

(2001) 01 DEL CK 0033

In the Delhi High Court

Case No : SAO 23 and C.M. 616 of 2000

Narendra Singh Jain

APPELLANT

Vs

Shri R.P. Saroj (Deceased) and Others

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Citation : (2001) 3 AD 245 : (2001) 90 DLT 232 : (2001) 57 DRJ 833 : (2001) RLR 258

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. G.N. Aggarwal, for the Appellant; Mr. R.S. Endlaw, for the Respondent

Judgement

Vikramajit Sen, J.—The Respondent/Landlord has filed the present Eviction Petition, inter alia, u/s 14(1)(k) of the Delhi Rent Control Act which was dismissed by the Additional Rent Controller in terms of his Order dated 31.7.1995. Thereafter, the Landlord filed an Appeal before the Rent Control Tribunal. By his Order dated 1.5.2000, while allowing the Appeal, the Tribunal observed as follows:

of DDA and the notice served upon the appellant sufficiently shows that premises are being used for office purpose which apparently is a use contrary to the conditions imposed upon him by DDA while giving him lease of land on which the premises are situate.

In such an eventuality there was no other option open to the Ld. trial court than to grant the respondent time to comply with the conditions imposed by DDA referred in the clause or pay to that authority such amount by way of compensation as the case may be.

In view of the foregoing reasons I accept the appeal, set aside the impugned judgment and allow the eviction petition U/S 14(1)(k) DRC Act and direct the respondent to stop the misuse of the premises within one month of the date of

this order and also pay misuse charges as imposed by DDA the amount of which would be ascertained by the Controller by holding Enquiry U/S 14(11) DRC Act. Parties are directed to appear before the Ld. trial court for the aforesaid purpose on 16.5.2000."

2. In the Grounds of Appeal, it has been asserted that several "substantial questions of law of great general public importance which need authoritative pronouncement" have arisen. But from a perusal of the five grounds raised they do not partake of this nature but calls for this Court taking a view contrary to that of the first Appellate Court. Be that as it may, since arguments were heard, I shall overlook this technicality. It must, however, borne in mind that the intention of the Legislation is that finality must attach to the judgment of the Rent Control Tribunal on facts, as well as the application of law in respect of those facts.

3. Mr. G.N. Aggarwal, Learned Counsel appearing for the Appellant/Tenant has strongly contended that the Tribunal had (a) no jurisdiction to direct the Tenant to stop the misuse of the premises within one month of the date of the Order and (b) direct the Tenant to pay misuse charges as imposed by the DDA. It was his contention that this power has been specifically granted only to the Controller. Reliance was placed on the decisions reported as Faqir Chand Vs. Shri Ram Rattan Bhanot, , M/s. Curewell (India) Ltd. Vs. Sahib Singh(dead by L.Rs.) and Others 1992 (2) RCR 318 and a decision of a Single Judge of this Court entitled as Ashok Kumar, Vijay Kumar, Kimtilal, Subhash Grover Vs. Usha Rani 1993 RLR 367.

4. The relevant provisions of the Delhi Rent Control Act are 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 favor of the landlords 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:-

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;

(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) if the tenant makes payment or deposit as required by section 15."

5. In Faqir Chand's case, two proposition were clarified by the Supreme Court. Firstly, that there can be no estoppel against the primary Lesser (the concerned Authority) merely because the landlord and tenant agree to a user contrary to that agreed upon/imposed by the Authority. The analogy of the well est. principle

that a party cannot convey/confer a better or greater title than that possessed by him, immediately comes to mind. Secondly, the Supreme Court set aside the order of the High Court passing an eviction decree in the following words:

"We are also of the opinion that the High Court was not justified in leaving to the Controller no option but to pass an order for eviction. That would make the alternative provided in sub-section (11) of Section 14 useless. The High Court is not correct in saying that since the Authority has no power to legalize the misuse of land contrary to the plans by acceptance of compensation under the Development Act, the Controller cannot order the payment of compensation by the tenant to the Delhi Development Authority. This is in effect nullifying part of the provisions contained in sub-section (11) of Section 14. The High Court has arrived at its conclusion on the basis that Section 14 of the Delhi Development Act applies to this case. We shall presently show that that section has no relevance to the decision of this case."

The decision is, however, not an authority for the proposition canvassed before me that it is only the Rent Controller who can pass an eviction order. The Supreme Court did not agree with the reasoning of the High Court and allowed to appeal for this reason. Similarly, in the Curewell case the Supreme Court followed this very sequence, as is evident from the following passage:

"Accordingly, we set aside the impugned judgment of the High Court as well as the orders of the authorities and direct the Controller to issue notice to the original lessee and the sub lessee, namely, the appellant and the Government represented by the Land and Development Officer and determine; (1) the actual period of misuse by the appellant, and (2) the compensation payable by the appellant in respect of such misuser. We make it clear that if the appellant has stopped the misuse or if he stops the misuse within a period to be specified by the Controller and also pays the amount determined by the Controller as compensation, he shall have the protection of sub section(11) of Section 14 from eviction on the ground mentioned in "Cl.(k of sub section(1) of that section."

6. Reverting to the present case, the Tribunal has firstly directed the Respondent/Tenant to stop the misuse of the premises within one month and secondly to pay misuse charges as imposed by DDA the amount of which would be ascertained by the Controller by holding an Inquiry u/s 14(11). There can be no objection against the latter direction, inasmuch as it merely reiterates what has been stated in Section 14(11) of the Delhi Rent Control Act. The powers of the Appellate Court and the Lower Court merged with each other and it would be incorrect to argue that since the word employed in the provisions of the Delhi Rent Control Act is "Controller", it is he and not the Rent Control Tribunal who can exercise those powers. When the Rent Control Tribunal is seized of the disputes between landlords and tenants, in the course of an appeal brought before it, it can pass all orders which the Controller could have passed in the first instance. In any event, the Rent Control Tribunal has not directed the Tenant to pay the sums demanded from the Landlord and admittedly that Inquiry is

pending before the Controller. As regards the other direction viz., misuse by the tenant, the case has already been remanded back by the Rent Control Tribunal to the Rent Controller obviously for carrying out the exercise envisaged in Sub-section (11). However, in the opinion of the Rent Control Tribunal, the tenant was using the premises for office purposes, which, keeping in view the Inspection Report of the Officer of the DDA and the notices served upon the Appellant, were contrary to the conditions imposed upon the Landlord by the DDA. Once this conclusion is arrived at, the Court has jurisdiction to direct the Tenant to comply with the conditions imposed on the Landlord by the Authorities, viz., that the premises should not be used for office purpose. To hold otherwise would had to be result that the protection against eviction granted to a section of society can be used to the detriment of their landlords which may have the consequence of the latter's rights being annihilated. The entire purpose of the Act would be lost. There is, Therefore, no error in the impugned judgment. The appeal also does not raise any substantial question of law. It is dismissed with costs of Rs.5000/-.

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