$~

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

Judgment reserved on: 23.09.2026
Judgment pronounced on: 21.11.2026

\# **CNR No. DLHC014575632017**

\+ W.P.(C) 9236/2017 & CM APPL. 37765/2017 (Stay)

SHRI OM PRAKASH GROVER AND ORS.

.....Petitioners

Through: Mr. Vipin Singhania and Mr. Lakshay Jain, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

.....Respondents

Through: Mr. Rishikant Singh, Advocate for DUSIB.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Writ Petition, filed under Article 226 read with Article 227 of the Constitution of India, seeks to assail the **Order dated 27.07.2017**[1], passed by the learned **District & Sessions Judge (HQs)/Rent Control Tribunal, Tis Hazari Courts, Delhi**[2], in the Appeal preferred under Section 9 of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971**[3], being **PPA No. 30139/2016**[4], titled *"Om Prakash Grover & Ors. v. MCD & Anr."*.

2. By way of the Impugned Order, the learned Appellate Authority

[1] Impugned Order
[2] Appellate Authority
[3] PP Act
[4] Appeal

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

partly allowed the Appeal preferred by the Petitioners against the **Order dated 14.12.2011**[5], passed by the learned **Estate Officer-I, Delhi Urban Shelter Improvement Board**[6], under sub-sections (2) and (2-A) of Section 7 of the PP Act. By the Order of the Estate Officer, the Petitioners had been held liable to pay a sum of Rs. 13,95,400/- as damages for the unauthorised occupation of the premises bearing **Nos. 4622, 4623 and 4624, Ward No. XII, Arya Pura, Subzi Mandi, Delhi-110007**[7], for the period from 01.04.1995 to 30.11.2011, and damages at the rate of Rs. 6,977/- per month thereafter, together with simple interest at the rate of 18% per annum.

3. The learned Appellate Authority modified the Order of the learned Estate Officer to the extent that the Petitioners were held liable to pay damages only with effect from 05.04.2000, being the date of cancellation of their licence, at the rate of Rs. 6,978/- per month till payment, together with simple interest at the rate of 12% per annum. The Petitioners, by way of the present Petition, seek the setting aside of the Impugned Order as well as the Order of the learned Estate Officer.

4. Petitioner Nos. 1 to 3 are the sons, and Petitioner No. 4 is the grandson, of late Sh. Lekh Raj *alias* Lekh Ram. They are, for the sake of convenience, hereinafter collectively referred to as ***"the Petitioners"***. Respondent No. 1 is the Municipal Corporation of Delhi (Slum & JJ Wing), whose functions in respect of the Subject Premises are now discharged by the **Delhi Urban Shelter Improvement Board**[8], and Respondent No. 2 is the learned Estate Officer. They are,

[5] Order of the Estate Officer
[6] Estate Officer
[7] Subject Premises
[8] DUSIB

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

for the sake of convenience, hereinafter collectively referred to as ***"the Respondents"***.

BRIEF FACTS:

Subject Premises and the grant of Licence

5. The Subject Premises, forming part of Property No. 4619-26, Ward No. XII, Katra Meena Beg, Roshanara Road, Delhi, are evacuee property which is stated to have been transferred by the Ministry of Rehabilitation, Government of India, to the Slum Department on 21.05.1956, and which has, at different points of time, been under the management and control of the Slum & JJ Wing of the Delhi Development Authority, the Slum & JJ Department of the Municipal Corporation of Delhi and, presently, DUSIB.

6. It is the case of the Petitioners that late Sh. Lekh Raj, a displaced person, had been in occupation of the Subject Premises as a licensee since about the year 1948, and had been carrying on business therefrom. On the other hand, the Respondents contend that, as per the Evacuee Property Register, only the portion bearing No. 4623, measuring 8' x 12', had been licensed to late Sh. Lekh Raj, and that too for residential use, whereas the portions bearing Nos. 4622 and 4624, measuring 12' x 12' and 8' x 12', had been licensed to one Sh. Mukand Lal and one Sh. Lachman Dass, respectively, and had come to be occupied by late Sh. Lekh Raj without authority.

7. Late Sh. Lekh Raj passed on in the year 1985. Upon a representation made by his legal heirs, the Office of the Commissioner (Slum & JJ), Delhi Development Authority, by a communication dated 06.02.1992, informed that Sh. Om Prakash, Sh. Sita Ram, Sh. Charanjit Lal and Sh. Nand Kishore, collectively referred to as ***"licensees"***, had, *vide* an Order dated 11.11.1991, been admitted as

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

joint licensees in respect of the Subject Premises on a licence fee of Rs. 42.56 per month.

8. A request made by them thereafter, for segregation of the said joint licence and for issuance of separate demand notices in their individual names, was declined on 15.09.1992. They, thereupon, instituted a Suit seeking mandatory injunction, being Suit No. 713/1992, subsequently renumbered as **Suit No. 630/1999**[9].

Cancellation of the Licence

9. During the pendency of the First Suit, a Notice dated 28.10.1993 was issued to the said licensees, calling upon them to show cause as to why the transfer of the licence in their favour be not withdrawn, to which they submitted a Reply dated 10.11.1993.

10. Thereafter, upon hearing Sh. Nand Kishore, *i.e.*, Petitioner No. 3 herein and one of the licensees, on 08.03.2000, the Deputy Commissioner (Slum & JJ), Municipal Corporation of Delhi, by a **Cancellation Order dated 05.04.2000**[10], cancelled the licence in respect of the Subject Premises. It was held therein that the portion bearing No. 4623 had been licensed to late Sh. Lekh Raj for residential use only, a fact admitted by the licensees in their Reply dated 10.11.1993, and that its user had been changed to commercial. It was further held that, in respect of the portions bearing Nos. 4622 and 4624, late Sh. Lekh Raj was himself an unauthorised occupant, and his legal heirs could claim no better right. By the same Order, the initiation of proceedings under the PP Act was directed.

Proceedings under Section 4 of the PP Act

11. Pursuant thereto, a **Notice dated 04.07.2000**[11] came to be

[9] First Suit
[10] Cancellation Order
[11] Section 4 Notice

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

issued to the licensees by the then Estate Officer (Slum)-III under Section 4(1) of the PP Act, stating that they were in unauthorised occupation of the Subject Premises and calling upon them to show cause as to why an order of eviction be not made. The licensees filed their Reply dated 18.08.2000, contending, *inter alia*, that the Subject Premises, a) had been allotted to their father, b) had been mutated in their favour after his demise, and c) had been in commercial use throughout.

12. By an **Order dated 20.03.2001**[12], the then Estate Officer, upon consideration of the said Reply and the record, found no defect in the cancellation of the licence. It was held that the licensees had failed to show that the portions bearing Nos. 4622 and 4624 had ever been allotted to their father, or that the portion bearing No. 4623 had been allotted for commercial purposes. The licensees were, accordingly, directed to approach the O.S.D. (Property) for assessment/calculation of damages for unauthorised occupation, as per the policy of the Department, within fifteen days. It is not in dispute that the licensees/Petitioners did not approach the O.S.D. (Property) in terms of the said direction.

Civil Proceedings

13. The Cancellation Order and the Order dated 20.03.2001 were assailed by the Petitioners before this Court in a Writ Petition, being W.P.(C) 6992/2001, which came to be withdrawn on 19.12.2001, with liberty to challenge the said Orders in accordance with law.

14. In the meantime, the First Suit came to be dismissed by a Judgment dated 16.01.2002, wherein the learned Civil Judge held that the premises had been allotted for residential purposes and could not

[12] Order dated 20.03.2001

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

be used for any other purpose, and that, in view of the cancellation of the licence *vide* the Cancellation Order, the very basis of the First Suit did not survive. An Appeal against the said Judgment, being RCA No. 04/2010, came to be preferred only in the year 2010, and was dismissed on 31.07.2010, the delay of about 2,894 days in filing the same not having been condoned.

15. The Petitioners also instituted a second Suit, being Suit No. 36/2003, subsequently renumbered as **Suit No. 759/2008**[13], seeking, *inter alia*, a declaration that the Cancellation Order and the Order dated 20.03.2001 were illegal. Their application for interim injunction was dismissed on 20.03.2003, and the Appeal there-against, being MCA No. 28/2003, was dismissed on 02.07.2003.

16. Against the order dt. 02.07.2003, the Petition preferred under Article 227 of the Constitution of India, being CM(M) 89/2004, was dismissed by this Court on 21.01.2004, observing that the finding returned in the First Suit, that the premises had been let out for residential purposes but were being used for commercial purposes, had not been challenged and had attained finality. Civil Appeal No. 4330/2004, preferred there-against, was dismissed by the Hon'ble Supreme Court on 14.01.2010.

17. In the meantime, the Second Suit came to be dismissed on 12.10.2012. The Appeal preferred against this dismissal by way of RCA No. 26/2017, was dismissed on 02.08.2018, the delay in filing the same not having been condoned.

18. For ease of reference, the proceedings instituted by the Petitioners, and the outcome thereof, are tabulated hereunder:

[13] Second Suit

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

S. No.	Proceeding	Nature of challenge	Outcome
1.	First Suit (Suit No. 713/1992, renumbered as Suit No. 630/1999)	Mandatory injunction for segregation of the joint licence	Dismissed on 16.01.2002
2.	RCA No. 04/2010	Appeal against the dismissal of the First Suit	Dismissed on 31.07.2010; delay of about 2,894 days not condoned
3.	W.P.(C) 6992/2001	Challenge to the Cancellation Order and the Order dated 20.03.2001	Withdrawn on 19.12.2001, with liberty
4.	Second Suit (Suit No. 36/2003, renumbered as Suit No. 759/2008)	Declaration that the Cancellation Order and the Order dated 20.03.2001 are illegal	Dismissed on 12.10.2012
5.	Application for interim injunction in the Second Suit	Stay of the Cancellation Order and the Order dated 20.03.2001	Dismissed on 20.03.2003
6.	MCA No. 28/2003	Appeal against the refusal of interim injunction	Dismissed on 02.07.2003
7.	CM(M) 89/2004	Petition under Article 227 of the Constitution of India against the Order in MCA No. 28/2003	Dismissed on 21.01.2004
8.	Civil Appeal No. 4330/2004	Appeal before the Hon'ble Supreme Court against the Order in CM(M) 89/2004	Dismissed on 14.01.2010
9.	RCA No. 26/2017	Appeal against the dismissal of the Second Suit	Dismissed on 02.08.2018; delay not condoned

Show Cause Notice under Section 7(3) of the PP Act

19. As the Order dated 20.03.2001 had not been complied with, the matter was referred to the Estate Officer on 04.03.2010 for taking action under the PP Act. A Notice dated 01.06.2010 was issued to the Petitioners, affording them a further opportunity to appear and submit

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

their Reply, pursuant to which they filed their Reply.

20. Thereafter, a **Notice dated 03.12.2010/06.12.2010**[14] was issued to the Petitioners under Section 7(3) of the PP Act. It was stated therein that a sum of Rs. 13,11,695/-, computed at the rate of Rs. 6,978/- per month, "*being arrears of rent from 1.4.1995 to 30.11.2010*", was due and payable in respect of the Subject Premises, and the Petitioners were called upon to show cause as to why an order requiring them to pay the said amount, together with simple interest, be not made.

21. The Petitioners submitted their Reply dated 28.12.2010. By a further Notice dated 28.11.2011, the Estate Officer afforded the Petitioners a final opportunity to appear on 07.12.2011 and to submit their Reply along with supporting documents, whereupon a further reply dated 07.12.2011 came to be filed.

Order of the Estate Officer

22. By the Order of the Estate Officer, it was held that the Petitioners, upon the cancellation of their licence on 05.04.2000, had become unauthorised occupants of the Subject Premises. Relying upon the statement of the Assistant Director (Property), the reports of the Survey Division, as per which the portion bearing No. 4622, measuring 40.23 sq. mtrs., was being used as a shop and the portions bearing Nos. 4623 and 4624, measuring 28.35 sq. mtrs. and 54.41 sq. mtrs., were being used as godowns, and the policy for assessment of damages approved by the Corporation *vide* Resolution No. 413 dated 15.10.2001 and Resolution No. 396 dated 25.10.2004, the Estate Officer assessed the damages at Rs. 6,977/- per month.

23. The Petitioners were, accordingly, directed, in exercise of the

[14] Show Cause Notice

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

powers under Section 7(2) of the PP Act, to pay a sum of Rs. 13,95,400/- towards damages for the period from 01.04.1995 to 30.11.2011, and damages at the rate of Rs. 6,977/- per month thereafter, and, under Section 7(2-A) of the PP Act, to pay simple interest thereon at the rate of 18% per annum with effect from 14.01.2012.

Appeal and the Impugned Order

24. Aggrieved thereby, the Petitioners preferred the Appeal under Section 9 of the PP Act. By an Order dated 08.05.2012, the operation of the Order of the Estate Officer was stayed, subject to the Petitioners depositing 40% of the damages assessed, pursuant to which the Petitioners deposited a sum of Rs. 5,66,712/-.

25. By way of the Impugned Order, the learned Appellate Authority held that the Petitioners were unauthorised occupants and were liable to pay damages, and that the mere mention of the expression *"arrears of rent"* instead of *"damages"* in the Show Cause Notice did not make any difference. The learned Appellate Authority, however, held that, the licence having been cancelled only on 05.04.2000, damages could be claimed only with effect from that date, and also reduced the rate of interest to 12% per annum.

Present Petition

26. Aggrieved by the Impugned Order, the Petitioners have preferred the present Petition, assailing the Impugned Order and the Order of the Estate Officer. The Notice of the present Petition came to be issued on 23.10.2017. During the pendency of the present Petition, the Petitioners have deposited a further sum of Rs. 5,00,000/- with DUSIB. The parties were also referred to Mediation by an Order dated 13.08.2025; the Mediation, however, did not fructify.

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

27. Learned counsel appearing on behalf of the Petitioners would, at the outset, submit that the very foundation of the Order of the Estate Officer stands vitiated by an irreconcilable inconsistency in the stand taken by the Respondents, and that the learned Appellate Authority failed to rectify the said infirmity, and that both the Impugned Order and the Order of the Estate Officer, therefore, stand vitiated.

28. It would be submitted that the proceedings under the PP Act commenced with the Section 4 Notice, whereby the Petitioners were alleged to be in unauthorised occupation of the Subject Premises and were called upon to show cause against their eviction. Learned counsel would submit that the said proceedings were never carried to their logical conclusion and that no Eviction Order has, till date, been passed against the Petitioners.

29. Learned counsel would further submit that, after a lapse of almost a decade, the Respondents issued the Show Cause Notice under Section 7(3) of the PP Act, wherein the Estate Officer recorded that a sum of Rs. 13,11,695/- was due and payable by the Petitioners "*being arrears of rent from 1.4.1995 to 30.11.2010*", and even the interest proposed to be levied was on "*the said arrears*". It would be contended that a demand for arrears of rent is referable only to Section 7(1) of the PP Act, which presupposes a subsisting relationship under which rent is payable, and that the Respondents, by issuing such a notice, had themselves treated the Petitioners as persons in authorised occupation and liable to pay rent, and not as unauthorised occupants.

30. Learned counsel for the Petitioners would submit that, notwithstanding the aforesaid, the Estate Officer proceeded to hold the Petitioners to be in unauthorised occupation and assessed damages

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

under Section 7(2) read with Section 7(2-A) of the PP Act. It would be contended that *"arrears of rent"* and *"damages"* operate in distinct fields, the former presupposing authorised occupation on payment of rent, and the latter being referable to unauthorised occupation, and that an order under Section 7(2) of the PP Act can be passed only after a notice calling upon the person concerned to show cause against the assessment of damages. According to learned counsel, the Petitioners were never put to notice of any proposed assessment of damages, and the Estate Officer could, at best, have held them liable to pay arrears of rent. The Order of the Estate Officer, it would be submitted, travels beyond the Show Cause Notice upon which it is founded. In this regard, attention of this Court would be drawn to the title of the Show Cause Notice. The same reads as under:

> "…
> To,
> Sh. Om Prakash Gorver, Sh. Charajit Lal Grover & Sh. Nand Kishore Grover all sons of Late Sh. Lekh Raj, & Legal heirs of late Sh. Sita Ram Grover S/o Late Sh. Lekh Raj, Property No.4622-24/XII, Katra Meena Begh, Roshanara
> Road, Delhi -110007.
>
> **NOTICE UNDER PROVISION OF SUB-SECTION (3) OF SECTION 7 OF THE PUBLIC PREMISES (EVICTION OF UNAUTHORIZED OCCUPANTS) ACT, 1971**.
>
> …"
>
> ***(Emphasis supplied)***

31. Learned counsel would further draw the attention of this Court to the Order of the Estate Officer to submit that the Show Cause Notice has been described therein as one calling upon the Petitioners to show cause as to why an order requiring them to pay Rs. 13,11,695/- "*towards damages*" should not be made, whereas the Show Cause Notice, on its plain terms, raised a demand for *"arrears of rent"*. It would be submitted that the Show Cause Notice has thus

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

been recast so as to make it consonant with the order ultimately passed.

32. Learned counsel for the Petitioners would submit that the learned Appellate Authority, instead of correcting the aforesaid illegality, perpetuated it by holding that the mere mention of the expression *"arrears of rent"* instead of damages in the Show Cause Notice does not make any difference. The said finding, it would be contended, treats rent and damages as interchangeable and runs contrary to the scheme of Section 7 of the PP Act.

33. Learned counsel for the Petitioners would next submit that the finding that the Petitioners are in unauthorised occupation of the Subject Premises is without any foundation. It would be submitted that the said finding rests upon the report of the Managing Officer (Evacuee Property Cell) dated 29.10.1991, which itself records that the relevant property file was not traceable and that the property "*appears*" to be residential. It would be contended that the licence in respect of all the three portions was transferred jointly in favour of the legal heirs of late Sh. Lekh Raj, *i.e.*, in favour of the Petitioners, by the communication dated 06.02.1992 after due verification, that the rent receipts issued in respect of all the three portions were placed on record, none of which describes the premises as residential, and that the Cancellation Order is, therefore, arbitrary and illegal.

34. In support of the aforesaid submission, learned counsel would place reliance upon the Judgment of the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. v. Nusli Neville Wadia***[15], particularly Paragraph Nos. 25 and 55 thereof. It would be submitted that the Hon'ble Supreme Court has held therein that the Estate Officer is

[15] (2008) 3 SCC 279

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

obligated to apply his mind so as to form an opinion that the person concerned is in unauthorised occupation of the public premises, and that, although the provisions of the Indian Evidence Act, 1872 do not apply to such proceedings, the principle underlying Section 101 thereof would apply, such that the burden of proving a fact rests upon the party who asserts it. The relevant paragraphs of the said Judgment, as relied upon, read as under:

> ***"Application of the Act and the Rules***
>
> **25.** Where an application is filed for eviction of an unauthorised occupant it obligates the Estate Officer to apply his mind so as to enable him to form an opinion that the respondent is a person who has been in unauthorised occupation of the public premises and that he should be evicted. When a notice is issued in terms of Section 4 of the Act, the noticee may show cause. Section 5 of the Act postulates that an order of eviction must be passed only upon consideration of the show cause and any evidence produced by him in support of its case also upon giving him a personal hearing, if any, as provided under Clause (*ii*) of sub-section (2) of Section 4 of the Act.
>
> *****
>
> **55.** Although the provisions of the Evidence Act are not applicable, the underlying principles of Section 101 thereof would apply. In *Sarkar on Law of Evidence*, 16th Edn., Vol. 2, at p. 1584 it is stated as under:
>
> > "*Principle and Scope*.—This section is based on the rule, *ei incumbit probatio qui dicit, non qui negat* — the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. 'It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons.' [per Lord Maugham in *Joseph Constantine Steamship Line Ltd.* v. *Imperial Smelting Corpn. Ltd.* [1942 AC 154 : (1941) 2 All ER 165 (HL)]] *This rule is derived from the Roman law, and is supportable not only upon the ground of fairness, but also upon that of the greater practical difficulty which is involved in proving a negative than in proving an affirmative [Halsbury's Laws of England, 3rd Edn., Vol. 15, Para 488]."*

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

35. Learned counsel would further submit that, in ***Nusli Neville Wadia*** *(supra)*, particularly in Paragraph Nos. 45 and 46 thereof, the Hon'ble Supreme Court has also recognised the right of the noticee to an effective opportunity to meet the case set up against him, including the right to cross-examine the witnesses of the authority and to lead evidence in rebuttal. It would be contended that, in the present case, the Estate Officer relied upon the statement of Sh. Abdul Dayyan, the then Assistant Director (Property), and upon the reports of Sh. Mahender Singh, Surveyor, and Sh. H.C. Bachani, Survey Officer, none of whom was offered for cross-examination by the Petitioners. The Respondents, according to learned counsel, thus failed to discharge the burden which lay upon them, and the finding of unauthorised occupation, returned in the teeth of the law laid down in ***Nusli Neville Wadia*** *(supra)*, cannot be sustained. The relevant portions of the said Judgment, as relied upon, read as under:

> "**Natural justice issue**
>
> **45.** If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the right to cross-examine the witness. This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right. (See K.L. Tripathi v. SBI [(1984) 1 SCC 43 : 1984 SCC (L&S) 62] and Lakshman Exports Ltd. v. CCE [(2005) 10 SCC 634] .)
>
> **46.** We may also take note of the fact that this Court in Bareilly Electricity Supply Co. Ltd. v. Workmen [(1971) 2 SCC 617 : (1972) 1 SCR 241] this Court held as under: (SCC p. 629, para 14)
>
> > "14. … the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used."

36. It would also be submitted that the proceedings initiated by the

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

Section 4 Notice were abandoned midway, which itself leads to the inference that the Petitioners were not in unauthorised occupation of the Subject Premises.

37. On the aspect of limitation, learned counsel would submit that the demand, even as modified by the learned Appellate Authority so as to operate from 05.04.2000, is barred by limitation insofar as it relates to the period beyond three years preceding the Show Cause Notice. Relying upon the Judgment of a Division Bench of this Court in ***G.R. Gupta v. Lok Sabha Secretariat***[16], it would be contended that the **Limitation Act, 1963**[17] applies to proceedings under Section 7 of the PP Act, and that the extended period of thirty years under Article 112 of the Schedule to the Limitation Act is available only to the Central Government or a State Government, and not to a statutory authority. It would further be submitted that limitation, being a pure question of law, can be raised at any stage of the proceedings.

38. In light of the foregoing submissions, learned counsel appearing on behalf of the Petitioners would urge that the Impugned Order, as also the Order of the Estate Officer be set aside.

39. The challenge to the Impugned Order and the Order of the Estate Officer were confined to these aforementioned grounds. No other submissions were advanced by learned counsel appearing on behalf of the Petitioners.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

40. Learned counsel appearing on behalf of the Respondents would submit that the present Petition is wholly misconceived. It would be submitted that the licence in respect of the Subject Premises was

[16] 2013 SCC OnLine Del 4832
[17] Limitation Act

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

cancelled by the Cancellation Order, on the grounds that the portion bearing No. 4623, which alone had been licensed to late Sh. Lekh Raj, and that too for residential use, was being misused for commercial purposes, and that the portions bearing Nos. 4622 and 4624 were in his unauthorised occupation. It would be submitted that the Petitioners themselves admitted, in their Reply dated 10.11.1993, that the property appeared to be residential, and that the finding of misuser has attained finality, the Petitioners having unsuccessfully carried the matter up to the Hon'ble Supreme Court.

41. Learned counsel would submit that, pursuant to the Section 4 Notice, the then Estate Officer, *vide* the Order dated 20.03.2001, after considering the reply of the Petitioners, found no defect in the cancellation of the licence, held that the Petitioners had failed to show that the portions bearing Nos. 4622 and 4624 were ever allotted to their father or that the portion bearing No. 4623 was allotted for commercial purposes, and directed them to approach the O.S.D. (Property) for assessment of damages as per the policy of the Department. It would be contended that the Petitioners never complied with the said direction, as a consequence of which the matter was referred to the Estate Officer on 04.03.2010, culminating in the Order of the Estate Officer. Learned counsel would submit that the proceedings for eviction have not been abandoned, and that the Respondents are taking steps for their revival.

42. Learned counsel would further submit that the mere mention of the expression *"arrears of rent"* in the Show Cause Notice does not alter the status of the Petitioners, who became unauthorised occupants upon the cancellation of their licence. It would be contended that the demand or acceptance of any amount towards use and occupation does

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

not confer upon an unauthorised occupant any right to remain in public premises. Reliance in this regard would be placed upon the Judgments of the Hon'ble Supreme Court in ***Sarup Singh Gupta v. S. Jagdish Singh***[18] and ***Delhi Development Authority v. Anant Raj Agencies (P) Ltd.***[19]. It would also be submitted that Resolution No. 396 dated 25.10.2004 merely provides a measure for the calculation of damages and confers no right upon an unauthorised occupant to continue in occupation.

43. Adverting to the reliance placed by the Petitioners upon ***Nusli Neville Wadia*** *(supra)*, learned counsel would submit that the said decision is clearly distinguishable. It would be submitted that the said decision arose out of proceedings for the eviction of tenants who had been lawfully inducted and whose tenancies had been terminated by a public sector insurance company, and that the question which fell for consideration was as to which party ought to lead evidence first where the case of the public authority rests upon grounds which are required to be established by evidence. It would be contended that the Hon'ble Supreme Court, even while placing the initial burden upon the public authority in such cases, reiterated that the proceedings before the Estate Officer are summary in nature, that the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not apply thereto, and that any requirement as to the order in which evidence is to be led can be waived.

44. Learned counsel would submit that, in the present case, the status of the Petitioners as unauthorised occupants does not depend upon any disputed question of fact requiring oral evidence, but flows

[18] (2006) 4 SCC 205
[19] (2016) 11 SCC 406

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

from the Cancellation Order, which has never been set aside, and that the question of unauthorised occupation stood adjudicated by the Order dated 20.03.2001 after notice to the Petitioners and consideration of their reply, the challenge whereto was withdrawn by them. It would further be submitted that the case of the Respondents rests upon the official record, that the Petitioners never denied the area or the user of the Subject Premises before the Estate Officer, and that they never sought to cross-examine any person. No prejudice, according to learned counsel, has thus been caused to the Petitioners, and *Nusli Neville Wadia (supra)* has no application.

45. On the aspect of limitation, learned counsel would submit that no such plea was raised either before the Estate Officer or before the learned Appellate Authority, and that the Petitioners are, therefore, precluded from raising the same for the first time in the present proceedings, more so when such a plea, if raised at the appropriate stage, could have been met by the Respondents by leading evidence. It would further be submitted that DUSIB came into being on 01.07.2010, that the Show Cause Notice was issued within three years thereof, and that the period prior thereto is governed by Article 112 of the Schedule to the Limitation Act. Learned counsel would also submit that, under Section 14 of the PP Act, the amounts due are recoverable as arrears of land revenue.

46. No other submissions were advanced by learned counsel appearing on behalf of the Respondents.

ANALYSIS:

47. This Court has heard learned counsel for the parties and, with their able assistance, perused the material available on record.

48. At the outset, it is necessary to note that, for clarity and

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

convenience, the ensuing analysis and discussion are arranged hereinafter under separate headings corresponding to the principal issues addressed. The said headings are merely intended to facilitate the orderly appreciation of the reasoning and are not to be construed as creating isolated compartments between the issues. The Judgment is to be read as a whole, and the findings recorded under each heading shall be understood in the context of, and in conjunction with, the findings and reasoning contained in the other parts of the Judgment.

Scope of Jurisdiction

49. Before proceeding to examine the grounds of challenge urged on behalf of the Petitioners, it would be apposite to advert to the scope of the jurisdiction which this Court is called upon to exercise. The PP Act provides a self-contained mechanism for adjudication. An order passed by the Estate Officer under Section 7 is appealable, under Section 9, to the Appellate Authority, and, by virtue of Section 10, the order made in such appeal is final. No further appeal or revision is provided.

50. The present Petition, therefore, invokes the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, which is supervisory in nature and cannot be equated with a second appeal. The contours of the said jurisdiction are well settled. The Hon'ble Supreme Court, in ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[20], and, more recently, in ***Garment Craft v. Prakash Chand Goel***[21], has held that, in exercise of such jurisdiction, the High Court does not act as a Court of first appeal to re-appreciate or re-weigh the evidence or the facts upon which the determination under challenge is

[20] (2010) 8 SCC 329
[21] (2022) 4 SCC 181

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

based, nor does it correct every error of fact, or even of law, where the final finding is justified or can be supported.

51. Interference is warranted where the authority below has acted without jurisdiction or in excess of it, has failed to exercise a jurisdiction vested in it, has acted in violation of the principles of natural justice resulting in prejudice, or has returned a finding which is perverse or suffers from an error apparent on the face of the record, resulting in manifest injustice. It is within the aforesaid limited parameters that the grounds urged on behalf of the Petitioners are required to be examined.

Grounds of Challenge for Determination

52. At this juncture, this Court deems it apposite to distil the grounds of challenge urged on behalf of the Petitioners. They may be enumerated as follows: (i) the effect of the Show Cause Notice having described the amount claimed as *"arrears of rent"*, whereas the Order of the Estate Officer assesses *"damages"* for unauthorised occupation; (ii) the challenge to the finding that the Petitioners are in unauthorised occupation of the Subject Premises, including the reliance placed upon ***Nusli Neville Wadia*** *(supra)* and the alleged abandonment of the proceedings under Section 4 of the PP Act; and (iii) the plea of limitation.

53. The aforesaid grounds, though interrelated in certain respects, arise from distinct factual and legal considerations. This Court shall, therefore, examine them in the sequence set out hereinabove.

Show Cause Notice for "arrears of rent" and Order for "damages"

54. The principal ground of challenge proceeds on the premise that the Show Cause Notice, having demanded *"arrears of rent"*, could not have culminated in an order assessing damages for unauthorised

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

occupation. In order to appreciate the said contention, it would be apposite to first advert to the statutory scheme. Section 2(g) of the PP Act defines *"unauthorised occupation"* as under:

> "**2. Definitions.**—In this Act, unless the context otherwise requires,—
> xxx xxx xxx
> (*g*) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."
>
> ***(Emphasis supplied)***

55. Further, this Court deems it appropriate to notice Section 7 of the PP Act as well. Section 7, as it stood at the relevant time, insofar as it is relevant for the present purpose, reads as under:

> "**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.
> (2-A) While making an order under sub-section (1) or sub-section (2), the estate 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, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978.
> (3) 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 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."
>
> ***(Emphasis supplied)***

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

56. A plain reading of the aforesaid provisions makes it manifest that a person who continues in occupation of public premises after the authority under which he was allowed to occupy the same has been determined is in unauthorised occupation thereof, and that the Estate Officer is empowered, under Section 7(2) of the PP Act, to assess damages on account of the use and occupation of the premises by such person. Further, the safeguard engrafted in Section 7(3) of the PP Act is two-fold, *namely*, a notice in writing calling upon the person concerned to show cause as to why such an order should not be made, and consideration of his objections and of the evidence, if any, produced by him.

57. The object of the said safeguard is evident. It is to ensure that the person against whom an order is proposed is made aware of the case which he is required to meet and is afforded a real opportunity to meet it. The question which, therefore, falls for consideration is not whether the Show Cause Notice is felicitously worded, but whether the Petitioners were, in substance, put to notice of the claim which was ultimately adjudicated against them, and whether any prejudice has been occasioned to them by the description of the said claim as one for *"arrears of rent"*.

58. The Show Cause Notice cannot, for this purpose, be read in isolation, divorced from the proceedings of which it formed a part. Those proceedings commenced with the Cancellation Order and the Section 4 Notice, and led to the Order dated 20.03.2001, the relevant portion of which reads as under:

> "The licences of the respondents have already been cancelled by the Competent Authority and seems no defect in it. The respondents failed to show that the remaining two properties i.e. property No. 4622/XII and 4624/XII were ever allotted to their father at any stage. They also failed to show that the property

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

No.4623/XII was allotted to their father for commercial purpose. The submission that the mutation of all the properties was done in their favour by the authority has no substance as on revelation of the facts, licences of the respondents were cancelled by the Competent Authority after affording them opportunity to show cause.

Keeping in view of the policy of the Department to charge damages from the unauthorized occupants, respondents are hereby directed to approach to the O.S.D. (Property) for assessment/calculation of damages of unauthorized occupation in the property as per policy of the Department within fifteen days of receipt of this order. He is also directed to file the copy of application filed before the O.S.D. (Property) to the undersigned within fifteen days of receipt of application to the O.S.D. (Property) failing which necessary order shall be passed in this matter."

(Emphasis supplied)

59. It is thus evident that, as far back as on 20.03.2001, the Petitioners had been held, after notice and upon consideration of their reply, to be in unauthorised occupation of the Subject Premises, and had been expressly told that damages for such unauthorised occupation were to be assessed as per the policy of the Department, and that, upon their failure to approach the O.S.D. (Property), *"necessary order shall be passed"*. However, the Petitioners chose not to comply with the said direction.

60. The Order of the Estate Officer records the circumstances in which the proceedings were thereafter taken up. The relevant portions thereof read as under:

"The case of Property No. 4022-24/XII, Katra Meena Begh, Roshnara Road, Delhi-7 was referred to my predecessor Estate Officer on 4.3.2010 for taking action under the PP Act,1971, as the defendants of the suit property had not complied with the order dated 20.3.2001 of the then Estate Officer(S)-III.

In this case the then Estate Officer has issued notice on 1.6.2010. to the respondents Sh. Om Prakash, sh. Chiranji Lal, Sh.Sita Ram & Sh. Nand Kishore all sons of Late Sh. Lekh Raj to appear before him to submit the reply as in spite of the order dated 20.3.2001 defendants had not approached to the Property section for assessment of damages.

xxx xxx xxx

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

> The licence of the Respondents had already been cancelled by the Competent Authority on 5.4.2000 and thereafter they became unauthorized occupants in the property and are liable to be evicted from the premises, however, since, there is policy of the department, which was approved by the Corporation vide Resolution NO.413 dated 15.10.2001 and Resolution No.396 dated 25.10.2004, to assess damages for unauthorized occupation from the unauthorized occupants, therefore, respondents are liable to pay damages for unauthorized occupation on the rates prescribed by the Corporation vide resolute No.396 dated 25.10.2004."
>
> ***(Emphasis supplied)***

61. The Show Cause Notice, which came to be issued in the aforesaid backdrop, reads as under:

> "WHEREAS, I the undersigned, am satisfied that you are in occupation of the Public Premises described in the Schedule below:
> AND WHEREAS, in exercise of the power conferred on me by sub-section Section(7) of the Public Premises (Eviction of the Unauthorized Occupants) Act, 1971, I consider that a sum of Rs.13,11,695.00 (Rs. Thirteen lacs, eleven thousand, six hundred ninety five only) @ Rs. 6,978.00 (Rs. Six thousand, nine hundred, seventy eight only) being arrears of rent from 1.4.1995 to 30.11.2010 (both days inclusive) in respect of the said premises is due and payable by you to the Government Statutory Authority.
> AND WHEREAS, in exercise of the powers conferred on me by the sub-section (2-A) of Section of 7 of the Public Premises (Eviction of the Unauthorised Occupants) Act, 1971, I consider that you are also liable to pay simple interest of the Government/Statutory Authority on the said arrears at the rate of determined by the undersigned till its final payment.
> Now, thereof, in the pursuance of sub-section(3) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants Act, 1971, I hereby call upon you to show cause on or before 15.12.2010 why an order requiring you to pay the said arrears of rent together with simple interest should not be made."
>
> ***(Emphasis supplied)***

62. It is true that the Show Cause Notice describes the amount claimed as *"arrears of rent"*, and that the Order of the Estate Officer, while narrating the background, inaccurately refers to the Show Cause Notice as one calling upon the Petitioners to show cause as to why an order requiring them to pay the said amount *"towards damages"* should not be made. The said infelicity in the Show Cause Notice, and

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

the inaccuracy in the narration, cannot be countenanced as a matter of good practice. The question, however, is whether they vitiate the Order of the Estate Officer. In the considered opinion of this Court, they do not, for the reasons which follow in the ensuing discussion.

63. *First*, the Show Cause Notice was not the commencement of a fresh proceeding founded upon a subsisting licence. It was issued in continuation of proceedings in which the licence already stood cancelled, the Petitioners already stood held to be unauthorised occupants, and a direction for assessment of damages for unauthorised occupation already stood issued and remained uncomplied with by the Petitioners themselves. The Petitioners were, therefore, at all times aware that what was being demanded from them were charges for their continued occupation of the Subject Premises after the cancellation of their licence.

64. *Second*, the Show Cause Notice itself left no room for doubt as to the nature of the demand. The licence fee in respect of the Subject Premises, as per the communication dated 06.02.1992 relied upon by the Petitioners themselves, was Rs. 42.56 per month. The Show Cause Notice, on the other hand, demanded a sum computed at the rate of Rs. 6,978/- per month. No person in the position of the Petitioners could have understood a demand at a rate more than one hundred and sixty times the licence fee to be a demand for the licence fee or the rent itself.

65. *Third*, and most significantly, the Petitioners did not, in fact, understand it as a demand for the licence fee or the rent. In their Reply dated 28.12.2010 to the Show Cause Notice, the Petitioners stated as under:

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

> "- That notice dated 03-12-2010/06-12-2010 (as received on 22-12-2010) is ex facie illegal and misconceived; the notice fails to consider that the noticees' have not been in arrears of rent qua subject premises till date;
> - That notice dated 03-12-2010/06-12-2010 (as received on 22-12-2010) would have been valid had the noticees' herein been in unauthorized occupation of subject premises which is yet to be determined;
> - That notice dated 03-12-2010/06-12-2010 (as received on 22-12-2010) fails to disclose the basis behind assessment of damages in the sum of Rs.13,11,695.00 (being rupees thirteen lac eleven thousand six hundred and ninety five only) at the rate of Rs. 6,978.00 (being rupees six thousand nine hundred and seventy eight only); Sub-section (2) of Section 7 of the Act makes it mandatory for the Estate Officer to disclose the principles of assessment of damages which has not been done; this failure is apparent on a bare perusal of the notice under reply; yet again, the period of unauthorized occupation is again vague and ambiguous to the hilt; the license admittedly has been determined sometime in the year 2000 whereas assessment undertaken with effect from 1995; the notice hence merits being set aside on this ground alone.
> In the above stated facts and circumstances, it is most respectfully prayed that notice and / or proceedings under reply may most kindly be quashed and / or recalled by the Learned Estate Officer. The noticees herein are not liable to pay damages in the sum of Rs.1311695.00 (being rupees thirteen lac eleven thousand six hundred and ninety five only) at the rate of Rs. 6,978.00 (being rupees six thousand nine hundred and seventy eight only)."
>
> ***(Emphasis supplied)***

66. The aforesaid Reply is self-speaking. The Petitioners understood the Show Cause Notice to be one for "*assessment of damages*" for a "*period of unauthorized occupation*", invoked Section 7(2) of the PP Act in terms, objected to the non-disclosure of the principles of assessment, objected to the period for which the assessment had been made, and prayed that they be held "*not liable to pay damages*". The same prayer was reiterated in their further Reply dated 07.12.2011, filed after the Estate Officer had afforded them a final opportunity. Having thus understood the case against them, and having answered it on that very footing, the Petitioners cannot now be heard to contend that they were never put to notice of a proposed

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

assessment of damages.

67. *Fourth*, the power of the Estate Officer to assess damages in respect of the unauthorised occupation of public premises is not in doubt; it is expressly conferred by Section 7(2) of the PP Act. It is well settled, as held by the Hon'ble Supreme Court in ***N. Mani v. Sangeetha Theatre***[22], that where an authority has the power under the law, the mere fact that the source of the power is not specifically referred to, or that a reference is made to a wrong provision of law, does not, by itself, vitiate the exercise of the power, so long as the power exists and can be traced to a source available in law. The erroneous description of the demand in the Show Cause Notice as one for *"arrears of rent"*, when the Estate Officer was, in substance and to the knowledge of the Petitioners, proposing to recover charges for unauthorised use and occupation, falls squarely within the said principle. The relevant portion of the said Judgment, being Paragraph No. 9, reads as under:

> "**9.** It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

68. *Fifth*, the requirement of a show cause notice is a facet of the principles of natural justice, and it is equally well settled that the said principles are not to be applied as an unbending formula. As held by the Hon'ble Supreme Court in ***State Bank of Patiala v. S.K. Sharma***[23], though in the context of disciplinary proceedings, a complaint of violation of a procedural safeguard is to be examined on

[22] (2004) 12 SCC 278
[23] (1996) 3 SCC 364

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

the touchstone of prejudice, and an order is not to be set aside for a procedural infraction which has caused no prejudice to the person complaining of it. The relevant portions of the said Judgment, being principles (3), (5) and (6) in Paragraph No. 33, read as under:

> "**33.** We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
>
> ***
>
> **(3)** In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

***

> **(5)** Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]
>
> **(6)** While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them."
>
> ***(Emphasis supplied)***

69. The present case is not one of *"no notice"*. The Petitioners had notice of the demand, of the rate at which it was computed and of the period to which it related; they filed two replies; and their objections were considered. The complaint, at its highest, is of a deficiency in the description of the demand, which is required to be examined from the standpoint of prejudice. No prejudice whatsoever is shown to have been caused to them.

70. The manner prescribed by Section 7(3) of the PP Act is the

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

issuance of a notice in writing to show cause and the consideration of the objections and the evidence of the noticee. That is precisely what was done. The statute does not render the exercise of the power under Section 7(2) of the PP Act dependent upon the nomenclature employed in the notice.

71. The related contention, that the demand of *"arrears of rent"* amounts to a recognition of the Petitioners as persons in authorised occupation, also does not merit acceptance. The status of the Petitioners is determined by the Cancellation Order, by which the authority under which they occupied the Subject Premises stood determined, and not by the label attached to the demand raised upon them a decade later. It is well settled, as held in ***Sarup Singh Gupta*** *(supra)*, that the mere acceptance of rent, after the determination of the right to occupy, does not, by itself, evince an intention to treat the occupation as authorised; such intention is a question of fact to be gathered from all the circumstances. A mere demand stands on no higher footing.

72. In ***Anant Raj Agencies*** *(supra)*, the Hon'ble Supreme Court held that the mere acceptance of amounts towards rent by a public authority, after the determination of a lease, cannot be construed as a renewal thereof. The relevant portion of the said Judgment, being Paragraph No. 27, reads as under:

> "**27.** The Transfer of Property Act, 1882 is a general law governing the landlord-and-tenant relationship in general. The specific Rent Control Acts are advancement over the Transfer of Property Act, thereby providing more protection to the tenant from arbitrary increase of rent and ejectment from the rented premises by the landlord. Thus, in the light of the aforesaid case law, it can be concluded that the Transfer of Property Act, 1882 is not applicable in respect of the public premises. The property in question is public premises by virtue of Section 2(e)(3)(ii) of the Public Premises

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

(Eviction of Unauthorised Occupants) Act, 1971, which is reproduced hereunder:

> "**2. (e) "public premises" means—**
>
> *******
>
> (3) in relation to the National Capital Territory of Delhi—
>
> ***
>
> (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;"

Therefore, in the instant case, as per Clause III(b) of the lease deed and Sections 21 and 22 of the DD Act read with Rule 43 of the Nazul Land Rules and in the light of Shanti Prasad Devi [Shanti Prasad Devi v. Shankar Mahto, (2005) 5 SCC 543] , Sarup Singh Gupta [Sarup Singh Gupta v. S. Jagdish Singh, (2006) 4 SCC 205] and Ashoka Mktg. Ltd. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406] cases, there cannot be an automatic renewal of lease in favour of the original lessee once it stands terminated by efflux of time and also by issuing notice terminating the lease. Merely accepting the amount towards the rent by the office of DDA after expiry of the lease period shall not be construed as renewal of lease of the premises in question, in favour of the original lessee, for another period of 20 years as contended by the respondent."

(Emphasis supplied)

73. The said principle applies with greater force to the present case, where the Respondents have accepted nothing, and are only alleged to have mis-described their demand as one for arrears of rent instead of damages. The Respondents had cancelled the licence, initiated proceedings under the PP Act, obtained an order directing assessment of damages and resisted every proceeding instituted by the Petitioners up to the Hon'ble Supreme Court. Their conduct evinces no intention whatsoever to treat the Petitioners as licensees. On the contrary, the record of the learned Appellate Authority reveals that when the Petitioners, in the year 2006, sought to tender the licence fee in respect of the Subject Premises for the period from the year 1992 onwards, the pay orders sent by them were returned by the Department on the

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

specific ground that the licence stood cancelled by the Cancellation Order. The contention that the Respondents continued to treat the Petitioners as persons liable to pay rent is, thus, belied by the record.

74. There is yet another aspect of the matter. The only real consequence which could have flowed from the anomaly in the Show Cause Notice was in respect of the period prior to 05.04.2000, during which the licence subsisted and for which no damages for unauthorised occupation could have been claimed. That anomaly was noticed by the learned Appellate Authority, which has confined the liability of the Petitioners to the period commencing from the date of the cancellation of the licence. The relevant portion of the Impugned Order reads as under:

> "**6.** Record reveals that property no.4623/XII was allotted to Sh. Lekh Raj, father of the appellants, for residential use and he also encroached upon property no. 4622/12 and 4624/12 which were not allotted to him. On 05.04.2000 the Deputy Commissioner had cancelled the license on the ground that appellants Om Prakash and others had changed the use of the properties from residential to commercial. Since the appellants are unauthorized occupants, they have to pay damages. Notice under Section 7(3) of the P.P. Act was issued to the appellants on 03.12.2010 wherein arrears of rent to the tune of Rs.13,11,695/- at the rate of Rs.6,978/- being arrears of rent from 01.04.1995 to 30.11.2010 were claimed. The appellants are unauthorized occupants, they have to pay damages and mere mention of the word "arrears of rent" instead of damages in the notice under Section 7 of the PP Act does not make any difference. The contention of the appellants that Estate Officer is the same person who has cancelled licence of the appellants does not affect the present case as at the relevant time he was discharging his duties as Dy. Commissioner and thereafter duty of Estate Officer was assigned to him. In the impugned order, policy of the department with regard to rate of damages have been specifically dealt with. However, the damages have been claimed with effect from 01.04.1995.
>
> **7.** It is not in dispute that the license of the appellants had been cancelled way back on 05.04.2000 and thus the department can legally claim damages only with effect from the date of cancellation of license i.e. 05.04.2000 and not prior thereto @ Rs.6,978/- as claimed in the notice dated 03.12.2010. Since the appellants are unauthorized occupants in respect of the premises in

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

> question, they are liable to pay the damages only from the date of cancellation of their license i.e. 05.04.2000 @ Rs.6,978/- per month till final payment is made. Since interest @ 18% has been awarded, which in my view is on the higher side. Accordingly, appellants are also liable to pay simple interest @ 12% per annum on the amount payable by them."
>
> ***(Emphasis supplied)***

75. The conclusion of the learned Appellate Authority, that the mention of the expression *"arrears of rent"* in the Show Cause Notice does not make any difference, though briefly stated, is, for the reasons set out hereinabove, the correct conclusion on the facts of the present case. The learned Appellate Authority has also granted to the Petitioners the only relief to which the anomaly in the Show Cause Notice could legitimately have entitled them.

76. Therefore, the *first*, and the primary, ground of challenge sought to be raised on behalf of the Petitioners does not merit acceptance and is, accordingly, rejected.

Finding of unauthorised occupation and the reliance upon Nusli Neville Wadia (supra)

77. Adverting to the *second* ground of challenge, it is contended that the finding that the Petitioners are in unauthorised occupation of the Subject Premises is without foundation, inasmuch as it rests upon the report of the Managing Officer (Evacuee Property Cell) dated 29.10.1991, and that the Cancellation Order is itself arbitrary and illegal. Considerable emphasis has been laid, in this regard, upon the decision of the Hon'ble Supreme Court in ***Nusli Neville Wadia*** *(supra)*.

78. In ***Nusli Neville Wadia*** *(supra)*, the respondent was a tenant in a building which had been acquired by a public sector insurance company. The tenancy was terminated, and proceedings were initiated

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

before the Estate Officer under the PP Act for eviction as well as for damages. The Estate Officer called upon the tenant to lead his evidence first. The High Court held that it was for the insurance company to lead its evidence first, and the Hon'ble Supreme Court declined to interfere with the said view.

79. The Hon'ble Supreme Court held that a public authority, though exempt from the rigours of the rent control legislation, is required to act fairly and reasonably in seeking the eviction of its tenants; that, although the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not, as such, apply to the proceedings before the Estate Officer, the principles of natural justice are required to be complied with; that the noticee is entitled to an effective opportunity to show cause, to inspect the documents relied upon against him and to cross-examine the witnesses examined on behalf of the authority.

80. The Hon'ble Supreme Court further held that, where the case of the authority for eviction rests upon grounds which are required to be established by it, the principle underlying Section 101 of the Indian Evidence Act, 1872 would require the authority to adduce its evidence first. The Hon'ble Supreme Court, at the same time, emphasised that the proceedings before the Estate Officer are summary in nature and are required to be concluded expeditiously.

81. There can be no quarrel with the principles so enunciated. This Court is, however, unable to accept that they advance the case of the Petitioners in the facts of the present case, for more than one reason.

82. In the *first* place, ***Nusli Neville Wadia*** *(supra)* was concerned with the manner in which a contested question, on which the right of the authority to evict depended, was to be tried before the Estate

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

Officer. In the present case, the status of the Petitioners does not depend upon any such contested question remaining to be tried. In terms of Section 2(g) of the PP Act, a person who continues in occupation of public premises after the authority under which he was allowed to occupy the same "*has been determined for any reason whatsoever*" is in unauthorised occupation thereof. That the licence of the Petitioners was determined by the Cancellation Order is not in dispute; the Petitioners, thus, fall squarely within the said definition.

83. The endeavour of the Petitioners, in substance, is to question the correctness of the Cancellation Order itself, by contending that the Subject Premises had been licensed to their father in their entirety and for commercial use. That question, however, in the considered view of this Court, is no longer open to the Petitioners.

84. The Cancellation Order was passed by the competent authority after a notice to show cause and a hearing. The challenge laid to it in the Writ Petition, being W.P.(C) 6992/2001, was withdrawn. The First Suit was dismissed with a finding that the premises had been allotted for residential purposes, and the Appeal there-against was dismissed as barred by limitation. The Second Suit, in which the Cancellation Order was directly assailed, has also been dismissed, and the Appeal preferred there-against was likewise dismissed as barred by limitation. The Cancellation Order and the Order dated 20.03.2001 have, thus, not been stayed or set aside in any proceeding.

85. This Court, in the Petition, being CM(M) 89/2004, has already taken the view, albeit while declining interim relief, that the finding as to the residential nature of the allotment and its commercial misuser, not having been challenged, had attained finality, and the Civil Appeal preferred there-against was dismissed by the Hon'ble Supreme Court

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

as well.

86. In view of the foregoing facts, this Court is of the considered view that the Petitioners cannot, now in a challenge to an order assessing damages, be permitted to reopen a cancellation which they have unsuccessfully assailed, in one proceeding after another, for over two decades.

87. In the *second* place, the question as to whether the Petitioners were in unauthorised occupation was not decided for the first time by the Order of the Estate Officer on the basis of the report dated 29.10.1991. It had been decided by the Order dated 20.03.2001, after the Section 4 Notice, the reply of the Petitioners dated 18.08.2000 and the reply of the Department had been considered. The Petitioners were, therefore, heard on the very question on which they now claim to have been condemned without evidence, and the finding returned against them has remained undisturbed. The burden which lay upon the Respondents, on the principle underlying Section 101 of the Indian Evidence Act, 1872, thus stood discharged by the Cancellation Order and the Order dated 20.03.2001, and it was thereafter for the Petitioners to show the authority under which they continued in occupation.

88. In the *third* place, the grievance that the Petitioners were denied an opportunity to cross-examine the Assistant Director (Property) and the officials of the Survey Division is not borne out by the record. Nothing has been shown to this Court to indicate that the Petitioners, at any stage of the proceedings before the Estate Officer, sought to cross-examine any person or to lead any evidence in rebuttal. The Replies dated 28.12.2010 and 07.12.2011 contain no such request. The Order of the Estate Officer, on the other hand, specifically records

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

that the Petitioners had not denied the area or the user of the Subject Premises in any of their Replies.

89. The right to cross-examine, recognised in ***Nusli Neville Wadia (supra)***, is a right to be afforded such opportunity where it is sought; it does not cast an obligation upon the Estate Officer to conduct a trial on matters which are not put in issue by the noticee. The requirement of cross-examination, as the passage relied upon by the Petitioners itself indicates, is attracted where material is relied upon to establish a contested fact; the area and the user of the Subject Premises were not contested by the Petitioners. The statement of the Assistant Director (Property), moreover, did no more than place before the Estate Officer the contents of the official record, including the Cancellation Order and the Order dated 20.03.2001, with which the Petitioners were fully conversant. No prejudice, therefore, is shown to have been caused to the Petitioners on this count either.

90. Further, the contention that the proceedings under Section 4 of the PP Act were abandoned midway, and that the same leads to an inference that the Petitioners were not in unauthorised occupation, is equally devoid of merit.

91. The said proceedings were not abandoned; they resulted in the Order dated 20.03.2001, by which the Petitioners were held to be unauthorised occupants and were directed to have the damages assessed. The fact that no order of eviction has, as yet, been passed against the Petitioners does not clothe their occupation with any authority. As held by the Division Bench of this Court in ***G.R. Gupta (supra)***, the failure of the authority to initiate eviction proceedings does not confer any right upon the occupant to continue in occupation of public premises; and the same would apply, *a fortiori*, where such

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

proceedings have been initiated but not carried to a conclusion.

92. In view of the foregoing, the *second* ground of challenge also does not inspire the confidence of this Court and is, accordingly, rejected.

Plea of Limitation

93. Adverting to the *third* ground of challenge, it is contended that the claim for damages, insofar as it relates to the period beyond three years preceding the Show Cause Notice, is barred by limitation. Reliance in this regard is placed upon the decision of the Division Bench of this Court in ***G.R. Gupta*** *(supra)*, the relevant portions whereof read as under:

> "**24.** 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* v. *Kalu Ram* (supra) has held as under : -
>
> > "…… 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 Mussorie Electric Tramway Company Ltd. (1) that this meant moneys due and recoverable in 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 its 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."

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

> xxx xxx xxx
> **27.** Even though we have held that the Act, 1963 applies to proceedings under the PP Act, 1971, yet the question that arises for consideration is whether the right to claim damages under Section 7(2) of the PP Act, 1971, was barred on the date the proceedings were initiated by the Lok Sabha Secretariat.
> xxx xxx xxx
> **29.** 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. In fact, in The *Union of India* v. *The District Judge Amritsar*, 1985 P.L.J. (67) 120 (Punjab & Haryana High Court) it has been held that "*The damages are being recovered in the present case by the Estate Officer on behalf of the Central Government. Therefore, under Section 7 of the Act damages for a period of 30 years prior to the initiation of proceedings under the said provision could be claimed and recovered.*" Consequently, as the proceedings for recovery of damages for the period 01st January, 1994 to 27th September, 2001 had been filed in 2001 i.e. within 30 years of cause of action having arisen, the respondent's claim for damages was within limitation."
>
> ***(Emphasis supplied)***

94. The proposition that the law of limitation applies to proceedings under Section 7 of the PP Act is, thus, not in doubt. The plea of the Petitioners, however, cannot be accepted.

95. The plea of limitation was not raised by the Petitioners in their Replies before the Estate Officer. It does not find place in the memorandum of the Appeal preferred before the learned Appellate Authority, and the Impugned Order does not record any such submission. It was not raised even in the present Petition as originally filed, and has been urged for the first time by way of Additional Written Submissions, several years after the institution of the present Petition.

96. The contention that a plea of limitation, being a pure question of law, can be raised at any stage, is too broadly stated. As held by the Hon'ble Supreme Court in ***Ramesh B. Desai v. Bipin Vadilal***

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

Mehta[24], a plea of limitation cannot be decided as an abstract principle of law divorced from facts, since, in every case, the starting point of limitation has to be ascertained, which is entirely a question of fact; a plea of limitation is a mixed question of law and fact. The relevant portion of the said Judgment, being Paragraph No. 19, though rendered in the context of Order VII Rule 11 of the Code of Civil Procedure, 1908, reads as under:

> "**19.** A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words "barred by law" occurring in Order 7 Rule 11(*d*) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in *Balasaria Construction (P) Ltd.* v. *Hanuman Seva Trust* [(2006) 5 SCC 658, below] it was held: (SCC p. 661, para 8)
>
> > "*8.* After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(*d*) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time."
>
> This principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(*d*) CPC."
>
> ***(Emphasis supplied)***

97. To the same effect is the decision of the Hon'ble Supreme Court in ***Kamlesh Babu v. Lajpat Rai Sharma***[25]. The Hon'ble Supreme Court, in that case, did permit the plea of limitation to be urged, though it had not been taken before the appellate courts, and noticed that a point of limitation is *prima facie* admissible even in the

[24] (2006) 5 SCC 638
[25] (2008) 12 SCC 577

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

court of last resort. It did so, however, because the plea had been raised in the written statement and decided upon by the learned Trial Court, and the factual foundation for it was, thus, already on record. The proposition that a plea of limitation which is a mixed question of law and fact cannot be raised at the appellate stage was, at the same time, expressly affirmed. The relevant portions of the said Judgment read as under:

> "**21.** It is no doubt true, as was pointed out by this Court in *Balasaria Construction (P) Ltd.* and also in *Narne Rama Murthy case*, that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the appellate stage. We have no problem with the said proposition of law. What we are concerned with is whether the said proposition is applicable to the facts of this case. In this case the plea of limitation had been raised in the written statement and though no specific issue was framed in respect thereof, a decision was given thereupon by the learned trial court.
>
> **22.** Apart from Section 3(1) of the Limitation Act, even Order 7 Rule 11(*d*) of the Code of Civil Procedure casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation. Further, as far back as in 1943, the Privy Council in *Lachhmi Sewak Sahu* v. *Ram Rup Sahu* held that a point of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the lower courts.
>
> **23.** The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very root of the court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial court but was not reversed by the first appellate court or the High Court while reversing the decision of the trial court on the issues framed in the suit. …"
>
> ***(Emphasis supplied)***

98. This Court is not unmindful of the mandate of Section 3 of the Limitation Act, sub-section (1) whereof reads as under:

> "**3. Bar of limitation.**—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred,

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

> and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

99. The nature of the said obligation was explained by the Hon'ble Supreme Court in ***Kamlesh Babu*** *(supra)* in the following terms:

> "**17.** It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence."
>
> ***(Emphasis supplied)***

100. The said duty, however, operates upon facts which are not in dispute. The Hon'ble Supreme Court, in ***Union of India v. British India Corporation Ltd.***[26], while holding that limitation is a mandate to the forum, which must be considered and applied irrespective of whether it was raised or not, was careful to qualify the said proposition by the words *"if there is no dispute on facts"*. The relevant portion of the said Judgment reads as under:

> "**7.** As to the first point, the question of limitation is a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it, if there is no dispute on facts. Section 50 of the 1922 Act, as modified by Rule 4-A, is a provision of the statute which was required to be applied by the High Court at the time of considering the relief, if any, to be granted in the writ petition. The claim being barred by time, the writ petition could not have been allowed nor could any relief be granted. The first contention, therefore, fails."
>
> ***(Emphasis supplied)***

101. The obligation under Section 3 of the Limitation Act, therefore, does not dispense with the requirement of a factual foundation. Where the bar is apparent from facts which are admitted, or which appear on the face of the record, the forum is bound to give effect to it, whether or not it has been pleaded. Where, however, the applicability of the bar depends upon facts which are in dispute, or which have never been

[26] (2003) 9 SCC 505

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

brought on record, the plea partakes of the character of a mixed question of law and fact, and must be raised at the stage at which such facts can be pleaded and proved. The question, therefore, is whether, in the present case, the bar of limitation was apparent on undisputed facts.

102. Tested on the said touchstone, the plea of the Petitioners does not rest upon undisputed facts. In the first place, the very starting point of limitation is not free from doubt. In ***G.R. Gupta*** *(supra)*, the Division Bench of this Court tested the bar of limitation with reference to the date on which the proceedings for recovery under Section 7 of the PP Act were initiated. In the present case, the earlier proceedings, which commenced with the Section 4 Notice and led to the Order dated 20.03.2001, were proceedings for eviction, though the said Order also directed the Petitioners to have the damages for their unauthorised occupation assessed. The matter was, thereafter, referred to the Estate Officer on 04.03.2010 for taking action under the PP Act, the Notice dated 01.06.2010 was issued to the Petitioners, and the Show Cause Notice under Section 7(3) of the PP Act followed on 03.12.2010/06.12.2010. The Petitioners compute the period of limitation from the Show Cause Notice. Whether the proceedings for recovery are to be regarded as having been initiated on the date of the Show Cause Notice, or on the reference dated 04.03.2010, or on the Notice dated 01.06.2010, and whether the direction contained in the Order dated 20.03.2001 has any bearing upon the matter, are questions which turn upon the record of the proceedings, and none of them was ever put to the Estate Officer.

103. Be that as it may, each of the said dates falls in the year 2010. On any of them, the liability to pay damages for use and occupation

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

being one which accrues for so long as the unauthorised occupation continues, the claim for the period of three years immediately preceding the initiation of the proceedings under Section 7 of the PP Act, and for the entire period thereafter, is within time. The plea of the Petitioners, as urged, is itself confined to the period anterior thereto. The plea, even if it were to be entertained, would thus not go against the core of the Order of the Estate Officer or of the Impugned Order, and could, at the highest, affect a part of the period for which damages have been awarded.

104. In the second place, insofar as the period from 05.04.2000 up to the commencement of the said three years is concerned, the answer would depend upon whether the claim is one to which Article 112 of the Schedule to the Limitation Act applies. As noticed in ***G.R. Gupta*** *(supra)*, the extended period of thirty years is available where the recovery is sought by or on behalf of the Central Government or a State Government, and not where a statutory authority seeks recovery in its own right. The Subject Premises are stated to be evacuee property transferred by the Ministry of Rehabilitation, Government of India, to the Slum Department in the year 1956, and have since been managed, successively, by the Delhi Development Authority, the Municipal Corporation of Delhi and DUSIB. It is the stand of the Respondents that the period prior to 01.07.2010, on which date DUSIB came into being, is governed by Article 112 of the Limitation Act.

105. Whether, during the said period, the Subject Premises continued to vest in the Government, with the Respondents and their predecessors managing the same and recovering the dues on its behalf, or whether they stood vested in the statutory authority itself, is a

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

question of fact, which turns upon the terms of the said transfer and the records of the Department. Significantly, the pleadings contain no averment as to the person or authority in whom the Subject Premises vested during the period from 05.04.2000 till DUSIB came into being on 01.07.2010, or as to the capacity in which the dues for that period were being claimed.

106. The Respondents, in their Counter Affidavit, have confined themselves to the assertion that the said period is governed by Article 112 of the Schedule to the Limitation Act, while the Petitioners, in their Additional Written Submissions, have contended to the contrary on the strength of ***G.R. Gupta*** *(supra)*. Beyond the bare statement, found in the Order of the Estate Officer and in the Petition, that the Subject Premises were transferred by the Ministry of Rehabilitation to the Slum Department in the year 1956, and the stand of the Municipal Corporation of Delhi, recorded in the Judgment dated 16.01.2002 in the First Suit, that the Subject Premises, previously under the control and management of the Slum and J.J. Department of the Delhi Development Authority, stood transferred with effect from 01.09.1992 *"to the MCD and Union of India"*, no material has been placed on record to show the terms of such transfers, or the capacity in which the Respondents, or their predecessors, held and managed the Subject Premises thereafter.

107. In the third place, the effect, if any, upon the computation of limitation, of the Order dated 20.03.2001, by which the Petitioners were directed to have the damages for their unauthorised occupation assessed, and of the stand taken by the Petitioners in the proceedings which followed, is a matter which could have been gone into only upon the plea being raised. None of these aspects has been examined

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

by either of the authorities below, for the simple reason that no such plea was ever urged before them.

108. It is in this backdrop that the obligation under Section 3 of the Limitation Act is to be viewed. Even proceeding on the footing that a like obligation rested upon the Estate Officer, in view of the principle, noticed in ***G.R. Gupta*** *(supra)*, that the amount payable under Section 7 of the PP Act must be one which is legally recoverable, the Estate Officer, in the discharge of his quasi-judicial function, could have given effect to the bar of his own accord only if it were apparent from the record before him. It was not. The Petitioners, in their Replies, did not dispute the claim on the ground of limitation, and the Respondents, consequently, had no occasion to place on record the material bearing upon the date of initiation of the proceedings, the capacity in which the claim was being made, or the effect of the Order dated 20.03.2001. In the absence of such material, the Estate Officer could not have determined, of his own accord, whether the period of limitation applicable to the claim was three years or thirty years, or the date from which it was to be reckoned. The position before the learned Appellate Authority was no different. The bar of limitation was, therefore, not one which was apparent on undisputed facts, and the plea, in the present case, is a mixed question of law and fact, and not a pure question of law which could be raised at any stage.

109. The aforesaid aspects are matters upon which the Respondents were entitled to an opportunity to place their material before the fact-finding authorities. A party who did not raise such a plea before either of the authorities below cannot be permitted to raise it for the first time in proceedings under Articles 226 and 227 of the Constitution of India, and the Impugned Order cannot be said to suffer from any error

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

for not having dealt with a plea which was never urged. The said jurisdiction is, moreover, discretionary, and this Court is not inclined to exercise it in aid of a belated plea raised by parties who, having been directed as far back as on 20.03.2001 to have the damages assessed, did not comply with the said direction and have continued in occupation of the Subject Premises throughout.

110. This Court, accordingly, declines to entertain the plea of limitation, and expresses no opinion on the applicability of Article 112 of the Schedule to the Limitation Act to the claim of the Respondents. The third ground of challenge, therefore, fails.

CONCLUSION:

111. On an overall consideration of the matter, this Court finds that the Petitioners, whose licence in respect of the Subject Premises stood cancelled on 05.04.2000, have continued in occupation thereof for over two decades thereafter. The direction issued to them as far back as on 20.03.2001 to have the damages assessed was not complied with. The proceedings which followed afforded them due notice and adequate opportunity, of which they availed.

112. The infirmity in the wording of the Show Cause Notice, upon which the principal challenge is founded, has caused no prejudice to the Petitioners, and the only consequence which could legitimately flow therefrom has already been addressed by the learned Appellate Authority by confining the liability to the period subsequent to the cancellation of the licence.

113. The decision in ***Nusli Neville Wadia*** *(supra)* also does not assist the Petitioners, the question of their status being governed by the Cancellation Order and the Order dated 20.03.2001, which have remained undisturbed. The plea of limitation, raised for the first time

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07

before this Court and dependent upon facts which were never placed before the authorities below, cannot be entertained.

114. In view of the foregoing discussion, this Court finds no jurisdictional error, violation of the principles of natural justice, perversity or error apparent on the face of the record in the Impugned Order or the Order of the Estate Officer, warranting interference in exercise of the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

DECISION:

115. Accordingly, the present Petition, being *sans* merit, is dismissed. The Impugned Order, and the Order of the Estate Officer as modified thereby, are upheld.

116. The amounts deposited by the Petitioners pursuant to the orders passed by the learned Appellate Authority and by this Court shall be adjusted towards the amount payable by them in terms of the Impugned Order, and the Respondents shall be at liberty to recover the balance amount, if any, in accordance with law.

117. The present Petition, along with pending Application(s), if any, stands disposed of in the aforementioned terms.

118. There shall be no Order as to the Costs.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 21, 2026/DJ

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:12:07