(2008) 11 DEL CK 0197

In the Delhi High Court

Case No : Regular First Appeal 11-13 of 2006 and 576 of 2007

Model Press Pvt. Ltd. APPELLANT

Vs

Mohd. Saied
 Joginder Lal Kuthialal and Others Vs Rajesh Kumar Meatle RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21
Delhi Rent Control Act, 1958 — Section 14, 3, 4, 6, 9
Transfer of Property Act, 1882 — Section 105

Citation : (2008) 155 DLT 403

Hon'ble Judges : Pradeep Nandrajog, J;J.R. Midha, J

Bench : Division Bench

Advocate : Rajiv Behl, in RFA 576/2007 and Ravi Nath, in RFA 11-13/200, for the Appellant; Rajinder Dutt and M. Salim, in RFA 576/2007 and B.B. Gupta in RFA 11-13/2006, for the Respondent

Judgement

Pradeep Nandrajog, J.—Parties in RFA No. 576/2007 were granted liberty to file written submissions within a week when arguments were concluded. More than a week has gone by. No written submissions have been filed.

2. The plaintiffs of the two suits, out of which the present appeals have arisen, are the landlords and have suffered a rejection of the plaint as the finding returned by the learned Trial Judge is that even as per the case pleaded in the plaint Civil Courts have no jurisdiction to entertain the claim for ejectment of the tenant of the respective suits.

3. The tenant of RFA No. 576/2007 is enjoying the tenanted premises since 1.11.1972 and is paying a rent of Rs. 1,285/- per month.

4. The tenant of the subject premises relatable to RFA No. 11-13/2006 is occupying the tenanted premises since around the year 1932 and is paying a monthly rent of Rs. 89.60.

5. The two landlords tried their luck by seeking ejectment of the respective tenant alleging that a Division Bench of this Court, in the decision reported as Raghunandan Saran Ashok Saran (HUF) Vs. Union of India and Others, had quashed Sections 4, 6 and 9 of the Delhi Rent Control Act 1958 being offensive to Article 14, 19(1)g and 21 of the Constitution of India and that as a consequence the landlords became entitled to receive rent at the market rate and since market rate of rent when suits were filed was above Rs. 3,500/- per month, the tenants were liable to be ejected by the civil courts because the tenancies were determined by issuing requisite notice under the Transfer of Property Act calling upon the tenants to surrender possession.

6. In Delhi, a tenant paying rent of less than Rs. 3,500/- per month is protected by the Delhi Rent Control Act 1958 and can be ejected only by the Rent Controller on one or more of the grounds enumerated u/s 14 of the Delhi Rent Control Act 1958. It may be noted that prior to the amendment incorporated in the Delhi Rent Control Act 1958 by Act No. 37 of 1988 with effect from 1.12.1988 all tenancies in Delhi, irrespective of the rent payable, were covered by the provisions of the Delhi Rent Control Act 1958. By Act No. 37 of 1988 Clause ''c'' was inserted in Section 3 of the Delhi Rent Control Act 1958, the effect whereof is to exclude premises whose monthly rent exceeded Rs. 3,500/- per month from the rigors of the Act.

7. It may be noted at the outset that the vires of Act No. 37/1988 and of Clause ''c'' of Section 3 of the Delhi Rent Control Act 1958 was upheld by the Supreme Court in the decision reported as D.C. Bhatia and Others Vs. Union of India (UOI) and Another,

8. The appellants suffered rejection of their plaints because the admitted agreed rent of the two premises, as noted herein above was far below Rs. 3,500/- per month and thus the bar created by Section 14 of the said Act to the jurisdiction of the Civil Court has been held fatal to the suits.

9. The only contention urged at the hearing of the appeals by learned Counsel for the appellants was that since Section 4, 6 and 9 of the Delhi Rent Control Act 1958 have been struck down by this Court in Raghunandan Saran''s case (supra), there was no embargo on the landlords to recover the standard rent as determined by said provisions and hence the rates at which rent could be realized by them as on date when the suits were filed would determine the question whether the Civil Court had jurisdiction and since it was pleaded in the plaints that the market rate of rent was much more than Rs. 3,500/- per month, the plaints could not be rejected at the thresh-hold.

10. Unfortunately for the appellants, the contention afore-noted by their Counsel holds no substance, though it is a very emotive plea.

11. The Division Bench of this Court in Raghunandan Saran''s case (supra) has very pithly summed up the ambit of Section 4, Section 6 and Section 9 of the Delhi Rent Control Act 1958 and since the vires of these Sections has been

tested and held to be offending Article 14, 19(1)(g) and 21 of the Constitution of India, we need not note down the said provisions as also the ambit thereof and the reasons for the said Sections to be struck down, save and except to briefly note that the legal position which emerged from the aforesaid provisions is that once the standard rent was fixed as per Section 6 of the Act, no rent in excess thereof could be recovered by the landlord from the tenant and while determining the standard rent u/s 9 of the Act, the Rent Controller was obliged to determine the same as per the formula prescribed u/s 6 of the Act. Thus, even the agreed rent was susceptible, to be recovered by the landlord. Not only that the standard rent became meaningless when viewed in the light of inflation i.e. in terms of the actual money value which the landlord got.

12. But, with respect to the agreed rent, wherever the same is less than Rs. 3,500/- per month and the tenant willingly paid the same, the question of fixation of standard rent does not arise. In such scenario, the issue of Section 4, 6 and 9 becomes irrelevant. The only issue which can be urged by the landlord is that the agreed rent was limited to the duration of the lease and after the same was over, the landlord would be entitled to increase the rent.

13. But, unfortunately, for the landlords who are receiving a rent of less than Rs. 3,500/- per month, there is no provision available for them to unilaterally increase the rent.

14. It would not be out of place to note that in para 28 of its decision in Raghunandan Saran''s case (supra), after giving reasons as to why Section 4, 6 and 9 of the Delhi Rent Control Act 1958 were ultra vires the Constitution, the Division Bench held:

The provisions are archic. They contain no mechanism to compensate the landlords to offset inflation. There ought to be a mechanism to increase the agreed rents keeping in view the price index.

15. Thus, even the Division Bench which penned the decision in Raghunandan Saran''s case (supra) made it clear that a mechanism has to be put in place for the landlords to increase the agreed rent keeping in view the price index.

16. The reason is obvious. Section 105 of the Transfer of Property Act 1882 defines a lease of an immovable property as a transfer of a right to enjoy immovable property for a certain time, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. Thus, a lease is a contract, which means, that all terms thereof have to be by a bilateral consensus between the lessor and the lessee. Neither a landlord can unilaterally increase the rent nor can the tenant unilaterally decrease the same.

17. Section 14 of the Delhi Rent Control Act 1958 gives as many as thirteen grounds on which a tenant can be ejected. The Section starts with a non-

obstante Clause by clearly recording that 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 the tenant. Thereafter, a proviso is inserted as per which on any one or more of the thirteen grounds listed under the proviso the landlord can recover possession from the tenant by preferring an application before the Rent Controller.

18. The embargo created by Section 14 hits the instant plaints. The vires of Section 14 of the Delhi Rent Control Act 1958 has not been challenged by the appellants.

19. It would also be not out of place to note that in D.C. Bhatia''s case (supra) the Hon''ble Supreme Court had to say as under, in paras 57, 58 and 61 of the decision:

57. In view of the aforesaid, we are unable to uphold the contention that the tenants had acquired a vested right in the properties occupied by them under the statute. We are of the view that the provisions of Section 3(c) will also apply to the premises which had already been let out at the monthly rent in excess of Rs. 3500/- when the amendment made in 1988 came into force.

58. The last contention was as to whether the term ''rent'' is to be construed as "standard rent" and not as the rent which is actually being paid. This argument is also not acceptable for a number of reasons. Firstly, the legislature has not used the expression ''standard rent'' in Clause (c) of Section 3. Words normally should be understood in the ordinary dictionary meaning.

59. xxxx

60. xxxx

61. Moreover, the scheme and the purpose of the Act are clear. Tenants who could afford to pay more than Rs. 3500/- per month by way of rent, were being removed from the protective umbrella of the Rent Act. Only thing that has to be seen for the purpose of deciding the class of tenants, who were being excluded from the ambit of the Rent Act, was the exact amount of monthly rent that was being paid on the relevant date i.e. 1-12-1988. There is no precondition of fixation of standard rent before application of the provisions of Section 3(c) of the Act.

20. It is unfortunate that after the decision in Raghunandan Saran''s case, the legislature has not filled up the vacuum created in the law with Sections 4, 6 and 9 of the Delhi Rent Control Act 1958 being held ultra vires the Constitution. The mechanism required to be put in place, as observed by the Division Bench in para 28, has yet to find its place. But, since under the garb of interpretation, this Court cannot legislate, the inevitable consequence has to be that the appellants can claim no more rent from their tenants other than the agreed rent which the tenants are happily paying. Since the agreed rent in both cases is far below Rs.

3,500/- per month, we hold that the learned Trial Judges were correct in rejecting the plaints as indeed the claim for recovery of possession against the respondents was not maintainable before a Civil Court.

21. No costs.

