order dated 11.11.2009, vacating the stay on the recovery proceedings.

Thereafter, the respondent sent a legal notice dated 09.08.2010 demanding damages w.e.f. 01.04.1998, which demand was rejected by the petitioner vide letter dated 27.10.2010.

5. Subsequently, in the year 2011, the respondent additionally filed two applications- one under sections 4 & 5 of the PP Act for eviction of the petitioner from the shop and another under Section 7 of the PP Act seeking damages from 01.04.1998 onwards.



6. On 22.08.2013, the Estate Officer, while disposing off the first recovery application filed under section 7 PP Act, held the petitioner liable to pay arrears of license fee from 01.04.1995 to 31.03.1997 amounting to Rs 3,32,136/-. The petitioner was further directed to pay interest @ 24% from 01.04.1997 till the final payment.

The petitioner preferred an appeal bearing PPA No.40/2013 only seeking reduction of interest which was allowed vide judgement dated 19.07.2016, reducing the interest component to 10%. As there was no further challenge, the judgement attained finality.

7. The respondent's application for eviction under Sections 4 & 5 of the PP Act came to be allowed on 21.01.2014 and the petitioner was declared as an unauthorised occupant.

The appeal against this order being PPA No. 130/16 was dismissed vide judgement dated 02.11.2018. There is nothing on record which would show that the said order was challenged further.

8. The respondent's application for recovery of damages from 01.04.1998 onwards came to be allowed on 05.12.2013 and the petitioner was directed to pay damages w.e.f. 01.04.1998 till 31.12.2010 amounting to Rs.2,22,93,565/- and damages @Rs.500/- per sq. ft. per month from 01.01.2011 till the vacant and peaceful possession of the shop was handed over by the petitioner. The order further directed the petitioner to pay interest on the above-mentioned amount @12% per annum from 01.01.2011 till its final payment.

Against this order, the petitioner preferred an appeal bearing PPA No. 189/16, contending that respondent's application under Section 7 of the PP Act was barred by limitation. It was in these proceedings that the impugned



order came to be passed, holding that the Limitation Act has no applicability to recovery of damages under Section 7(2) PP Act. It was further held that no reason has been assigned by the Estate Officer for arriving at the conclusion of awarding of damages @Rs.500/- per sq. ft. p.m. or awarding interest @12% per annum and the matter was remanded back for fresh consideration on this limited aspect.

9. Learned counsel for the petitioner has primarily challenged the impugned award on the ground that claim for recovery of damages was time barred. It is submitted that though the damage claimed pertains to the period w.e.f. 01.04.1998 to 31.12.2010, i.e. for 12 years and 9 months, the application for recovery of damages before the Estate Officer was filed only in February 2011 and thus, the same was barred by limitation. It is submitted that the limitation act is applicable to proceedings under Section 7 of the PP Act. Reliance in this regard is placed upon the decisions in G.R. Gupta versus Lok Sabha Secretariat¹, New Delhi Municipal Committee versus Kalu Ram & Ors.² and Union of India versus Rajinder Singh.³

8. Learned counsel for the respondent, on the other hand, submits that the license of the shop in question had expired on 31.03.1998, and since thereafter, the petitioner had not vacated the property and therefore became an unauthorized occupant. It is submitted that the first application for recovery of rent from 01.04.1995 to 31.03.1998 was filed under Section 7(1) of the PP Act while the second application was under filed Section 7(2) for damages from 01.04.1998 to 31.12.2010. It is further submitted that the Limitation Act does not have applicability over the recovery for damages

¹ MANU/DE/4392/2013

² MANU/SC/0017/1976

³ WP (C) 4918 of 2014 decided on 08.08.2014



proceedings instituted under Section 7(2) of the PP Act, and therefore, there is no infirmity in the impugned order. In the alternative, even if Limitation Act is held to be applicable, in view of Article 112 of the Schedule to the Act, the limitation period applicable would be 30 years and hence, the respondent's claim for damages were not time-barred. It has also been argued that the pendency of the writ petition WP(C) 3615/1998 filed by the petitioner and the interim stay granted therein would itself extend the period of limitation since the stay on recovery proceedings was only vacated on the dismissal of the petition on 11.11.2009. Reliance is placed on decision of this Court in Ram Sarup v. Raj Dulari.⁴

9. In rejoinder, petitioner contended that the interim order passed in WP(C) 3615/1998 was restricted to proceedings for recovery of limited rent from 01.04.1995 to 31.03.1997 and did not stop the respondent from filing proceedings for damages thereafter. Furthermore, the Estate Officer rejected the said contention without assigning any reasons and awarded the amount of Rs.500/- per sq. feet per month as damages. Also, the decision in Ram Sarup (Supra) is sought to be distinguished by submitting that the same is inapplicable, having been passed in the context of Delhi Rent Control Act. It is submitted in the said case, contractual rent had been suspended and standard rent fixed in an application, upon whose dismissal, the contractual rent had become payable. It is submitted that the facts are entirely distinguishable from the present case.

10. I have heard learned counsel for the parties and gone through the record.

11. The solitary issue which needs to be adjudicated in the present case is

⁴ 1972 SCC OnLine Del 236.



whether Limitation Act would be applicable to the proceedings under the PP Act or not, and if yes, whether the respondents' claims for damages were time-barred.

12. Fortunately, the law on this aspect is no longer *Res integra*, with the decision of Supreme Court in Kalu Ram (Supra) holding the field. The Supreme Court has held that Section 7 of the PP Act merely creates a specialized procedure for realizing the arrears of rent and does not bar the applicability of Limitation Act. It held as follow: -

2...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...

...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?..

...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..

..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.

13. While dealing with the aspect of limitation, the impugned order makes a distinction between Section 7(1) and 7(2) of the PP Act, holding that the decision in Kalu Ram (Supra) would govern only to Section 7(1) and that Limitation Act would not have any application to Section 7(2) and thus, respondents claim was not barred by limitation. The Court had relied



on several co-ordinate bench decisions of this Court as well as that of the Madhya Pradesh High Court in L.S. Nair v. Hindustan Steel Ltd., Bhilai & Ors.⁵

14. However, the ruling of the Division Bench of this Court in G.R. Gupta (Supra) does not support this line of reasoning. On the contrary, it demolishes this distinction which is sought to be created between Section 7(1) and 7(2) of the PP Act. The Division Bench has held that in view of the authoritative pronouncement of Supreme Court in Kalu Ram (Supra), the same being binding by virtue of Article 143, it could not have been held that Limitation Act ceases to apply to application for recovery of damages under Section 7(2) of the Act. The relevant portion is reproduced here under: -

23. However, we are of the opinion that the law of limitation applies to proceedings initiated before the Estate Officer under the PP Act, 1971. The Supreme Court in New Delhi Municipal Committee Vs. Kalu Ram and Another (supra) has held as under:-...

24. In view of the aforesaid authoritative pronouncement by the Supreme Court, this Court is of the opinion that the distinction sought to be drawn by the respondent between proceedings under Sections 7(1) and 7(2) of the PP Act, 1971, is untenable in law. The reliance of the respondent on the judgment of the Madhya Pradesh High Court in L.S. Nair vs. Hindustan Steel Ltd., Bhilai and Ors. (supra) is also misplaced as the same did not deal with or refer to the aforesaid Supreme Court's judgment in New Delhi Municipal Committee Vs. Kalu Ram and Another (supra). In fact, in L.S. Nair vs. Hindustan Steel Ltd., Bhilai and Ors. (supra), the Madhya Pradesh High Court has dealt with the judgment of the Punjab High Court in Kalu Ram v. New Delhi Municipal Committee MANU/PH/0503/1965: (1965) 67 Pun LR 1190 and not the Supreme Court's judgment.

25. It is settled law that a judgment of one High Court is not binding on the other, but in view of Article 141 of the Constitution of India, the Supreme Court judgment is binding on all High Courts. Consequently, the finding of the learned Single Judge that the limitation prescribed under the Act, 1963 has no application to recovery of damages under Section 7(2) of the PP Act, 1971, is not correct.

⁵ MANU/MP/0021/1980



15. The extract reproduced above would further show that the Division Bench was of the opinion that the decision of MP High Court in L.S. Nair (Supra) did not consider the Supreme Court decision in Kalu Ram (Supra), rather dealing with the Punjab High Court decision. A perusal of the impugned order would show that it places heavy reliance on the decision in L.S. Nair (Supra). Notably, though the decision in G.R. Gupta (Supra) was challenged before the Supreme Court in G.R. Gupta v. Lok Sabha,⁶, the challenge was however dismissed. The view of the Division Bench renders the reasoning employed in the impugned order faulty. Thus, Limitation Act will be applicable in proceedings for recovery of damages under Section 7(2) of the PP Act as well.

16. Now, the consequent question which arises is what limitation period would be applicable on the respondent and whether the claims are time-barred.

17. The respondent claiming itself to be a Government Company sought shelter under Article 112 of the Schedule to Limitation Act to claim enhanced period of limitation.

18. The contention is fallacious and is rejected. Admittedly, the respondent is a Government Company incorporated under the Companies Act. Though such an entity falls in the definition of “State” under Article 12 of the Constitution of India, the same would not entitle it to claim applicability of Article 112 of the Limitation Act. It is settled law that merely by nature of one being a Government Company, it cannot be construed as the Central or State Government. The reason being that the company is an independent and separate legal entity. The benefit of extended

⁶ decided on 18.08.2021 in Civil Appeal No. 6829 of 2014.



limitation under Article 112 is available only to the Central and State Governments and the same has not been extended to its Agencies or Instrumentalities. The Division Bench of this Court in G.R. Gupta (Supra) had clarified that the Limitation Act, under Article 112 of the Schedule, grants extended limitation of 30 years only to Central and State Governments and not to other statutory authorities such as NDMC. It held as follow: -

“28. It is pertinent to mention that the Act, 1963 grants extended limitation of 30 years only to Central and State Governments and not to statutory authorities like NDMC and Calcutta Port Trust. In any event, in none of the judgments cited before us the import and significance of Article 112 of the Act, 1963 has been considered.”

19. Pertinently, the Supreme Court while rejecting a challenge to the aforementioned decision of Division Bench, held that the period of limitation would be such as would be applicable in case a civil suit for recovery is filed. The Supreme Court also distinguished the decision in Kalu Ram (Supra) by stating that the said case pertained to a municipal corporation which was a State for the purpose of Article 12 only, while the respondent in G.R. Gupta (Supra) being Lok Sabha Secretariate was held to be one wherein Article 112 of the Schedule to the Limitation Act would apply. The relevant extract is reproduced below: -

A perusal of the aforesaid extract from the judgment would show that the period of limitation would be such which would be applicable if a civil suit for recovery is to be filed. That was a case of recovery of arrears of rent by a Municipal Corporation, which is a State for the purpose of Article 12 of the Constitution only. The reference be made to the judgments of this Court reported as Mohd. Hadi Raja v. State of Bihar & Anr., (1998) 5 SCC 91 and Central Warehousing Corporation v. Municipal Corporation, (1994) Supp 3 SCC 316. The expression State includes three pillars falling within Part V of the Constitution such as Executive, Legislature and Judiciary...



20. Due reference in this regard may be made to the Decision of the Supreme Court in BSNL v. Pawan Kumar Gupta⁷, wherein it was held as follow: -

“11. ...The expression “Central Government” under the General Clauses Act is clearly defined, which relevant provision is extracted in the afore-stated portion of this judgment. By a reading of the afore-stated definition, by no stretch of imagination it can be construed that the appellant Company which is registered under the Companies Act, though the share capital of the Company owned in the name of the President is 100%, it cannot be construed as the Central Government for the reason that the appellant Company by registration under the Companies Act, no doubt it is under the control of the Central Government as it is financed and its administration is under the absolute control of the Central Government, nonetheless, it shall not be construed as the Central Government for the reason that the appellant Company is a separate legal entity. It also cannot claim that it is entitled to the benefit under Article 112 of the Limitation Act on the ground that a debt recoverable from the subscriber is an actionable claim in terms of Section 3 of the TP Act, even if the same has been transferred under Section 130 of the TP Act by execution of the Office Memorandum, referred to supra, thereby vesting in it the rights and the remedies vis-à-vis the same...

12....By a careful reading of the aforesaid Article, it makes abundantly clear, that a suit can be instituted by or on behalf of the Central Government. It is not the case of the appellant herein that it has filed the suit on behalf of the Central Government. This is for the reason that the appellant Company has instituted the suit on the basis of the instrument of Office Memorandum wherein DoT has transferred its assets and actionable claims. It cannot be said that it has filed the suit on behalf of the Central Government because the appellant-plaintiff is a company, a distinctly independent and separate entity. Therefore, the reliance placed upon the aforesaid Article 112 of the Limitation Act to claim that there would be thirty years of limitation period as the asset transferred is an actionable claim due to DoT is wholly misconceived in law.

13. The other argument advanced by the learned Senior Counsel on behalf of the appellant Company that it is an agency or instrumentality under the Central Government which falls within the inclusive definition as defined under Section 3(8) of the General Clauses Act is wholly misconceived for the reason that Article 112 of the Limitation Act speaks of the Central Government or the State Government. Its agencies or instrumentalities are not incorporated under Article 112 of the Limitation Act. Such an argument is contrary to the Constitution Bench judgment of this Court in Padma Sundara Rao v. State of T.N. [(2002) 3

⁷ (2016) 1 SCC 363



SCC 533] In para 14 of the said judgment it is categorically stated that the legislative casus omissus cannot be supplied by judicial interpretative process and the Court cannot do the legislative functions...”

21. In the present case, the application under Section 7 of the PP Act seeking damages from 01.04.1998 onwards came to be filed by the respondent on 11.02.2011. Since Article 112 would not be applicable to the respondent, the limitation period which would apply is three years. It is thus clear that claims of the respondent are time-barred and the impugned order, in so far as it holds that Limitation Act would not apply to the proceedings under Section 7(2) of the PP Act, is set aside.

22. Consequently, the present petition is allowed.

**MANOJ KUMAR OHRI
(JUDGE)**

JULY 03 , 2025

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