

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

Date of decision: 11th May, 2012

+ **LPA No. 9/2012 & CM No.259/2012** (for stay)

INDIAN INSTT. OF PUBLIC OPINION PVT LTD Appellant

Through: Mr. Aruneshwar Gupta, Sr. Advocate
with Mr. Manish Raghav & Mr. Vasu
Sharma, Advs.

Versus

LIFE INSURANCE CORPORATION OF INDIA Respondent

Through: Mr. Kamal Mehta, Adv.

AND

+ **LPA No. 30/2012**

AHUJA REFRIGERATION P LTD Appellant

Through: Mr. Bahar U Barqi, Adv.

Versus

LIFE INSURANCE CORPORATION & ANR. Respondents

Through: Mr. Mohinder Singh & Mr. Ankur
Goel, Advs.

AND

+ **LPA No. 31/2012 & CM No.907/2012** (for filing addl. documents)

AHUJA REFRIGERATION PVT LTD Appellant

Through: Mr. Bahar U Barqi, Adv.

Versus

LIFE INSURANCE CORPORATION & ANR Respondents

Through: Mr. Mohinder Singh & Mr. Ankur
Goel, Advs.

AND

+ **LPA No. 43/2012 & CM No.1157/2012** (for stay)

P.P. CHAUDHARY

..... Appellant

Through: Mr. Bahar U Barqi, Adv.

Versus

LIFE INSURANCE CORPORATION

..... Respondent

Through: Mr. Mohinder Singh & Mr. Ankur
Goel, Advs.

AND

+ **Review Petition No.234/2012 & CM No.6509/2012** (for exemption)
in LPA No. 977/2011

LIFE INSURANCE CORPORATION OF INDIA

..... Appellant

Through: Mr. Mohinder Singh & Mr. Ankur
Goel, Advs.

Versus

DAMYANTI VERMA DECD THR

LRS

.... Respondent/Review Applicant

Through: Mr. Bahar U Barqi, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. The intra court appeal subject matter of LPA 9/2012 impugns the order dated 23rd December, 2011 of the learned Single Judge dismissing WP(C) No. 8987/2011 preferred by the appellant. The said writ petition was filed challenging the order dated 12th December, 2011 of the District Judge exercising the powers as an Appellate Authority under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act) dismissing the appeal preferred by the appellant against the order dated 2nd September, 2011 of the Estate Officer of the respondent LIC of eviction of the appellant from the premises admeasuring 3476 sq ft. on the ground floor of Jeevan Tara Building, 5 Parliament Street, New Delhi of the respondent LIC and of assessing damages for use and occupation @ ₹ 200/- per sq ft. per month for the period from 16th August, 2009 since when the appellant was found to be in unauthorized use and occupation of the said premises. The order of the learned Single Judge records that the challenge by the appellant to the proceedings for eviction under the PP Act was solely on the ground of the same being in violation of “Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of

public sector undertaking / financial institutions” issued in the year 2002.

2. Notice of LPA No. 9/2012 was issued and eviction of the appellant stayed subject to the appellant depositing in this Court an amount calculated @ ₹ 1.50 lacs per month from the date the appellant has been found to be an unauthorized occupant. A sum of ₹ 30 lacs has been deposited in this Court in pursuance to the said interim order. The senior counsel for the appellant before us also, has argued only on the aspect of the Guidelines aforesaid.

3. LPA Nos. 30 & 31/2012 have been preferred against the order dated 5th December, 2011 of the learned Single Judge dismissing the WP(C) 3521/2008 preferred by the appellant. The said writ petition was preferred impugning the order dated 7th April, 2008 of the District Judge exercising the powers as the Appellate Authority under Section 9 of the PP Act dismissing the two appeals preferred by the appellant against the order dated 28th November, 2001 of the Estate Officer of the respondent LIC of eviction of the appellant from the premises admeasuring 850 sq. ft. on the ground floor and 387 sq. ft. on the second floor of Laxmi Building Asaf Ali Road of the respondent LIC and assessing damages for unauthorized use and

occupation of the said premises by the appellant @ ₹ 20/ per sq. ft. per month w.e.f. 1st August, 1994 since when the appellant was found to be in unauthorized use and occupation thereof. As per the impugned order of the learned Single Judge, the challenge by this appellant also was primarily on the ground of the Guidelines aforesaid, though certain other arguments were also raised.

4. Notice of these appeals also was issued and the eviction of this appellant was also stayed subject to the appellant depositing in this Court the entire amount of mesne profits/damages for use and occupation as assessed by the Estate Officer. However, no amount appears to have been deposited by the appellant.

5 LPA No. 43/2012 impugns the order dated 14th December, 2011 of the learned Single Judge dismissing the WP(C) No.8678/2011 preferred by the appellant. The said writ petition was preferred impugning the order dated 30th November, 2011 by the District Judge exercising the powers as an Appellate Authority under Section 9 of the PP Act dismissing the appeals preferred by the appellant against the orders dated 4th July, 2011 of the

Estate Officer of the respondent LIC of eviction of the appellant from the premises admeasuring 1130.05 sq. ft. in 15/16, Sterling House, Daryaganj, New Delhi of the respondent LIC and assessing damages for unauthorized use and occupation @ ₹ 55 per sq. ft. per month w.e.f. 1st August, 2009 since when the appellant was found to be in an unauthorized use and occupation thereof. As per the judgment of the learned Single Judge, the challenge by this appellant also was primarily on the ground of the Guidelines aforesaid, though other arguments were also raised.

6. Notice of this appeal also was issued and the eviction of the appellant stayed, subject to the appellant depositing 50% of the mesne profits/damages ascertained by the Estate Officer. It is informed that in pursuance to the said order, a sum of ₹ 5.10 lacs was deposited directly with the respondent LIC.

7. We have vide our judgment dated 23rd March, 2012 allowed LPA Nos. 977-980/2011 all titled ***Life Insurance Corporation of India v. Damyanti Verma*** preferred by the respondent LIC and negated the challenge to the proceedings under the PP Act by the erstwhile tenants of the respondent LIC whose tenancy had expired by efflux of time or had been

determined, on the ground of the Guidelines aforesaid. Though in view of the said judgment, the challenge propounded in all these appeals, again on the basis of the said Guidelines, deserved *in limine* dismissal but upon the counsel urging that their arguments had not been considered and which may require us to have a re-look into our judgment dated 23rd March, 2012, we had issued notice of these appeals and have heard the counsels. During the pendency of the said hearing, Review Petition No. 234/2012 has also been preferred seeking review of our judgment dated 23rd March, 2012. Since, the controversy entailed in all these matters is the same, we have heard them together and are disposing of by this common judgment.

8. The Guidelines aforesaid, on the basis whereof the challenge to the proceedings under the PP Act is predicated, inter alia provide that the provisions of the PP Act should not be resorted to, where the premises are in occupation of original tenants to whom the premises were let out and such persons should not be treated as an unauthorized occupant merely on service of notice of termination of tenancy; against such persons recourse as available to private landlords in law, should be taken. It is the contention of

the counsels for appellants that since appellant in each case was admittedly a tenant, having been lawfully indicted into the premises, recourse against them of PP Act is in violation of said Guidelines notified by the Government of India and as per which, recourse under PP Act is to be taken against rank trespassers only.

9. At the outset, we may summarize what we have found/held in the judgment dated 23rd March, 2012 *supra* :

- A. that a Division Bench of this Court as far as in ***Uttam Parkash Bansal Vs. LIC of India*** 2002 (100) DLT 497 had rejected the challenge to the eviction proceedings under the PP Act on the ground of the said Guidelines, holding that having regard to the clear and unambiguous provisions of the PP Act, not following the Guidelines, cannot be raised as a defence.
- B. that even the Supreme Court in ***Syndicate Bank Vs. Ramachandran Pillai*** 2011 (1) SCALE 368 has observed that the said Guidelines have not been issued in exercise of any statutory power under the PP Act or any other statute and that the non-compliance of the Guidelines could not deprive public authority of the order of the eviction under the PP Act.

- C. Other Benches of this Court in *L.D. Nayar & Sons Vs. Punjab National Bank* 151 (2008) DLT 27 and in *Heera Midha Vs. ITDC* 2008 VII AD (Delhi) 251 have also held the said Guidelines to be administrative in nature and being incapable of supplanting the power to invoke a speedy remedy to evict tenant whose arrangements ended long ago and to hold otherwise would not only tantamount to fettering statutory powers on patently insubstantial grounds, but would also place unwarranted disabilities on a plain misreading of the Guidelines; the intra court appeal being LPA No.350/2008 in *L.D. Nayar & Sons* (supra) was also dismissed by a Division Bench of this Court vide judgment dated 29th July, 2008.
- D. that the reliance placed by the respondent LIC in that case on *New India Assurance Company Ltd. Vs. Nusli Neville Wadia* (2008) 3 SCC 279 was held to be misplaced since the controversy therein was as to who should begin to lead evidence in a proceeding under the PP Act and further since the Supreme Court in the said judgment also had observed that the Guidelines were not statutory and were merely advisory in character and conferred no rights on the tenant.
- E. Reliance was also placed on *Banatwala & Company Vs. LIC of India* AIR 2011 SC 3619 also holding that the Guidelines are not

directions under Section 21 of the LIC Act.

- F. that after the Guidelines (supra) were notified on 30th May, 2002, the Central Government had issued a clarificatory order dated 23rd July, 2003 to the effect that the Guidelines will not apply to affluent tenants.
- G. that as far as the city of Delhi is concerned, the legislative intent was against the interference in the contract of tenancy as is apparent from the amendment w.e.f. 1st December, 1988 of the Delhi Rent Control Act, 1958 removing the tenancies at a rent in exceeds of ₹ 3500/- per month from the purview/ambit of the said Rent Act.
- H. that it is the duty of a State agency as LIC to ensure that it uses its premises/properties and resources within its control to sub serve the best objectives and which include an obligation to ensure that it optimizes the best returns.
- I. it was noticed that the same learned Single Judge against whose order the appeal had been preferred, had in subsequent judgments held the guidelines to be not binding on the bodies such as LIC/PNB and do not come in the way of the LIC and PNB proceedings under the PP Act.

10. The senior counsel for the appellant in LPA No. 9/2012 has argued –
- a. that PP Act traces its legislative competence to Entries 6, 7 and 13 in List III and to Entry 32 in List I of the Seventh Schedule of the Constitution of India.
 - b. that the Guidelines aforesaid have been issued in exercise of executive powers under Article 73 of the Constitution of India.
 - c. that these Guidelines are legislative in character as the same were debated and approved by both the Houses of Parliament and have been published in the Official Gazette.
 - d. that the Guidelines were issued to prevent arbitrary evictions, since the PP Act is silent and does not provide the grounds of eviction and fixation of rent. The Guideline are the procedure established by Law to be followed by all the public authorities uniformly and create a vested right in the genuine tenants not to be evicted without following procedure prescribed therein. The Guidelines provide the statutory procedure and are law and have to be uniformly followed/enforced and implemented by the Estate Officer.
 - e. that till the said Guidelines are held to be unconstitutional and invalid and are struck down, the same have to be followed.

- f. the guidelines have been upheld by the High Courts of Bombay and Kerala.
- g. Refusal to follow the Guidelines would impinge upon the distribution of powers between the legislature, executive and judiciary.
- h. that the Courts including the Supreme Court have from time to time enforced even non-statutory Guidelines.
- i. that the respondent LIC has not challenged the legality or validity of the Guidelines and this Court in the absence thereof ought not to question the same.
- j. that the Guidelines are reasonable, just and proper and the respondent also has not given any reason for not following the same.
- k. the principle of “where a power is given to do a certain thing in a certain way, thing must be done in that way or not at all” is invoked.
- l. the guidelines create a vested right and/or promissory estoppel and/or raise a legitimate expectation that the respondent LIC will not resort to proceedings under the PP Act against the genuine tenants.

- m. that the appellant is a tenant of the respondent LIC since the year 1970 and its lease was extended from time to time, last till 14th July, 2005 and since when the respondent LIC has wrongfully refused to renew/extend the lease.
- n. the respondent LIC has not stated any ground for eviction of the appellant.
- o. that the damages should have been assessed on the basis of the provisions of the Delhi Rent Act and not on the basis of market rent.

11. Reliance is placed on -

- i. ***Sardar Associates Vs. Punjab & Sind Bank*** (2009) 8 SCC 257 holding the Guidelines issued by the Reserve Bank Of India to be binding on the banks;
- ii. ***Corporation Bank Vs. D.S. Gowda*** (1994) 5 SCC 213 holding the circulars/directions issued by the Reserve Bank of India regarding interest chargeable by bank from borrowers to be based on rational policy and having statutory force; it was further held that the banks were bound to follow the said circulars unless declared to be illegal or unreasonable.

- iii. ***Shiv Kumar Chadha Vs. Municipal Corporation of Delhi*** (1993) 3 SCC161 holding the regulations and bye laws of the MCD in respect of buildings to be for public interest and on the proposition of *ubi jus ibi remedium* i.e. where there is a right there is a remedy.
- iv. ***State of Karnataka Vs. Union of India*** AIR 1978 SC 68 (paras 201 and 202) on what is legal right.
- v. ***Rai Sahib Ram Jawaya Kapur Vs. The State Of Punjab*** AIR 1955 SC 549 (paras 5 and 15)

12. The counsel for the appellant in the other appeals and for the review applicant/ respondent in the review petition has argued -

- a. that the Guidelines aforesaid were issued in pursuance to the assurance given on the floor of the Parliament to the nation against the indiscriminate use of PP Act by statutory corporations/financial institutions for eviction of legally and validly inducted occupants of the properties of the said corporations/financial institutions and to the effect that the applicability of the PP Act would be confined to rank trespassers in the properties of the said corporations/financial institutions;
- b. that the respondent LIC has no uniform policy for revision of rent

of tenants in its properties and indulges in a policy of pick and choose;

- c. that the respondent had given an undertaking before the Bombay High Court to frame such a policy but has not produced any such policy till now and owing to the undertaking given before the Bombay High Court is not resorting to proceedings under the PP Act against bona fide tenants and on the same parity ought not to be permitted to do the same qua its properties in Delhi also;
- d. attention is again invited to the judgment of the Division Bench of the Bombay High Court in *Persis Kothawalla Vs. LIC* 2004-BCR-4-610 (which was considered in our judgment dated 23rd March, 2012) and it is contended that the SLP thereagainst was dismissed by the Supreme Court;
- e. that the respondent LIC cannot be permitted to charge exorbitant rent from its tenants and cannot be permitted to claim market rent and can at best increase the rent from time to time while renewing the lease, by some percentage of the last paid rent;
- f. that respondent LIC in *Damyanti Verma* (in which review is sought) had sought eviction for its bona fide requirements of the premises but no evidence in support thereof was produced;

- g. that in LPA 30-31/2012 also, the ground of eviction alleged was default in payment of rent, electricity and water charges but which again remained unestablished and eviction has been ordered only on the ground of the tenancy having been determined under Section 106 of the Transfer of Property Act; it is argued that without default being established, the said appellant is not liable to be ejected;
- h. that the judgment in *Jiwan Das Vs. LIC of India* 1994 Supp (3) SCC 694 is being misused;
- i. reliance is again placed on *Jamshed Hormusji Wadia vs Board of Trustees, Port of Mumbai* (2004) 3 SCC 214 (which was considered in our judgment dated 23rd March, 2012) to contend that State as landlord cannot be seen to be indulging in rapturous profiteering and cannot claim whimsical and unreasonable evictions and bargains;
- j. it is argued that the appellant in LPA 43/2012 had offered as much as 35% enhancement in the last paid rent but the lease was still not renewed.

13. Mr. Kamal Mehta, Advocate for the respondent LIC in LPA 9/2012 has contended -

- i) that the appellant therein admittedly has no subsisting lease; that the Guidelines aforesaid cannot vest a right contrary to the statute;
- ii) that a tenant of a statutory corporation as LIC whose tenancy has expired by efflux of time or been determined by notice under Section 106 of the Transfer of Properties Act, 1882 is within the definition of “unauthorized occupation” in Section 2 (g) of the PP Act;
- iii) attention is invited to Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 prescribing the assessment of damages, to contend that the same has to be as per the market rent;
- iv) it is contended that the Guidelines are not under Article 73 (supra) and in any case cannot override the statute;
- v) attention is invited to para 59 of the ***Indian Medical Association Vs. Union of India*** (2011) 7 SCC 179 where the reliance by the Government of Delhi on Article 162 to make 100% reservation was negatived by observing that such powers of executive cannot be exercised to set at naught a declared, specified and mandated

policy legislated by the legislature;

- vi) it is contended that the Guidelines, even if issued in exercise of powers under Article 73, could not have been issued since the field is occupied by a statute and can be issued only to fill up lacuna in a statute;
- vii) attention is invited to ***K.T. Corporation Vs. India Tourism Development Corporation*** 165 (2009) DLT 65 (DB) holding that a licensee of a statutory corporation has no right to mandatorily claim renewal of licence and that the quantum or increase as demanded by statutory corporation cannot be interfered with in exercise of powers of judicial review;
- viii) attention is further invited to para 22 of ***Nusli Neville Wadia*** (supra) to show that ***Uttam Prakash*** (supra) was noticed therein and not disapproved of;
- ix) reliance is placed on paras 4 and 5 of ***Ramachandran Pillai*** (supra) to contend that the Guidelines are not issued in exercise of statutory power under the PP Act or any other statute and relief to the statutory corporations could not be denied on the basis thereof;
- x) it is argued that the appellant is a commercial enterprise and falls

in the category of “affluent tenant” and the Guidelines, for this reason also are not applicable to the appellant.

14. Mr. Mohinder Singh, counsel for the LIC in the other matters has contended -

- a) it is controverted that the respondent LIC has no policy qua its tenants/premises; attention is invited to the Estate Policy of the LIC;
- b) reliance is placed on **Jiwan Dass** (supra) laying down that LIC is entitled to deal with its property for its profitable use and seek eviction under the PP Act after determination of tenancy, without assigning any reasons.
- c) reliance is placed on **Ratan Kumar Tandon Vs. State of Uttar Pradesh** AIR 1996 SC 2710 holding administrative instructions to be not having overriding effect on the operation of a statute (Land Acquisition Act, 1894 in that case) and the law laid down by the Supreme Court;
- d). attention is also invited to **K.R.K. Talwar Vs. Union of India** AIR 1977 (Del) 189 where a Division Bench of this Court held that justifiability of an action of termination of tenancy is not open to judicial review;

- e. attention is yet further invited to *State of UP Vs. Daulat Ram Gupta* (2002) 4 SCC 98 holding that the State Government or the Licensing Authority, in guise of issuance of directions, cannot supplant the provisions of the Statutory Order but can only supplement it, to give effect to it.

15. Though we are of the opinion that in the face of the judgments of the Supreme Court (supra) particularly in *Nusli Neville Wadia, Ramachandran Pillai* and in *Banatwala & Company* (supra) and the judgments of the Division Bench of this Court in *Uttam Parkash Bansal* and *L.D. Nayar & Sons* (supra), the question is no longer *res intera* but the new points urged and not dealt with in our earlier judgment dated 23rd March, 2012 in *Damyanti Verma* (supra) need to be dealt with.

16. Article 73 of the Constitution of India is as under-

“73. *Extent of executive power of the Union - (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend -*

(a) *to the matters with respect to which Parliament has power to make laws; and*

(b) *to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of*

India by virtue of any treaty of agreement:

Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws

- (2) *Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.”*

17. The Supreme Court in ***Common Cause Vs. Union of India*** (1999) 6 SCC 667, after considering the earlier judgments on Article 73 including the Constitution Bench judgment in ***Rai Sahib Ram Jawaya Kapur*** (supra) held that though it is not possible to frame an exhaustive definition of what executive function means and implies but ordinarily the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. It was further held that the executive has to act subject to the control of the legislature and if the executive action of the Government prejudicially affects the rights, such executive action would be justified only if it was supported by the authority of law.

18. The Guidelines have been issued “to prevent arbitrary use of powers to evict the genuine tenants from public premises and to limit the use of powers by the Estate Officers” and provide that the provisions of the PP Act “should be used primarily to evict totally unauthorized occupants of the premises of public authorities or subletees or employees who have ceased to be in their service and thus ineligible for occupation of the premises”. The Guidelines further provide that the provisions of PP Act should not be resorted to either with “a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises” were let out. The Guidelines further prohibit, treating as an unauthorized occupant, a person “merely on service of notice of termination of tenancy”. The Guidelines, also leave it open to the public authorities to secure periodic revision of rent “in terms of the provision of the Rent Act in each State” and advise the public authorities to exercise the rights “similar to private landlords under the Rent Control Act in dealing with genuine legal tenants”.

19. We are at the moment not concerned with the right, if any of the tenants of statutory corporations to demand renewal of their lease. That aspect shall be dealt with a little later. However, if the tenants of statutory corporations are not found to have such a right, the question which arises is whether, for evicting tenants whose tenancy has expired or has been determined, the statutory corporations, instead of resorting to the PP Act, which they are admittedly entitled to do, should resort to the Civil Courts or the Courts / Tribunal established under the Rent Control Legislation.

20. It cannot be lost sight of that the claim of such tenants to the protection of the Rent Act was negated by the Constitution Bench in *Ashoka Marketing Ltd. Vs. Punjab National Bank* (1990) 4 SCC 406. The provisions of the PP Act were held to override the provisions of the Delhi Rent Control Act, 1958. It was further held, that the PP Act had been enacted to deal with the mischief of rampant unauthorized occupation of public premises, by providing speedy machinery for eviction of persons in unauthorized occupation. It was further held that while the Delhi Rent Act is intended to deal with the general relationship of landlords and tenants, the

PP Act is a special statute and not a general enactment. The Constitution Bench noticed that in the statement of objects and reasons of the PP Act, reference had been made to the judicial decisions whereby the 1958 Act was declared as unconstitutional; the object underlying the PP Act was to safeguard public interest by making available for public use premises belonging to Central Government, companies in which the Central Government has substantial interest, corporations owned or controlled by Central Government and certain other autonomous bodies and to prevent misuse of such premises. It was further noticed that the Delhi Rent Act itself excluded the Government premises from its purview and all that the PP Act did was to exclude the buildings belonging to such statutory corporations and autonomous bodies also from the ambit of the Rent Act. The Constitution Bench also noticed that the investments in such statutory corporations are from the consolidated fund, that is to say from the tax payers and it is the public at large which has an interest in the functioning and profitability of the said statutory corporations.

21. We have wondered as to how, after the Constitution Bench (*supra*) has declared the law as aforesaid, could the Central Government by Executive fiat in the form of Guidelines (*supra*), relegate such statutory corporations to the Civil Courts and Foras under the Rent Act. We may highlight that as per ***Common Cause*** (*supra*), executive action contrary to law, is liable to be struck down by Courts in exercise of power of judicial review.

22. We may notice that Chief Justice, Mukherjea in ***Rai Sahib Ram Jawaya Kapur*** (*supra*) had also observed that the executive powers connote the residue of governmental functions that remain after legislative and judicial functions are taken away; if there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. The Supreme Court recently in ***Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd.*** (2010) 7 SCC 1 held the policy decision of the Government, subject matter in that case, to be in exercise of powers under Article 73 of the Constitution and having force of law “since the field is not occupied by any legislation made by Parliament”.

23. However, what we find in the present case and as is rightly contended by the counsel for the respondent LIC, that the 'field' indeed is occupied. The PP Act while defining unauthorized occupation, includes within its ambit persons, though lawfully inducted into the premises but the grant in whose favour has expired or has been determined. The Apex Court also in *Jiwan Dass* (supra) has held that proceeding under the PP Act can be taken against such persons. The Guidelines cannot curtail or limit the applicability of the Statute or the Law as declared by the Supreme Court. The Guidelines to the extent contrary to the Statute and the Law declared by the Supreme Court cannot come in the way of this Court upholding what is permitted by the Statute and the Law declared by the Supreme Court. Thus the argument on Article 73 does not dissuade us from confirming the view already taken by us in *Damyanti Verma* (supra).

24. As far as the claim of the tenants to renewal of their tenancy at rent below market rent is concerned, the same would amount to the tenants of the statutory corporations/financial institutions being placed in a better position than the tenants of private landlords. We do not see any reason to create

such a classification. As we have already observed in *Damyanti Verma* (supra) as far as the city of Delhi is concerned, the tenancy where the rent is in excess of ₹ 3500/- per month, as is the case in most of the tenancies today except which were created long ago, are bound strictly by contract – the tenants are entitled to renewal only if agreed to by the landlord and cannot force the landlord to continue with the tenant. Not only will such a situation create two classes of tenants and would be discriminatory but would also result in loss to the statutory corporations/financial institutions, which instead of earning market rent would be getting a much lower return on their assets/properties. That would also amount to giving benefit to certain class of tenants at the cost of the public exchequer. We fail to find any rationale therefor. The same is also against the spirit of judgment of the Constitution Bench in *Ashoka Marketing Ltd* (supra). The Constitution Bench proceeded on the premise that the statutory corporations/financial institutions require better and more expeditious provisions to evict persons continuing in occupation after the authority under which they were allowed to occupy the premises has expired or has been determined and thus held the provisions of PP Act to be overriding the provisions of the Rent Act. The

Division Bench of this Court in *K.T. Corporation* (supra) has held that the Court cannot interfere with the demand for market rent.

25. As far as the reliance on *Jamshed Hormusji Wadia* (supra) is concerned, that case turned on its own facts. Even otherwise, the Supreme Court now in *Centre for Public Interest Litigation Vs. Union of India* (2012) 3 SCC 1 has held that the distribution of State resources is to be guided by the Constitutional principles including the doctrine of equality and larger public good and rational, transparent procedures designed to fetch the maximum value, for enrichment of the public at large have been commended. To accept the contentions of the appellant would amount to giving monetary benefit for all times to come to those who, may be on first come basis, have come into occupation of properties of statutory corporations and financial institutions and at the cost and prejudice of others. This cannot be permitted.

26. In the face of our findings aforesaid, need is not felt to deal with the other contentions recorded above which also, in our view, stand answered by our reasoning above. Suffice it is to add that there can be no estoppel and legitimate expectation contrary to law and the Guidelines which have been enforced by the Courts, were not found contrary to any Statute or law, as is the case here. Moreover, if the respondent LIC or any other statutory corporation / financial institution, in the matter of eviction or enhancement in rent, indulges in favouratism, the remedy therefor is to bring that to the attention of the Court, rather than claim negative equality. We may also observe that even if while claiming eviction, besides the ground of determination of tenancy, any other ground is cited, the proceedings under the PP Act would be maintainable even if such other ground is not proved, as long as determination of tenancy is established. In the light of discussion aforesaid, we are also unable to agree with the judgment of the Bombay High Court in *Persis Kothawalla* (supra).

27. We therefore do not find any merit in the appeals or in the review petition and dismiss the same. The monies deposited in this Court in pursuance to the interim orders in these matters, be released forthwith to the respondent LIC. We also impose costs of ₹15,000/- on each set of the appellants / review applicants and which cost would also be recoverable by the LIC alongwith its other claims.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 11, 2012
M