* **HIGH COURT OF DELHI : NEW DELHI**

\+ **LPA No. 336 of 2009**

Judgment reserved on: February 10, 2010

% Judgment delivered on: March 08, 2010

1. Union of India
Through Secretary
Ministry of Urban Development
Nirman Bhavan
New Delhi.

2. Ministry of Works & Housing
Through Secretary
Land & Development Officer
Nirman Bhavan
New Delhi. …Appellants

Through Mr. A.S. Chandhiok, ASG with
Mr. B.V. Niren, CGSC and
Mr.Ritesh Kumar, Advs.

Versus

Savitri Devi (Deceased)
Through East West Rescue (Pvt.) Ltd.
47, Friends Colony
New Delhi. …Respondent

Through Mr.Madan Bhatia, Sr.Advocate with
Mr. S.C. Dhanda, Adv.

Coram:

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, ACJ

The question that arises for our consideration concerns the interpretation of Clause 8 of Office Order No. 23/76 dated 31st March, 1976 issued by the Ministry of Works and Housing (now known as the Ministry of Urban Development). According to the Appellants, charges for misuse of leased premises are liable to be paid by the lessee and in addition thereto some penalty. According to the Respondent, only 1% token penalty is required to be paid by the lessee and no misuse charges are payable. In our opinion, looking to the Office Order as putting forward a composite scheme, misuse charges and penalty thereon are both leviable on a lessee for misuse of the leased premises. We, therefore, agree with the view canvassed by the Appellants.

2. The Appellants are aggrieved by an order dated 23rd January, 2009 passed by a learned Single Judge allowing WP (C) No. 7676 of 2000 and rejecting the contention urged by the Appellants.

3. The Respondent - Savitri Devi (since deceased) was allotted Plot No. 38, Golf Links, New Delhi by a perpetual lease deed dated 19th December, 1969 executed by the President (the successor for all practical purposes being the Land & Development Officer or L&DO).

4. The premises were leased out for residential use and the terms included the requirement of paying all requisite charges, rates, taxes, etc. The lessee was prohibited from making any architectural or structural changes in the built up property without the previous consent of the lessor/L&DO. The relevant clauses of the lease deed in this regard are Clause 2(2), Clause 2(3), Clause 2(5) and Clause 2(7). These read as follows: -

> "2. The Lessee for himself, his heirs, executors, administrators and assigns covenants with the Lessor in manner following (that is to say) –
>
> (1) xxx xxx xxx
>
> (2) That Lessee will from time to time and at all times pay and discharge all rates, taxes, charges and assessments of

every description which are now or may at any time hereafter during the continuation of this Lease be assessed, charged, or imposed upon the premises hereby demised or on any buildings to be erected thereupon or on the Landlord or Tenant in respect thereof.

(3) All arrears of rent and other payments due in respect of the premises hereby demised shall be recoverable in the same manner as arrears of land revenue under the provisions of the Punjab Land Revenue Act, XVII of 1887, and any amending Act for the time being in force.

(4) xxx xxx xxx

(5) The Lessee will not without the previous consent in writing of the Chief Commissioner of Delhi or of such officer or body as the Lessor or the Chief Commissioner of Delhi may authorize in this behalf make any alterations in or additions to the buildings erected on the said demised premises so as to affect any of the architectural or structural features thereof or erect or suffer to be erected on any part of the said demised premises any buildings other than and except the buildings erected thereon at the date of these presents.

(6) xxx xxx xxx

(7) The Lessee will not without such consent as aforesaid carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a double storey residential building consisting of a single or two residential flats in all/or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Chief Commissioner of Delhi may be an annoyance or disturbance to the President of India or his tenants in the New Capital of Delhi."

5. It appears that Savitri Devi earlier let out the leased premises to the National Productivity Council for commercial purposes and that had the consent of the L&DO. However, since the requisite charges and government dues were not paid, an order was passed by the L&DO on 27th April, 1974 re-entering the leased premises. The re-entry was communicated to Savitri Devi on 20th May, 1974 and she filed a writ petition in this Court being WP(C) No. 109 of 1975 challenging the re-entry. The writ petition was dismissed for non-prosecution on 17th January, 1996 and no effective relief was granted to Savitri Devi. Resultantly, the order for re-entry continued to remain in operation, and continues till today.

6. After the National Productivity Council vacated the leased premises, Savitri Devi gave them on rent to the East West Medical Centre (EWMC for short) in February, 1976 under the provisions of Section 21 of the Delhi Rent Control Act, 1958 for residential purposes for a limited period of two years. At this stage, it is very important to note that one of the partners of EWMC is a person called N.P.S. Chawla and he (along with another partner P.R. Kucharia) categorically stated before the Rent Controller that they "want to have this house only for

residential purpose."

7. Notwithstanding the statement of N.P.S. Chawla (and P.R. Kucharia), EWMC commercially exploited the leased premises by running a medical centre. This led to a considerable amount of litigation between Savitri Devi and EWMC, but we are not concerned with that litigation for the time being.

8. Be that as it may, sometime in 1986 Savitri Devi filed Civil Suit No.2506 of 1986 in this Court being a suit against EWMC for a permanent injunction restraining it from misusing the premises for commercial purposes. N.P.S. Chawla was arrayed as defendant No. 3 in the suit. During the pendency of the suit, it was apparently suggested by a learned Single Judge that the L&DO should give an up-to-date account of the misuse charges and penalty leviable in respect of the leased premises from 10th February, 1976 onwards when the premises were let out to EWMC. In compliance therewith, the L&DO communicated to EWMC/Savitri Devi the misuse charges by a letter dated 6th February, 1992. The amount of misuse charges claimed by the L&DO from 10th February, 1976 to 14th July, 1992 was in the region of

about Rs.1.7 crores and penalty thereon was communicated at about Rs.16.8 lakhs. This amount has not been paid and is in dispute.

9. Civil Suit No. 2506 of 1986 was eventually dismissed as withdrawn on 31st October, 1994 on the basis of an undertaking dated 6th December, 1991 given by N.P.S. Chawla to pay the amount demanded by the L&DO, subject to a reasonable challenge to the demand made. The undertaking given by N.P.S. Chawla is in the following words:

> "I undertake that in the event of the Land and Development office levying any charges under the lease granted by the President of India to the Plaintiff on account of the premises being used as a nursing home-cum-clinic as misuser charges then I shall be liable to pay the same. I shall, however, before paying the aforesaid charges entitled to challenge the said demand by filing any suit, writ or other appropriate proceedings and my liability shall be confined to the ultimate amount determined by the court under the proceedings filed by me. Smt. Savitri Devi shall extend all cooperation to the Deponent in challenging the claim/demand raised by the Land and Development Officer on account of the said misuser charges. In case the plaintiff does not cooperate, then the Defendants shall not be liable."

10. During the pendency of the civil suit, Savitri Devi also filed a petition on 27th August, 1987 for the eviction of her tenant EWMC from

the leased premises. The eviction petition was filed under proviso (k) to Section 14(1) of the Delhi Rent Control Act, 1958 on the ground that the premises were being misused for commercial purposes. Proviso (k) to Section 14(1) of the Act reads as follows: -

> "**14. Protection of tenant against eviction.**
>
> (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:
>
> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely: -
>
> (a) to (j) xxx xxx xxx
>
> (k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate."

11. In the eviction proceedings, it appears that Savitri Devi and EWMC entered into some kind of a settlement with the result that a decree for eviction was passed against EWMC by an order dated 24th February, 1997. By this order, EWMC was to hand over vacant

possession of the leased premises on or before 31st August, 1997 and it appears that "on paper" vacant possession was handed over by EWMC to Savitri Devi. We say "on paper" because it appears (and this will be clear a little later) that N.P.S. Chawla continued to exercise control over the leased premises even thereafter (though in a different capacity).

12. Several of the above facts ought to have been disclosed by Savitri Devi in the writ petition filed before the learned Single Judge out of which the impugned order has arisen. Unfortunately, this was not done and it amounts to a gross suppression of relevant facts. We have come to know many of these facts only because it transpired from the record that after the demise of Savitri Devi on 10th October, 2005 East West Rescue (Pvt.) Ltd. [for short EWRPL] moved an application for substituting its name in place of Savitri Devi since it had purchased the leased premises from her. The sale deed was not on record and so we directed learned counsel for Savitri Devi to place the relevant documents on records. The agreement to sell entered into by Savitri Devi with EWRPL was then placed on record. We also called for the files of WP(C) No. 109 of 1975 and Civil Suit No. 2506 of 1986 to check out the facts.

13. To our surprise, three significant facts have now come on record: (1) That the agreement to sell entered into between Savitri Devi and EWRPL is dated 5th August, 1993. In other words, this agreement to sell was entered into when WP(C) No. 109 of 1975 and Civil Suit No. 2506 of 1986 were still pending in this Court. This fact was not disclosed to this Court either by Savitri Devi or by EWRPL. Similarly, this fact was not disclosed to the Rent Controller before whom the eviction proceedings were pending. We are unable to understand the reason for this secrecy. (2) To make matters worse, we find that the agreement to sell was entered into on behalf of EWRPL by one of its directors Dr. Daljit Kimberley Chawla. This lady does not disclose her parentage in the agreement to sell. However, it is clear from the joint application filed by Savitri Devi and EWRPL for conversion of the leased premises into freehold filed before the L&DO on 22nd December, 1999 (also placed on our record) that she is either the wife or daughter of N.P.S. Chawla and the amount paid towards conversion charges was through a cheque drawn by N.P.S. Chawla. We are mentioning this not only in the context of N.P.S. Chawla being in control of the leased premises but also in the context of suppression of facts by Savitri Devi and by EWRPL. (3) Possession of the leased premises was given by

Savitri Devi to EWRPL as stated in the application for substitution on the death of Savitri Devi.

14. For a better appreciation of the case, we summarize the facts as they appear from the records:

a. The leased premises were re-entered by the L&DO on 27th April, 1974.

b. The re-entry was challenged by Savitri Devi by filing WP(C) No. 109 of 1975. This writ petition was dismissed for non-prosecution on 17th January, 1996. The re-entry, therefore, stands even today.

c. Savitri Devi had filed Civil Suit No. 2506 of 1986 for a permanent injunction restraining EWMC from misusing the leased premises for commercial purposes. In this civil suit, misuse charges were quantified for the period 10th February, 1976 till 31st July, 1992 at about Rs. 1.7 crores and penalty at about Rs. 16.8 lakhs. This amount remains unpaid.

d. Civil Suit No. 2506 of 1986 was dismissed as withdrawn on 31st October, 1994 on the basis of an undertaking given by N.P.S. Chawla on 6th December, 1991.

e. Savitri Devi filed an eviction petition against EWMC on or about 27th August, 1987 on the ground that the leased premises were being misused by her tenant EWMC.

f. The eviction petition filed by Savitri Devi was settled on 24th February, 1997 and EWMC was to hand over vacant possession of the leased premises to her on or before 31st August, 1997.

g. In the meanwhile, Savitri Devi had entered into an agreement to sell the leased premises on 5th August, 1993 to

EWRPL acting through Dr. Daljit Kimberley Chawla (wife or daughter of N.P.S. Chawla).

h. On 22nd December, 1999 EWRPL through Dr. Daljit Kimberley Chawla and Savitri Devi filed a joint application with the L&DO for conversion of the leased premises into freehold.

i. On 10th October, 2005 Savitri Devi passed away and EWRPL claimed to be her legal representative on the basis of the agreement to sell dated 5th August, 1993.

j. Possession of the leased premises were handed over by Savitri Devi to EWRPL as stated in the agreement to sell dated 5th August, 1993.

15. It seems that notwithstanding all this, Savitri Devi began making representations to the L&DO from sometime in July 1997 onwards, to give her the benefit of Clause 8 of the Office Order No. 23/76 dated 31st March, 1976 issued by the Ministry of Works and Housing now known as the Ministry of Urban Development (the Lessor). According to Savitri Devi, the L&DO could not claim misuse/breaches in terms of Clause 8 of the Office Order but could only claim payment of 1% of the misuse charges as token penalty. It is not at all clear why Savitri Devi made these representations and not EWRPL.

16. Be that as it may, since the request of Savitri Devi was not acceded to by the L&DO, she filed a writ petition in this Court being

WP(C) No. 7676 of 2000 out of which the impugned order has arisen. The prayer made in the writ petition was for a direction to the lessor to decide the application made by Savitri Devi in terms of Clause 8 of the Office Order No. 23/76 and also to decide the application for conversion of the plot from leasehold to freehold. It may be recalled that on 22nd December, 1999 a joint application was made by Savitri Devi and EWRPL through Dr. Daljit Kimberley Chawla (wife or daughter of N.P.S. Chawla) for conversion of the leased premises to freehold. No mention was made in the writ petition of the fact that Savitri Devi had entered into an agreement to sell with EWRPL on 5th August, 1993 or that a joint application was made for conversion by Savitri Devi and Dr. Daljit Kimberley Chawla (wife or daughter of N.P.S. Chawla). All this was suppressed (apart from other relevant facts) and it was merely stated that Savitri Devi had applied for conversion of the leased premises to freehold.

17. The question before us is whether the interpretation given by Savitri Devi to Clause 8 of the Office Order No. 23/76 is correct or not. As mentioned above, Savitri Devi is of the opinion that the misuse could be regularized or condoned on payment of 1% token penalty. According

to the L&DO, the entire misuse charges have to be paid by Savitri Devi and in addition thereto she is obliged to pay a penalty of 10% of the misuse charges or, in any case, at least 1% penalty.

18. For a proper appreciation of Office Order No. 23/76 dated 31st March, 1976 it is necessary to refer to some of its terms. The text of the Office Order is not reproduced in view of its length.

19. Clause 1 of the Office Order relates to determination of the date for recovery of charges while Clause 2 refers to recovery of charges for the breaches. Clause 3 of the Office Order gives the formula for calculation of charges for change of use and it appears that the calculation made by the lessor for misuse charges is made under this clause. Clause 4 concerns itself with the date of determination for commencement and vacation of breaches. Clause 5 concerns itself with rehabilitation properties while Clause 6 deals with communications received from the lessee for removal of breaches on a future date. Clauses 7, 8 and 9 are of importance and they read as follows: -

> "7. In cases where the charges on account of change in use are found, beyond any doubt, to be more than the income of the lessee from the leased premises the charges will be reduced suitably according to the circumstances of

each case in consultation with Ministry of Works and Housing and Finance, while doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises will, no doubt, have to be fully considered.

8. In case where the lessee/ex-lessee files suit for eviction against defaulting tenants on receipt of our notice for misuse and are successful in eviction of such tenants one per cent of the charges will be recovered as token penalty in consultation with the Ministry of Works and Housing and Finance.

9. In case where the lessee admits existence of breach of terms of lease in his property though it is subsequently removed after the expiry of the notice period, but before the exercise of the re-entry, payment of misuse charges/addl. Charges etc., for the breaches remained in existence be insisted upon as a condition for the grant of permission for sale/transfer/mutation/mortgage etc.

20. Clause 10 deals with levy of penalty and in respect of non-re-entered and re-entered premises (such as the one that we are concerned with). This Clause reads as follows: -

"10% PENALTY

(i) Non-re-entered cases: -

10% penalty is addition to the additional charges for change of use will be charged upto the date of request for compromise plus 30 days thereafter. 10% penalty will not however, be charged on the damages for unauthorised construction.

(ii) Re-entered sites: -

10% penalty both in addition to the additional charges for change of use and damages for unauthorised construction will be charged upto the date of withdrawal of re-entry plus 30 days thereafter."

21. It appears from the scheme of the Office Order that misuse of the leased premises, contrary to the terms of the lease deed, would attract misuse charges and penalty thereon. These misuse charges and penalty thereon are bound to be paid by the lessee to the lessor before the misuse can be regularized. Some concessions are, however, provided. As per Clause 7, if the misuse charges exceed the income derived from the leased premises, then necessary downward adjustments can be made by the lessor. Similarly as per Clause 8, if the lessee evicts the tenant who has misused the premises, a token penalty of 1% would be levied. Clause 9 makes it clear that if, before the exercise of re-entry, there is an application for sale or transfer of the leased premises, then the payment of misuse charges and additional charges will certainly be insisted upon before permission for sale etc. is granted. Clause 10, which is the penalty clause for re-entered premises states that 10% penalty will be levied upto the date of withdrawal of re-entry for misuse

of the premises. If the scheme is read as a whole, it is clear that misuse charges and penalty thereon are leviable for misuse of the leased premises, but certain concessions are provided, given the exigencies of the situation.

22. We see logic in the scheme in contra-distinction to the submission made by learned counsel for Savitri Devi. If the argument advanced on her behalf is accepted, it would mean that in view of Clause 8 of the Office Order, whatever the situation, only 1% of the misuse charges are payable as token penalty. This would, ex facie, render Clause 7, 9 and 10 otiose. Such an interpretation cannot be countenanced. Acceptance of this argument would, in a sense, place a premium on misuse of the leased premises, which is clearly impermissible.

23. Learned counsel for Savitri Devi relied upon two decisions rendered by learned Single Judges of this Court to contend that in terms of Clause 8 of the Office Order, only 1% of the entire misuse charges and penalty can be levied as token penalty by the lessor. The first such decision is ***Birla Institute of Scientific Research v. Union of India,***

1993 (2) RCR 646. In this decision, in paragraph 4 thereof, it has been mentioned that at an interim stage, a learned Single Judge had passed an order dated 4th November, 1996 to the effect that only 1% of the misuse charges could be recovered as token penalty. The contention of the lessor in that case was that since the eviction order under proviso (k) to Section 14(1) of the Delhi Rent Control Act was passed without any contest, Clause 8 of the Office Order would not be applicable. It was noted that the same contention was dealt with in the order dated 4th November, 1996 and rejected. After the final hearing of the writ petition, the learned Single Judge in the cited decision agreed with the interim view expressed on 4th November, 1996. All that was decided in that case was that it does not matter if the eviction order is passed under proviso (k) to Section 14(1) of the Act with contest or without contest. No doubt an observation was made to the effect that in terms of the interim order dated 4th November, 1996 only 1% of the charges could be levied by the lessor as token penalty, but in our opinion this is completely contrary to the scheme postulated by the Office Order.

24. Reliance was also placed on ***Justice Sisir Kumar Sen (Retd.) and others v. Union of India and another, 1996 V AD (Delhi) 231***

which merely followed ***Birla Institute***. The learned Single Judge who decided ***Justice Sisir Kumar Sen*** did not consider the plea raised on behalf of the lessor that the implication and interpretation of the Office Order No. 23/76 dated 31st March, 1976 was not debated or argued in ***Birla Institute***.

25. Learned counsel for the Appellant, on the other hand, relied upon ***Satish Kumar Mehta v. Union of India and another, 2009 VIII AD (Delhi) 593*** which is also a decision of a learned Single Judge of this Court. After referring to ***Birla Institute*** and ***Justice Sisir Kumar Sen*** it was opined that ***Birla Institute*** did not hold that only 1% penalty could be recovered and not the misuse charges itself. Similarly in ***Justice Sisir Kumar Sen*** also the question raised concerned the levy of penalty and it did not deal with the payment of misuse charges or dispensing with the payment of misuse charges.

26. In our opinion, ***Satish Kumar Mehta*** lays down the correct legal position. Neither ***Birla Institute*** nor ***Justice Sisir Kumar Sen*** dealt with an exemption or concession, if at all, from payment of misuse charges. All that these two decisions hold is that instead of 10% penalty

that could be levied, only 1% should be levied if the tenant was evicted under proviso (k) to Section 14(1) of the Delhi Rent Control Act. Neither of the learned Single Judges addressed themselves to the question whether misuse charges were waived by virtue of Clause 8 of the Office Order No. 23/76. In our opinion, if ***Birla Institute*** and ***Justice Sisir Kumar Sen*** are read as waiving or writing off misuse charges or additional charges that would be a wrong understanding of these two decisions and if these two decisions hold that misuse charges and additional charges for breaches are waived or written off by Clause 8 of the Office Order No. 23/76 then these decisions are over-ruled as not laying down the correct legal position.

27. Having taken the view that misuse charges are not waived by Clause 8 of the Office Order No. 23/76, we would like to give an example. In the present case itself, misuse charges are in the region of Rs.1.7 crores and merely because Savitri Devi and her tenant collusively got an eviction order passed under proviso (k) to Section 14(1) of the Act, the misuse charges and penalty levied thereon get reduced (as contended) to 1% of the misuse charges, that is, Rs.16.8 lakhs. This can hardly be rational or logical. By using residential charges for

commercial purposes, the tenant and perhaps even the landlord would have made a huge amount and while both are entitled to pocket the profits made and the benefits accrued from commercial exploitation of the premises, all that the lessor would be entitled to is 1% of the misuse charges. Surely, this is not and cannot be the intention of the Office Order No. 23/76.

28. As mentioned above, Clause 7 of the Office Order takes care of a situation where the landlord is put to a disadvantage by the tenant exploiting the premises for commercial use. In the event that the landlord bona fide gives out the premises for residential premises and receives a meager amount of rent which is not commensurate with the misuse charges, then these facts would be taken into consideration by the lessor under Clause 7 of the Office Order No. 23/76 while levying misuse charges. This Clause does not postulate complete waiver of the misuse charges. Similarly, if where a landlord is able to evict his tenant for misusing the leased premises, the penalty leviable on the misuse charges would be brought down to a token amount of 1%. This also does not mean complete or even partial waiver of the misuse charges. This interpretation is fully in consonance with the overall scheme of

Office Order No. 23/76. The scheme is furthered by Clause 9 of the Office Order No. 23/76 which specifically states that if the premises have not been re-entered by the lessor then payment of the misuse charges or additional charges would be insisted upon as a condition for the grant of permission for sale or transfer of the premises. Therefore, on a conjoint reading of Clauses 7, 8 and 9 of the Office Order No. 23/76 and the scheme postulated by the office order, it is quite clear that under no circumstances are misuse charges or additional charges completely condoned or overlooked or written off by the lessor – in some cases misuse charges might be reduced and in some cases penalty might be reduced – that is all.

29. As regards Clause 10 of the Office Order No. 23/76, ordinarily the penalty for misuse of re-entered premises would be 10% of the charges but by virtue of Clause 8, the quantum of penalty is reduced to 1% but that is also hedged in by the condition that the landlord should have obtained an eviction decree against the tenant under proviso (k) to Section 14(1) of the Act for misusing the premises. Therefore, in our opinion, the entire Office Order No. 23/76 read as a whole would clearly show that misuse charges or additional charges are

not condoned by the lessor at any point of time. These charges can be negotiated if the actual income of the landlord is less than the misuse charges and the penalty can also be reduced to 1% thereon if the landlord obtains an order of eviction under proviso (k) to Section 14(1) of the Act.

30. Looked at from the broad perspective before us, it is clear that Savitri Devi/EWRPL is obliged to pay the misuse charges demanded by the L&DO. In addition thereto, Savitri Devi/EWRPL is obliged to pay penalty as applicable to re-entered premises. The contention urged to the contrary on behalf of Savitri Devi must be rejected. We, therefore, set aside the judgment and order of the learned Single Judge dated 23rd January, 2009.

31. Learned counsel for Savitri Devi vehemently contended that the appeal is not maintainable because it was filed against a dead person. This argument arises from the fact that Savitri Devi died on 10th October, 2005 during the pendency of the writ petition filed by her. After her death, an application was moved by EWRPL to the effect that Savitri Devi had sold the leased premises to EWRPL.

32. The application filed by EWRPL was allowed by a learned Single Judge by an order dated 26th May, 2009 and it appears that EWRPL was impleaded as the writ petitioner in place of Savitri Devi. It was directed that an amended memo of parties be filed and that was done on or about 21st August, 2006.

33. When the present appeal was filed, it does appear that it was not indicated in the memo of parties that Savitri Devi was since dead and that EWRPL had become the writ petitioner. But when learned counsel for Savitri Devi (deceased) entered appearance on 17th August, 2009 in this appeal, he pointed out that Savitri Devi had since died. Then, learned counsel for the Appellants sought leave to amend the cause title and the memorandum of appeal, which was granted. It was also stated by learned counsel for the Appellants that the so-called legal representatives of Savitri Devi (deceased) are the original tenants of the premises and this does not appear to have been denied by learned counsel appearing for Savitri Devi (deceased).

34. Thereafter, an application was filed on behalf of EWRPL being CM No. 13001/2009 challenging the maintainability of the

appeal. When this application was taken up for consideration on 15th September, 2009 it was directed that the application would be heard along with the appeal.

35. The Appellants also filed an application being CM No. 10030/2009 which was for condoning the delay in filing the appeal and that application was taken up for consideration on 9th November, 2009 when the delay of 35 days in filing the appeal was condoned. On the same date, the application filed by EWRPL being CM No. 13001/2009 was also taken up for consideration and dismissed.

36. Before us, learned counsel for EWRPL insisted that the appeal was not maintainable and, in any case, it was delayed by more than 35 days because the correct amended memo of parties was filed by the Appellants much later. In our opinion, this argument is not open to learned counsel for EWRPL for the reason that when there was a delay of 35 days in filing the appeal, that was condoned by an order dated 9th November, 2009 and if technically there is any further delay, in our opinion, the facts and circumstances of the case would indicate that this is an appropriate case for condoning any delay that may have been

occasioned in filing the appeal by the Appellants. As regards the maintainability of the appeal, it appears that it was clearly an oversight that the correct amended memo of parties was not filed by the Appellants. In fact, even the certified copy of the order passed by the learned Single Judge does not indicate that Savitri Devi has since expired and that EWRPL was impleaded as the Petitioner. Since there is an error in the certified copy provided by this Court, the Appellants cannot be prejudiced by this. Even otherwise, it appears to be only a technical mistake and we do not think that the error is so substantive as to warrant the dismissal of the appeal on this ground.

37. We are not going into the question of suppression of facts by EWRPL or by Savitri Devi (deceased). This is because we have heard the parties on merits and at length and find that this is a fit case where interference is called for. However, we do wish to place on record that Savitri Devi / EWRPL are guilty of gross suppression of facts. Ordinarily, therefore, the writ petition should have been dismissed on this ground alone – but, we say nothing more.

38. For the above reasons, we allow the appeal and dismiss the writ petition filed by Savitri Devi (deceased) now represented by EWRPL. Further steps may be taken by the Appellants if necessary, only after all dues are cleared by Savitri Devi (deceased)/EWRPL.

(MADAN B. LOKUR)
ACTING CHIEF JUSTICE

March 08, 2010
kapil

(MUKTA GUPTA)
JUDGE

Certified that the corrected copy of the judgment has been transmitted to the main Server.