
(2006) 12 DEL CK 0168
In the Delhi High Court
Case No : CM (M) .: 1618 of 2005

Anshu Goyal

APPELLANT

Vs

Vijender Kumar Rohtagi

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Delhi Rent Control Act, 1958 — Section 14(1)(a), 14(2), 2(e), 27, 4

Citation : (2007) 1 ILR Delhi 90

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : N.K. Goyal, for the Appellant; K.K. Rohtagi, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—Admit. At request of learned counsel for the parties, the matter is taken up for final disposal.

2. The respondent is the tenant in respect of two shops in property bearing no. F-2/1 Krishan Nagar, Delhi-51 at a monthly rent of Rs. 234 excluding other charges. The landlady of the premises was one Smt. Champa Nagpal and it is stated that the rent used to be collected by her husband Sh. M.L. Nagpal. Smt. Champa Nagpal and M.L. Nagpal both passed away. The rent was paid till May, 2000.

3. It is the case of the respondent/tenant that thereafter the rent was never demanded by any of the legal heirs of the Nagpals nor could the respondent locate as to who would be entitled to the rent. Thus the respondent was not in a position even to deposit the rent u/s 27 of the Delhi Rent Control Act, 1958.

4. The petitioner apparently purchased the property vide a sale deed dated 26.06.2002. The petitioner served a notice on the respondent dated 20.11.2002 Ex. PW 1/D in the following terms

Under instructions from and on behalf of my clientess Smt. Anshu Goyal w/o Sh. Vijay Kumar Goyal r/o E-6/11, Krishna Nagar, Delhi-51, I hereby serve you with the following legal notice:-

1. That my clientess is the owner and landlady of the property bearing no. F-2/1, Krishan Nagar, Delhi-51 and you are a tenant in respect of two shops Pvt. No. 11 & 12 in the said property at a monthly rent of Rs. 234/- per month excluding of all other charges.

2. That the price index has been changed and increased very high and the value of rupees is down continuously and due to the change in the price index and also as per the Order of the Hon''ble Judges Sh. Anil Dev Singh and Mr. O.P. Dwivedi in the Writ Petition No. 2783 of 1997 decided on 18.01.2002 has declared the Sections 4, 6 and 9 of the Delhi Rent Control Act, 1958 as ultra vires the Constitution and held that the landlord can increase the rent as per price index in the market.

3. That the rate of rent is liable to be held equal to the price index of the market rate and as such Rs. 3,000/- per month is a reasonable rent as per the present market value of the tenanted property of each shop.

4. You are very irregular in paying the rent to my clientes as despite the repeated request and demands you have failed to pay the rent w.e.f 01.06.2000. It is not out of place to mention here that my clientess had purchased the property in June, 2002 but the previous owners had authorized her to receive all the previous rent balance upon you.

5. That the rented shops under your tenancy are in dangerous conditions and my clientess wrote a letter to the MCD of the facts and on this ground also you are liable to be vacated the tenanted premises and if you failed to vacate the tenanted premises and any mis happening caused to you then my clientess will not be responsible for the same.

I, therefore, hereby call upon you to pay whole of the arrears of rent w.e.f. 01.06.2000 to 31.09.2002 @ Rs. 234/- per month within two months of this legal notice and increase the rent by Rs. 3,0007/- pm w.e.f. 1.10.2002 excluding all other charges of each shop and also vacate the tenanted shops as they are in dangerous conditions.

Be notified that in the event of your failure to carry out the above said requisitions my clientess shall be constrained to take appropriate legal action against you holding you responsible for all the costs and consequences arising therefrom.

5. The notice was replied to by the respondent in terms of a reply dated 03.01.2003 Ex. PW 1/G. In the reply, the respondent has stated that after Sh. M.L. Nagpal expired on January, 2002, the owners/landlords of the property could not be located. It is also stated that the rent is Rs. 234/- per month and had been paid up to May, 2000. The respondent also demanded the document of

ownership of the petitioner.

6. The petitioner filed an eviction petition u/s 14(1)(a) of the said Act on the ground of non-payment of rent and the said eviction petition was dismissed by the order dated 28.04.2004. The petitioner aggrieved by the said order filed an appeal before the Rent Control Tribunal. The appeal was allowed by the order dated 29.07.2004 whereby the matter was remanded back to the Additional Rent controller. Thereafter the ARC passed an order dated 01.11.2004 in terms whereof the respondent was found to be in default of rent but the respondent was held entitled to the benefit of Section 14(2) of the said Act. The respondent aggrieved by the same filed an appeal before the Rent Control Tribunal and the appeal has been allowed by the impugned order dated 11.03.2005.

7. The admitted position which emerged from the evidence led by the parties is that the petitioner has purchased the property and that the petitioner did not send any copy of the proof of ownership either at the stage when the notice was sent on 20.11.2002 or even thereafter when it was demanded by the respondent.

8. Learned counsel for the petitioner submits that it is the respondent who owed a duty to either pay the rent or deposit in court and merely because the respondent was demanding a copy of the title documents is not ground not to pay the rent. In this behalf, learned counsel relied upon the judgment of the learned Single Judge of the Madras High Court in K.M. Mohammed Vs. N. Ethirajan, T.E. Kasthuri and E. Nandakumar, . The context in which the observations have been made have to be considered. It has been observed that it is not for the tenant to demand that unless the copy of the sale deed is provided to him by the landlord and a fresh lease deed is entered into between the parties, he need not pay the rent to the landlord. This would prove the intention of the tenant not to pay the rent and that too after admitting that the landlord had purchased the property from the predecessor in title and had become owner of the property. Learned counsel also relied upon the judgment of the learned single judge of this court in Smt. Renu Jolly and Others Vs. Shri Vinod Kumar, to contend that the owner is always the landlord in view of the definition of landlord in Section 2(e) of the said Act and thus entitled to receive the rent.

9. Learned counsel for the respondent on the other hand contends that in the present case the original landlady had passed away as also her husband. Thus in the absence of knowledge of the legal heirs, there was no question of offering the rent to anyone nor was the rent so demanded. The respondent could also not deposit the rent u/s 27 of the said Act not knowing who is the landlord/landlady.

10. The petitioner for the first time demanded the rent as per the notice dated 20.11.2002 and the respondent asked for some document to show that the petitioner had become the landlord. Learned counsel further points out that the petitioner had demanded rent for the period even prior to purchase of the property as the rent was demanded from 01.06.2000 to 31.09.2002 at the rate

of Rs. 234/- per month while the sale deed did not provide for the right of the petitioner to recover any such arrears of rent which would be payable to the then owners/their legal heirs. Thus the right of the petitioner to demand the said amount itself was in doubt. Not only that for the subsequent period, the petitioner demanded the rent at Rs. 3,000/- per shop amounting to Rs. 6,000/- per month despite the tenancy being protected under the said Act.

11. In view of the aforesaid position, learned counsel submits that the judgment of the learned single judge of the Madhya Pradesh High Court in Ram Narayan Vs. Benji, would apply where it was held that a notice demanding rent at a rate higher than what the tenant was liable was not lawful and the demand ought to have been confined to the entitlement of the landlord. Learned counsel also refers to the judgment of the Devender Singh V. MCD, 1996 Rajdhani Law Reporter 101 where it was held that a notice u/s 14(1)(a) of the said Act has to be a notice of demand for a legally recoverable sum.

12. On consideration of the submissions of the learned counsel for the parties, I am of the view that the impugned order of the Tribunal cannot be said to suffer from any patent or jurisdictional error which is the scope of the interference under Article 227 of the Constitution of India. The present case is not one where the tenant suddenly started disputing the right of a landlord to recover the amount. It is an undisputed position that the landlady passed away and so did her husband who used to recover the rent on her behalf. None of the legal heirs demanded any amount from the respondent. The respondent did not know who the new landlord was and thus the occasion to make a deposit u/s 27 of the said Act did not arise. The respondent thus cannot be faulted on this account.

13. The petitioner for the first time vide the notice dated 20.11.2002 demanded rent claiming to be the landlord. The respondent did not even care to enclose any document to support the plea that they had acquired the rights in respect of the property. It cannot be said that the anyone can suddenly start demanding rent without at least putting the tenant to notice as to how the title had been acquired. Even at the stage when the respondent by the reply dated 03.01.2003 demanded a copy of the document of title the same was not supplied. In fact at no stage a copy of the document of title was supplied to the respondent as it emerged during the course of recording of evidence. This forms the basis of the order of the Tribunal.

14. In my considered view, there is another important aspect of the matter which emerges from the nature of demand made by the notice dated 20.11.2002. The petitioner sought recovery of past arrears of rent which were actually due prior to the purchased of the property by the petitioner. The petitioner did not substantiate that he was entitled to make such recovery or that the legal heirs of the original landlord at the stage of sale of property gave such rights to the petitioner. It is the legal heirs who would be entitled to the rent for the past period unless it is shown that such right is transferred when the property is so transferred.

15. The demand made for the rent is also not in accordance with what was being paid by the respondent. Soon after acquiring the property, the petitioner as per the notice demanded the rent at the rate of 6,000/- per month from 01.10.2002 as against the agreed rent of Rs. 234/- per month. This was not on the basis of any statutory increase but on the basis of a Division Bench judgment of this Court holding that certain provisions of the said Act were ultra vires. This judgment had been stayed.

16. In view of this factual position, the judgment in Devender Singh's case (supra) and Ram Narayan's case (supra) squarely apply to the present case as the demand of rent was not of the recoverable amount. The demand itself not being valid, non compliance of the same cannot give rise to a cause of action in favour of the petitioner. In view of the aforesaid, the petition is dismissed leaving the parties to bear their own costs.