

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

Judgment reserved on: 01.06.2022

Date of decision: 13.07.2022

+ W.P.(C) No. 10445/2021 & CM APPL. 32109/2021

**DELHI TOURISM & TRANSPORTATION DEVELOPMENT
CORPORATION LTD**

..... Petitioner

Through: Mr. Parvinder Chauhan & Mr. Sushil
Dixit, Advocates.

Versus

BAREFOOT HOLIDAYS INDIA PVT LTD

..... Respondent

Through: Mr. Avadh Kaushik, Advocate.

**CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA**

JUDGMENT

ANU MALHOTRA, J

1. The petitioner i.e., Delhi Tourism and Transportation Development Corporation Ltd. (hereinafter referred to as DTTDC), vide the present petition seeks the setting aside of the impugned order dated 24.08.2021 of the Court of the Principal District & Sessions Judge (North), Rohini Courts, Delhi in PPA No.11/2020 whereby, an application filed by the respondent herein i.e. M/s Barefoot Holidays India Pvt. Ltd. (hereinafter referred to as M/s Barefoot) arrayed as the appellant to PPA No.11/2020 under Section 9(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 seeking

condonation of nine (9) days delay in filing the said appeal against the order dated 19.11.2019 in Eviction Petition No.8/2019 of the Estate Officer, DTTDC was allowed with it having been prayed by the petitioner that the said PPA No.11/2020 filed by the respondent before the District & Sessions Judge (North), Rohini Courts, Delhi,- be rejected and dismissed as being barred by limitation.

2. Notice of the petition was issued to the respondent.

3. Reply to the writ petition was submitted by the respondent with written submissions also having been submitted on behalf of either side with a catena of verdicts having been relied upon *inter se*. Oral submissions were also made on behalf of either side by their respective learned counsel.

4. Vide order dated 19.11.2019 in Eviction Petition No.8/2019 filed by the DTTDC against the respondent thereto who is also arrayed as the respondent to the present petition i.e. M/s Barefoot filed under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and in terms of Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the respondent i.e. M/s Barefoot was directed to pay to the petitioner a sum of Rs.27,85,189/- forthwith on account of an outstanding amount in respect of Annual Concession Fees, damages on account of unauthorized use and occupation of the premises, property tax, water & electricity charges, tax liability upto 31.05.2018 besides interest 10% per annum on the aforesaid amount from the date of filing of the petition i.e. 21.06.2019 till realization to the petitioner and it was directed that in the event of refusal or failure on the part of the

respondent M/s Barefoot Holidays India Pvt. Ltd. to pay the amount as detailed in Para (a) above within a period of 07 days or in the manner aforesaid, the amount would be recovered as an arrears of land revenue, in as much as it was held vide the said order that the Estate Officer, DTTDC was satisfied that the petitioner, DTTDC Ltd. had been able to establish that the respondent had failed to pay Rs.27,85,189/- with respect to the public premises i.e. Food Plaza and Kiosks and open area at Guru Teg Bahadur Memorial, Delhi.

5. Vide this order dated 19.11.2019 which was assailed in PPA No.11/2020 by M/s Barefoot i.e. the respondent herein, it was observed to the effect:-

“Order may be communicated by the official email ID and Speed Post.”

6. In terms of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, an appeal against an order of the Estate Officer, DTTDC made in respect of any public premises under Section 5 or 5(B) or Section 5(C) or Section (7) (as is in the instant case), in as much as, the order dated 19.11.2019 which forms the subject matter of PPA No.11/2020 was one under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, to an Appellate Officer who has to be the District Judge of the District in which the public premises are situated or such other judicial officers in that district of not less than 10 years standing as the District Judge being designated in that behalf,- has in terms of Section 9(2)(b) thereof to be filed within 12 days from the date on which the order is communicated to the appellant and in terms of the proviso to Section

9(2) of the said enactment, the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there were compelling reasons which prevented the person from filing the appeal in time.

7. The respondent herein preferred the appeal i.e. PPA No.11/2020 to the District & Sessions Judge (North), Rohini, Delhi against the order dated 19.11.2019 of the Estate Officer, DTTDC under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 25.09.2020 submitting to the effect that the respondent had not been served with any notice nor with the copy of the petition of the proceedings conducted by the Estate Officer nor was the copy of the final order dated 19.11.2019 that was impugned in PPA No.11/2020 ever served on the respondent and the copy of the said order was served on the respondent only on 28.08.2020 along with a letter dated 26.08.2020, which was sent by the DTTDC Ltd. to a sister concern of the respondent namely M/s Fortune Grand Management Pvt. Ltd., wherein the Director in the respondent company i.e. M/s Barefoot was also one of its Directors.

8. The respondent thus, submitted that it was only on 28.08.2020 that the respondent came to know of the order dated 19.11.2019 passed by the Estate Officer, DTTDC and thus, an appeal was filed before the Appellate Court along with a formal application seeking condonation of nine (9) days delay in filing the appeal, which application seeking condonation was allowed by the First Appellate Court of the District & Sessions Judge (North), Rohini vide the

impugned order dated 24.08.2021 subject to costs of Rs.15,000/- to be paid to the Rohini Courts Bar Association which has since been paid by the respondent.

9. The respondent herein i.e. M/s Barefoot as the appellant of PPA No.11/2020 before the learned District & Sessions Judge (North), Rohini under Section 9(2) and the proviso thereto whilst seeking condonation of delay of nine days in filing the appeal submitted to the effect that the impugned order in PPA No.11/2020 was an *ex-parte* order passed on 19.11.2019 but no notice nor communication nor order was received from the office of the respondent to the appeal i.e. from the DTTDC neither before nor during the proceedings initiated against the petitioners under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

10. *Inter alia*, the respondent herein as appellant of PPA No.11/2020 had submitted that its Director was shocked and surprised to receive a letter dated 26.08.2020 on 28.08.2020 from the office of the respondent i.e. DTTDC in the name of some other Company i.e., M/s Fortune Grand Management Private Limited ('Fortune Grand') wherein the director therein was also one of the directors of the appellant/ respondent herein.

11. It was submitted through the application seeking condonation of delay in filing the appeal that vide the letter dated 26.08.2020, it was indicated that M/s Barefoot Holidays India Pvt. Ltd. who had been called upon to pay a sum of Rs. 32,06,316/- on account of demand raised against M/s Fortune Grand qua which there was litigation already pending and at the same time, - DTTDC also annexed the two

orders one in respect of Fortune Grand and another being the order dated 19.11.2019 impugned in PPA No.11/2020 and it is thus how, the said respondent i.e. M/s Barefoot came to be served with the impugned order whereby it was revealed that an ex parte order under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been passed against M/s Barefoot.

12. It was also submitted by the respondent herein through the application seeking condonation of delay in filing the appeal i.e. PPA No.11/2020 that though the order dated 19.11.2019 spoke about issuance of notice of hearing to M/s Barefoot, it did not disclose as to whether the same was served and if so served, by what mode and it was submitted on behalf of M/s Barefoot that no communication was served on M/s Barefoot in respect of proceedings before the Estate Officer, DTTDC. It was further submitted by M/s Barefoot that even otherwise, no notice or order was possible to be served on it at the given address, in as much as, the registered office of M/s Barefoot was the residence of the directors of the company which was under renovation for a substantial period of more than two years i.e. from May 2018 to May 2020 and thus the directors were residing in a rented accommodation during that period.

13. *Inter alia*, it was submitted by M/s Barefoot that DTTDC was very well aware of the email ID of the appellant of PPA No.11/2020 and the parties had communicated through emails earlier but no attempt had been made by DTTDC to serve M/s Barefoot in any manner. It was further submitted through this application seeking condonation of delay in filing PPA No.11/2020 that the appellant

thereof had contacted its counsel to prepare the appeal but since the file concerned was lying in the office of the earlier counsel of the appellant who was stuck abroad due to the lockdown, it took around 10 days in obtaining and retrieving the concerned record from the office of his earlier counsel through his junior colleague as also in collecting relevant documents from his own records and sources and thereafter, the appellant's representative approached the present counsel on 07.09.2020, whereafter, the appeal was drafted which took around another 10 days with the compilation of documents and thus, there was a delay of around 09 days in filing the appeal.

14. *Inter alia*, through this application dated 18.09.2020 filed on behalf of the appellant in PPA No.11/2020 seeking condonation of nine days delay in filing the appeal against the order of the Estate Officer, DTTDC under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it was submitted that in terms of the order dated 23.03.2020 of the Hon'ble Supreme Court in '*Suo Moto Writ Petition (Civil) No (S).3/2020 In Re: Cognizance For Extension Of Limitation*', it had been directed to the effect:-

"To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities."

and it was thus submitted on behalf of the appellant through this application before the District & Sessions Judge (North), Rohini that no prejudice would be caused to any of the parties, if the application seeking condonation of delay was allowed and the appeal heard on its own merits.

15. The respondent to PPA No.11/2020 i.e. the present petitioner had *inter alia* urged vide its response to the appeal that there was in fact a delay of 203 days in filing the appeal and not nine (9) days as sought to be contended by the appellant and that there was no sufficient cause put forth by the appellant to explain the reasons for delay in filing the appeal and rather the appellant had made a deliberate false statement regarding its ignorance of the passing of the impugned order and the manner of gaining knowledge of the same and submitted that the appellant had made a false statement to the effect that it came to know of the passing of the impugned order passed by the Estate Officer, DTTDC dated 19.11.2019 on the receipt of the letter dated 26.08.2020 and rather the appellant was in receipt of the impugned order as early as 20.11.2019 from which date the appeal would be delayed by 203 days.

16. *Inter alia*, the respondent to PPA No.11/2020 had submitted that vide memo of parties submitted in the appeal, the appellant had furnished two email addresses i.e. barefootfood@hotmail.com and

manojkrgupta@live.com and that the copies of the notices, daily order and the impugned order had indeed been sent to the email address of the Appellant i.e., manojkrgupta@live.com and apart from the same, every email had also been marked to ps.rawat68@yahoo.com and that the said Mr. P. S. Rawat was working as a Manager of the Appellant and had been attending the office of the respondent on behalf of the appellant.

17. It was submitted in response to the appeal by the respondent thereto i.e. the present petitioner that the appellant had been informed of the filing of the petition, the next date of hearing i.e. 12.07.2019 at 4:00 PM, the copy of the notice issued by the Estate Officer and the copy of the petition was also attached in the email but that the appellant had failed to appear on 12.07.2019 and the matter was adjourned to 19.07.2019 at 4:00 PM and vide an email dated 17.07.2019, the appellant had been informed of his absence in proceedings held on 12.07.2019 as well as of the scheduled next date of hearing i.e. 19.07.2019 and it was when the appellant failed to appear on 19.07.2019 for hearing before the Estate Officer, the appellant was proceeded *exparte* and vide an email dated 23.07.2019, the appellant was informed of the same and the copy of the order dated 19.11.2019 was also appended with the email dated 20.11.2019 to the appellant and the copies of the notices, appeal and orders through email were also sent on the address furnished by the appellant in the agreement dated 18.09.2013 and there were postal receipts and tracking reports that had been submitted and that the appellant was very well aware of the institution of the eviction petition and of each

date of hearing and the order passed on each date as well as of the impugned order dated 19.11.2019 and the absence of the appellant from the proceedings were calculated and deliberate and thus, the respondent to the appeal i.e. the present petitioner had opposed the prayer made by the appellant of PPA No.11/2020 seeking the condonation of delay in filing the appeal against the order dated 19.11.2019 of the Estate Officer, DTTDC under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

18. Vide the impugned order dated 24.08.2021 impugned in the present petition, the learned Principal District & Sessions Judge (North), Rohini, the appellate authority in terms of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 observed vide paragraphs 16 to 20 to the effect:-

“16. After hearing learned Counsels for both the parties, I am of the opinion that the main grounds for delay in filing the present appeal taken by the appellant are receiving copy of impugned order beyond the time prescribed under law for preferring an appeal against the said order and lockdown in the country due to COVID19. It is pertinent to note that the impugned order was passed on 19.11.2019 and the present appeal has been filed on 24.09.2020 and according to the appellant herein, there is a delay of 9 effective days in filing the present appeal. I am conscious of the fact that the delay is to be liberally construed, but there should be some plausible explanation from the side of the person/party who is seeking indulgence of the Court in condoning the delay. It should not be taken that the condonation of delay is a matter of right to any party to the proceedings.

17. In the instant case, applicant/appellant is taking plea that the service of the notice was not valid in law since

the respondent was to serve the appellant as per Section 4 Sub Section 3 of the Public Premises Act. Learned Counsel for the applicant/appellant has further argued that the appellant was not properly served as the notice was served at the sister concern of the appellant. It is further stated that the notice was allegedly served through email which was never received in time and the delay, if any, in filing the present appeal is of only 9 days effectively.

18. In the present case, the limitation to prefer the present appeal expired on 02.12.2019, however, the appeal was preferred only on 24.09.2020. The time of filing the appeal had expired much before the declaration of lockdown in the Country and there is no satisfactory explanation from the side of the applicant/appellant herein for not filing the appeal prior to lockdown.

19. No doubt the time of filing the appeal was expired much before the declaration of lockdown in the County and there is no satisfactory explanation from the side of the appellant herein for not filing the appeal prior to lockdown, but it has been, time and again, held by the Superior Courts that the delay shall be construed liberally and the Court should consider grant of delay liberally and should make an endeavour to decide the cases as far as possible on merits. The Hon'ble Delhi High Court in Hilton International Co. vs. K.V. Kumar AC, 165 (2009) DLT 278” has held that there are Judgments of the Hon'ble Supreme Court (refer Malkiat Singh vs. Joginder Sing, I (1998) CLT 44 (SC)=II (1998) SLT 74 = 1998 2 SCC 206 and Lal Devi vs. Vaneeta Jain, V (2007) SLT 308 = II (2007) CLT 543 (SC) = 2007(7) SCC200, which say that even if a defendant prevaricates, or his Counsel is not careful enough for notifying him or attending the Court, if the consequences that visits the party is harsh, the Court would secure the ends of justice, and set aside the ex parte judgment. Hon'ble Delhi High

Court in “Santosh & Ors. vs. Shri Tek Chand, 134(2006) DLT 332” has held that rules of procedure are handmaiden to end of justice and should not be permitted to effect substantial justice.

20. In view of the above discussions, I deem it appropriate, though the appellant has failed to satisfy the Court for not preferring the present appeal within limitation period, to grant opportunity to the appellant to pursue the present appeal. Accordingly, the application under reference moved by the applicant/appellant seeking condonation of delay in filing the present appeal, stands allowed, however, subjection to imposition of cost of Rs. 15,000/- (rupees fifteen thousand only) upon the appellant to be deposited in Rohini Courts Bar Association, Delhi. The appellant is directed to submit the receipt of above payment to be made to Rohini Courts Bar Association, on or before the next date of hearing. With this, the present application stands disposed of.”

19. It is thus, the avowed contention of the petitioner that in as much as, the Appellate Court had observed vide paragraph 19 of the impugned order to the effect that there was no satisfactory explanation from the side of the appellant for not filing the appeal prior to lockdown, in that event the condonation of delay in institution of the appeal is wholly erroneous and thus, the impugned order requires to be set aside.

20. Reliance was placed on behalf of the petitioner on the proviso to Section 9(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which reads to the effect:-

“....

(2) An appeal under sub-section (1) shall be preferred,—

(a) in the case of an appeal from an order under Section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under Section 5-B or Section 7, within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under Section 5-C, within twelve days from the date of such order :

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.”

submitting thus that the institution of an appeal against an order under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in terms of Section 9(2)(b) of the said enactment can be assailed only within a period of 12 days from the date on which the order is communicated to the appellant and the Estate Officer may entertain the appeal only in exceptional cases after the expiry of the said period if the Appellate Officer is satisfied for reasons to be recorded in writing that there were compelling reasons which prevented the person from filing the appeal in time. It has thus been submitted on behalf of the petitioner that there had been no exceptional case put forth by the respondent nor is set forth through the impugned order nor has the appellate authority recorded its satisfaction in writing to the effect whether there were any compelling reasons that prevented the appellant from filing the appeal in time.

21. Furthermore, it was submitted on behalf of the petitioner that the general principles of Section 5 of the Limitation Act, 1963 do not apply to seeking condonation of delay for filing an appeal under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and reliance has thus been placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in "***S.D. Bandi vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors., (2013) 12 SCC 631***" to contend to the effect that it has been laid down therein by the Hon'ble Supreme Court that the power of the Appellate Officer to condone the delay in filing of appeal under Section - 9 should be exercised very reluctantly and it should be an exceptional practice and not a general rule.

22. The verdict of the Hon'ble Supreme Court in "***S.D. Bandi vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors., (2013) 12 SCC 631***" puts forth suggestions to the effect:-

"Suggestions

33. *The following suggestions would precisely address the grievances of the Central and the State Governments in regard to the unauthorized occupants:*

33.1. *As a precautionary measure, a notice should be sent to the allottee/officer/employee concerned under Section 4 of the PP Act three months prior to the date of his/her retirement giving advance intimation to vacate the premises.*

33.2. *The Department concerned from where the government servant is going to retire must be made liable for fulfilling the abovementioned formalities as well as*

follow-up actions so that rest of the provisions of the Act can be effectively utilised.

33.3. The principles of natural justice have to be followed while serving the notice.

33.4. After following the procedure as mentioned in SR 317-B-11(2) and 317-B-22 provisos 1 and 2, within 7 working days, send a show-cause notice to the person cancelled in view of the advance intimation sent three months before the retirement.

33.5. Date of appearance before the Estate Officer or for personal hearing as mentioned in the Act after show-cause notice should not be more than 7 working days.

33.6. Order of eviction should be passed as expeditiously as possible preferably within a period of 15 days.

33.7. If as per the Estate Officer, the occupant's case is genuine in terms of Section 5 of the Act then, in the first instance, an extension of not more than 30 days should be granted.

33.8. The responsibility for issuance of the genuineness certificate should be on the Department concerned from where the government servant has retired for the occupation of the premises for next 15 days and further. Giving additional responsibility to the Department concerned will help in speedy vacation of such premises. Baseless or frivolous applications for extensions have to be rejected within seven days.

33.9. If as per the Estate Officer the occupant's case is not genuine, not more than 15 days' time should be granted and thereafter, reasonable force as per Section 5(2) of the Act may be used.

33.10. There must be a time frame within how much time the Estate Officer has to decide about the quantum of rent to be paid.

33.11. The same procedure must be followed for damages.

33.12. The arrears/damages should be collected as arrears of land revenue as mentioned in Section 14 of the Act.

33.13. *There must be a provision for compound interest, instead of simple interest as per Section 7.*

33.14. *To make it more stringent, there must be some provision for stoppage or reduction in the monthly pension till the date of vacation of the premises.*

33.15. *Under Section 9(2), an appeal shall lie from an order of eviction and of rent/damages within 12 days from the day of publication or on which the order is communicated respectively.*

33.16. *Under Section 9(4), disposal of the appeals must be preferably within a period of 30 days in order to eliminate unnecessary delay in disposal of such cases.*

33.17. *The liberty of the appellate officer to condone the delay in filing the appeal under Section 9 of the Act should be exercised very reluctantly and it should be an exceptional practice and not a general rule.*

33.18. *Since allotment of the government accommodation is a privilege given to the Ministers and Members of Parliament, the matter of unauthorised retention should be intimated to the Speaker/Chairman of the House and action should be initiated by the House Committee for the breach of the privileges which a Member/Minister enjoys and the appropriate Committee should recommend to the Speaker/Chairman for taking appropriate action/eviction within a time-bound period.*

33.19. *The Judges of any forum shall vacate the official residence within a period of one month from the date of superannuation/retirement. However, after recording sufficient reason(s), the time may be extended by another one month.*

33.20. *Henceforth, no memorials should be allowed in future in any government houses earmarked for residential accommodation."*

(emphasis supplied)

23. The respondent to the present petition submits that since the period to file an appeal under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is very short i.e. 12 days only, it

makes the Estate Officer all the more responsible to ensure that the order passed is duly served on the parties. *Inter alia*, the respondent has submitted that there has been no compliance of the provisions of Section 4 (3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 r/w Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 and the respondent was not served with the order of the Estate Officer in the said manner even if it was deemed though not admitted that the respondent was served through email.

24. The respondent thus submits that service through email if at all effected in the instant case, does not fall within the parameters of Section 4(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 r/w Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, in as much as, the said rules are specific, categorical and unambiguous qua the manner of service of the notice and orders under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in as much as, Section 4(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 provides as under:-

“4(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.”

25. It is further submitted on behalf of the respondent that Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971

deals with the manner in which the notices and orders for proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are to be served, which reads as under:-

“4. Manner of service of notices and orders.—(1) In addition to any mode of service specified in the Act a notice issued under Section 3-B or sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section (1) of Section 5-B or sub-section (1) or sub-section (1-A) of Section 6 or an order issued under [Section 3-A or sub-section (1) of Section 5 or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-C or sub-section (1) or sub-section (2) of Section 7 of the said Act shall be served by delivering or tendering a copy of the notice or order, as the case may be, to the person for whom it is intended or to any adult member of his family, or by sending it by registered post acknowledgment due in a letter addressed to that person at his usual or last-known place of residence or business.

(2) Where the copy of the notice or the order, as the case may be, under sub-rule (1) is delivered or tendered, the signature of the person to whom the copy is so delivered or tendered should be obtained in token of acknowledgment of the service.

(3) In respect of a notice issued under Section 3-B or sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section (1) or sub-section (1-A) of Section 6 or an order issued under Section 3-A or sub-section (1) or sub-section (3) of Section 5-A or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-C or sub-section (1) or sub-section (2) of

Section 7 of the said Act] where the person or the adult member of the family of such person refuses to sign the acknowledgment, or where such person cannot be found after using all due and reasonable diligence and there is no adult member of the family of such person, a copy of the notice or the order, as the case may be, shall be affixed on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and the original shall be returned to the estate officer who issued the notice or the order, as the case may be, with a report endorsed thereon or annexed thereto stating that a copy has been so affixed, the circumstances under which it was done so and the name and address of the person, if any, by whom the ordinary residence or usual place of business was identified and in whose presence the copy was affixed.

(4) If a notice under Section 3-B or sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section (1) or sub-section (1-A) of Section 6 or an order issued under sub-section (1) of Section 5 or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-E or sub-section (1) or sub-section (2) of Section 7 of the said Act cannot be served in the manner provided in sub-rule (1), the estate officer may, if he thinks fit, direct that such notice or order, as the case may be, shall also be published in at least one newspaper having circulation in the locality and he may also proclaim the contents of any notice or order in the locality by beat of drum.

[Emphasis supplied]

26. The respondent has thus submitted that the said statutory provisions under Section 4(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as well as the Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 make it apparently clear that the notices or the orders as the case may be are to be served by delivering or tendering a copy of the notice or order to the person for whom it is intended or to any adult member of his family or by sending it by registered post acknowledgement due in the letter addressed to that person at his usual or last known place of his residence or business and that there is a mandatory "SHALL" legislated in sub-Rule 3 of Rule 4 of the PP Rules, which thus provides for the mandatory mode of service of notices/orders in the manner provided under the statute that where the person or the adult member of the family of such person refuses to sign the acknowledgement or where such person cannot be found at the spot, the notices/orders shall be affixed on the outer or some other conspicuous part of the ordinary residence or usual business place of such person and that sub-Rule 4 of Rule 4 of the said Rules further casts a duty upon the Estate Officer to serve through the substituted mode including publication.

27. The respondent has submitted that in the instant case, the respondent-company was neither served through a hand delivery nor through speed/registered post nor was it served through affixation or publication with the order dated 19.11.2019 nor is it contended by the petitioner that the respondent was served through any of these modes and that the only contention of the petitioner is that the respondent was

served through email on his given recognized email ID. The respondent has submitted further that the respondent has stated categorically in the appeal as well as in the additional affidavit before the Appellate Court on 19.04.2021 and has given proof that the order dated 19.11.2019 was found in the spam/ junk box of the email of the respondent and the respondent had also filed the requisite certificate under Section 65B of the Indian Evidence Act, 1872 in support of his contention and thus, the order dated 19.11.2019 cannot be termed to have been served on the respondent. The respondent has thus, submitted that an email service is, even otherwise, not a recognized and valid mode of service under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder.

28. Reliance has *inter alia* been placed on behalf of the respondent on the verdict of the Division Bench of the Hon'ble High Court of Jammu and Kashmir in "*Yash Paul Gupta vs. S.S. Anand & Ors*". [*AIR 1980 J&K 16*], and on the verdicts of this Court in "*Union of India vs. Smt. Deepa Sharma*" [*W.P.(C) No. 248/2015; decided on 02.05.2016*] and "*Sudhir Goel vs. MCD & Ors.*" [*112 (2004) DLT 249*] to contend to the effect that where in any proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder, the procedure of law has not been followed, then, all such proceedings are vitiated in law. The respondent has thus submitted to the effect that in as much as, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Rules framed thereunder had not been complied with in respect of service of the order dated 19.11.2019 as

passed by the Estate Officer, DTTDC prior to the date 28.08.2020, there is actually no delay in filing the appeal and there is no irregularity or infirmity or illegality in the impugned order of the Appellate Court and the respondent has thus sought the dismissal of the present petition.

ANALYSIS

29. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the impugned order dated 24.08.2021 of the Appellate Authority in terms of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 after it observes vide paragraph 19 that there was no satisfactory explanation from the side of the appellant for not filing the appeal prior to the lockdown, the said order does not fall within the permissible contours of the proviso to Section 9(2)(b) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in as much as, it does not detail any compelling reasons which the Appellate Authority has found that prevented the respondent from filing the appeal in time.

30. However, this Court does not consider it appropriate to remand the matter back to the Appellate Authority in view of the non compliance of the proviso to Section 9(2)(b) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in view of the pleadings of the parties on the record of the present petition as well as the copies of the pleadings of the record of PPA No.11/2020 already placed on the record of the present petition which have been perused by this Court. It is brought forth on a perusal of the record that as

indicated through the response of the petitioner herein through its reply supported with an affidavit dated 07.11.2020 of Mr. Rajesh Juneja, Manager (Catering) in Delhi Tourism & Transportation Development Corporation Ltd. in PPA No.11/2020 that the copy of the order dated 19.11.2019 of the Estate Officer, DTTDC sent through speed post and registered post as per the documents placed on the records of the present petition indicate that the addressee was repeatedly not found with the report of the postal authorities dated 18.07.2019 placed at Page-293 of the petition being to the effect that ***“Baar Baar Jaane Par Praptkarta Nahi Milta”***, dated 19.07.2019 placed at Page-295 of the petition being to the effect that ***“Baar Baar Jaane Par Praptkarta Nahi Milta”***, coupled with the postal authorities report placed at Page-297 of the petition dated 27.07.2019 also to the effect that ***“Baar Baar Jaane Par Praptkarta Nahi Milta”***, coupled with the report dated 22.11.2019 placed at Page-300 of the petition which is in relation to the communication sent by Mr. B.L. Aggarwala, the Estate Officer of the DTTDC to the respondent i.e. M/s Barefoot Holidays India Pvt. Ltd. at 18A, Pocket-B, Mayur Vihar, Phase-II, New Delhi wherein the report was to the effect that ***“Baar Baar Jaane Par Praptkarta Nahi Milta”***, which makes it apparent that the service of the notice of the order dated 19.11.2019 of the Estate Officer, DTTDC to which challenge was made by the respondent vide PPA No.11/2020,- had not been effected in terms of Rule 4(3) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971.

31. Though, a contention was raised on behalf of the petitioner that the provisions of Section 4(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, would not apply to an order of an Estate Officer under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in as much as, Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 only relates to situations where persons are in unauthorized occupation, it is essential to observe that the manner of service of notices/orders i.e. provided under the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 is categorical and specific even qua service of notices/orders in terms of **Section 7** of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

32. This is so, in as much as, Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 provides to the effect:-

“4. Manner of service of notices and orders.—(1) In addition to any mode of service specified in the Act a notice issued under Section 3-B or sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section (1) of Section 5-B or sub-section (1) or sub-section (1-A) of Section 6 or an order issued under [Section 3-A or sub-section (1) of Section 5 or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-C or sub-section (1) or sub-section (2) of Section 7 of the said Act shall be served by delivering or tendering a copy of the notice or order, as the case may be, to the person for whom it is intended or to any adult member of his family, or by sending it by registered post

acknowledgment due in a letter addressed to that person at his usual or last-known place of residence or business.

(2) Where the copy of the notice or the order, as the case may be, under sub-rule (1) is delivered or tendered, the signature of the person to whom the copy is so delivered or tendered should be obtained in token of acknowledgment of the service.

(3) In respect of a notice issued under Section 3-B or sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section (1) or sub-section (1-A) of Section 6 or an order issued under Section 3-A or sub-section (1) or sub-section (3) of Section 5-A or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-C or **sub-section (1) or sub-section (2) of Section 7 of the said Act]** where the person or the adult member of the family of such person refuses to sign the acknowledgment, or where such person cannot be found after using all due and reasonable diligence and there is no adult member of the family of such person, a copy of the notice or the order, as the case may be, shall be affixed on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and the original shall be returned to the estate officer who issued the notice or the order, as the case may be, with a report endorsed thereon or annexed thereto stating that a copy has been so affixed, the circumstances under which it was done so and the name and address of the person, if any, by whom the ordinary residence or usual place of business was identified and in whose presence the copy was affixed.

(4) If a notice under Section 3-B or sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section

(1) or sub-section (1-A) of Section 6 or an order issued under sub-section (1) of Section 5 or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-E or sub-section (1) or sub-section (2) of Section 7 of the said Act cannot be served in the manner provided in sub-rule (1), the estate officer may, if he thinks fit, direct that such notice or order, as the case may be, shall also be published in at least one newspaper having circulation in the locality and he may also proclaim the contents of any notice or order in the locality by beat of drum.

Thus, in as much as, the mode of service qua the service of an order under Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 in addition to any mode of service specified in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is also mandatorily required to be served by delivering or tendering a copy of the notice or order as the case may be to the person for whom it is intended or to any adult member of his family or by sending it by registered post acknowledgement due in the letter addressed to that person at his usual or last known place of his residence or business with Rule 4(3) of the said Rules specifically providing to the effect that where such person cannot be found after using all due and reasonable, diligence, the copy of the notice or the order, as the case may be, inclusive of the order under Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is required to be mandatorily affixed on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person

with such person which is required to be returned to the Estate Officer who issued the notice or the order, as the case may be, with a report endorsed thereon or annexed thereto stating that a copy has been so affixed, the circumstances under which it was so done and it is in these circumstances held that the provisions of Section 4 of the Information Technology Act, 2000 which provides to the effect:-

“4. Legal recognition of electronic records.-Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.”

per se, do not suffice to bring forth the mandatory requirement of service of an order under Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to suffice simplicitor through email in view of Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which apart from sending of information of any notice or order in writing in terms of Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 **requires** in terms of Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 in addition to any mode of service specified in the Act that the requisite notice inclusive of the notice under Section 7(2) of the Act is to be served by delivering or tendering a copy of the notice or order as the case may

be to the person for whom it is intended or to any adult member of his family or by sending it by registered post acknowledgement due in the letter addressed to that person at his usual or last known place of his residence or business and where no such service can be effected due to such person not being found after using all due and reasonable diligence then in terms of Section 4(3) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, the notice is mandatorily required to be affixed on the outer door or some other conspicuous part of the ordinary place or usual place or business of such person and in terms of Rule 4(4) of the said Rules where there is also a requirement of the publication of the notice at least in one newspaper having circulation in the locality apart from a proclamation of the contents of the notice or order in the locality by beat of drum.

33. In these circumstances, where the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which as rightly contended on behalf of the respondent put a minimal period of 12 days for filing an appeal are under consideration, it is apparent that the specific mode of service required to be effected in terms of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and under Rules framed thereunder in terms of the Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 which have specifically been legislated to be in addition to modes of service prescribed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 have essentially to be complied with.

34. It is essential to observe that even the verdict of the Hon'ble Supreme Court in *S.D. Bandi* (supra) relied upon on behalf of the petitioner vide suggestions of the Hon'ble Apex Court in paragraph 33.3 categorically stipulates that the principles of natural justice have to be followed while serving the notice and vide suggestion 33.15, it has specifically been stipulated that under Section 9(2) of the enactment, an appeal shall lie from an order of eviction and of **rent/damages** (as in the instant case) within 12 days from the day of publication or on which the order is communicated respectively.

CONCLUSION

35. In view thereof, it is not considered appropriate to set aside the order dated 24.08.2021 in PPA No.11/2020 condoning the delay in institution of the appeal in the facts and circumstances of the case.

36. The petition is thus, dismissed and CM. APPL. 32109/2021 calls for no further action.

ANU MALHOTRA, J.

JULY 13th, 2022

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