

(2006) 09 DEL CK 0018

In the Delhi High Court

Case No : CM (M) No. 343 of 2004 and CM No. 3538 of 2004

Dr. (Miss) Taramotihar

APPELLANT

Vs

Smt. Satyawati Sharma (since deceased) through LRs.

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Delhi Rent Control Act, 1958 — Section 14(1), 7, 8

Citation : (2006) 91 DRJ 255

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : V.M. Issar, for the Appellant; A.C. Gambhir, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The respondent filed an eviction petition u/s 14(1)(k) of the Delhi Rent Control Act, 1958 (herein-after referred to as the said Act) in respect of the tenanted premises located at Desh Bandhu Gupta Road. Both these petitions raised a common question since the landlord is common and the allegation is that the premises are being put to commercial use contrary to the terms of the perpetual lease.

2. In order to appreciate the controversy, it is necessary to re-produce the relevant provisions which are as under:

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 favor 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:

(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; 14(11) No order for the recovery of possession of any premises shall be made on the ground specified in Clause (k) of the proviso to Sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

3. There are concurrent findings both by the Additional Rent Controller and by the Rent Control Tribunal that the premises are being used for commercial purposes. In fact there is no dispute in that behalf. Both the courts below have held in favor of the respondent-landlord and have given time to the tenants to stop the misuse and rectify the position.

4. The only question which has been urged in the present petitions by the learned Counsel for the petitioner arises from a scheme framed by the DDA in respect of the Karol Bagh Area. It is the submission of the learned Counsel for the petitioner that in view of the scheme, the petitioner is entitled to continue with the commercial user. This scheme has been discussed in the impugned order. The scheme was formulated with the intention of inviting the applications for obtaining permission for commercial use of the ground floor within the provisions of MPD-2001. Till now no such applications have been invited. The scheme also envisages demand of conversion fee and provisions being made for parking etc. Thus in order for the conversion from residential to commercial use, a number of parameters will have to be fulfilled .Learned Counsel has pointed out that Desh Bandhu Gupta road has been specifically included as one of the streets where this scheme would apply. The scheme requires approval of the Central Government and learned Counsel urges that action in that behalf is being taken now.

5. The substratum of the submissions of the learned Counsel for the petitioner is that perpetual lease itself envisages that there can be change in the user and in this behalf has referred to Clause 4(c) The lessee shall not use the said land and buildings that may be erected thereon during the said terms for any other purpose than for the purpose of a residential house, without that consent in writing of the Lesser; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the Lesser.?

6. Learned Counsel emphasizes the expressions not being a purpose subsequently approved by the Lesser. Learned Counsel thus submits that the scheme purports to change the user to commercial.

7. Learned Counsel for the respondent on the other hand has relied upon the

judgment of the Supreme Court in Shri Munshi Ram and Another Vs. Union of India and Others, which dealt with the same scheme. The Supreme Court made the following observations:

Para 7

Thirdly, we are considering not a violation of master or zonal plan but breach of a term of lease, which paramount Lesser is unwilling to condone. In the present case, it is not necessary to decide as to the effect of the proposal sent by the DDA to the Central Government to allow commercial user since the ground of eviction is Clause (k) as aforesaid where the question is about breach of a term of lease and the Lesser has declined to regularize the misuse for future. Learned Additional Solicitor General submits that DDA is not only serious in pursuing the action taken by it on account of misuse but it is duty-bound to do so.

Para 8

The question whether master plan and/or zonal plans provide or not for any use is not relevant for this matter. As already noted, we are concerned with the breach of the terms of the lease. It is not in dispute that the commercial use is contrary to the use permissible under the lease. The paramount Lesser has taken action to terminate the lease for contravention of the terms thereof. It cannot be held that despite contravention of the lease, the paramount Lesser is debarred from exercising its rights under the terms of the lease for absence of providing a user u/s 7 in the master plan or u/s 8 in the zonal development plan.

8. The submissions of the learned Counsel for the respondent thus are that the present scheme is irrelevant in view of the aforesaid observations of the Supreme Court which emphasize that the basic question to be considered is the breach of the terms of the lease and thus the scheme would not be relevant.

9. Learned Counsel for the petitioner sought to distinguish this judgment on the ground that in that case, it has been observed in para 7 itself that there is a controversy whether the area in question really fell within the scheme while in the present case there is no such doubt.

10. The aforesaid aspect has been analyzed by the Rent Control Tribunal in para 19 of the impugned order and this very plea has been repelled. It has been emphasized that what is relevant is the violation of the perpetual lease and the action taken by the paramount Lesser for stoppage of commercial use. I am in agreement with the views expressed by the Tribunal inasmuch as the ratio of the judgment of the Supreme Court is that in case of scrutiny of such a case, the relevant aspect is the violation of the perpetual lease.

11. In Munshi Ram's case, the Supreme Court repelled the contention of the petitioner on various grounds. One of the grounds, of course, was that it was not clear whether the area fell within the scheme. Simultaneously another ground was that the aspect of the scheme is not even relevant and it is these observations which have material bearing in the present case. In fact the

Supreme Court observed that the question whether the Master Plan and/or Zonal Plan provides or not for any use is not relevant for the matter as the question is of the breach of the terms of the lease.

12. Undisputedly, lease terms provide for residential use. Lease terms have not been changed by the perpetual Lesser. In the absence of any such change, the petitioner cannot take advantage of the last sentence of Clause 4(c) as urged by learned Counsel for the petitioner.

13. In view of the aforesaid, I find no patent error or erroneous exercise of jurisdiction by the trial court so as to call for interference by this Court under Article 227 of the Constitution of India.

14. Dismissed.

15. Petitioner is granted two months time to comply with the directions of the Tribunal.