

(2011) 12 DEL CK 0270

In the Delhi High Court

Case No : CM (M) No. 1588 of 2010 and CM No. 22286 of 2010

North Delhi Power Ltd.

APPELLANT

Vs

Swarna Gupta

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Companies Act, 1956 — Section 391, 394
Delhi Rent Control Act, 1958 — Section 14, 14(1), 15, 2, 3
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 5

Citation : (2012) 1 RCR(Rent) 60

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, with Mr. Divyam Agarwal, Mr. Manish Kr. Jha and Mr. Mohit Bakshi, for the Appellant; Rakesh Khanna with Mr. Anshu Mahajan, Karan Arora and Ms. Seema, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The order impugned before this Court is the order dated 08.09.2010 which is an order passed by the Additional Rent Control Tribunal (ARCT) reversing the finding of the Additional Rent Controller (ARC) dated 22.09.2009 whereby the eviction petition filed by the landlord i.e. Swarna Gupta against the tenant namely Delhi Vidyut Board (DVB) on the ground of sub-letting as contained in Section 14(1)(b) of the Delhi Rent Control Act (DRCA) had been dismissed. The impugned judgment reversing this finding had decreed the suit of the landlord.

2. Certain facts are undisputed. Landlord is the owner of the premises in question i.e. property bearing No. 13-A(Southern Hall) bearing municipal No. 6323 and 6324 now known as Jagannath Market, Kamla Nagar, G.T. Road, Delhi-110007 which had been let out to the tenant in the year 1963 i.e. to the DVB. Present tenancy is of the North Delhi Power Limited (NDPL). Admittedly, the DVB has come to a close and its existence has been terminated; the company

now dealing with the distribution of power in the said area is the NDPL.

3. The only question which has to be answered by this Court is whether the merger of DVB with the NDPL was necessarily a transfer by the operation of law or whether it was a voluntary transfer; if it is of the first category i.e. if it is an operation by law, then a case of sub-letting u/s 14(1)(b) of the DRCA would not be made out; in case it is a voluntary transfer, an eviction decree on the ground of sub-letting u/s 14(1)(b) of the DRCA would have to be passed in favour of the landlord. Both the learned senior counsels for the parties agree that this is the only question which has been posed before this Court; it is a legal question.

4. The Delhi Electricity Reforms Act, 2000 (hereinafter referred to as the Act of 2000) as also the document of transfer i.e. the notification dated 20.11.2001 issued by the Government of NCT whereby the assets, liabilities, proceedings and personnel of the DVB had been transferred to private DISCOMS (the relevant DISCOM in the present case being DISCOM-3 i.e. NDPL) have been adverted to.

5. Learned Counsel for the petitioner has pointed out that after the coming into force of the Delhi Electricity Reforms Act 2000 there was a reorganization of the electricity industry as contained in Chapter V of the said Act. Attention has been drawn to the various sub clauses of Sections 14 and 15; contention being that all the assets, liabilities and proceedings of the DVB had by operation of law been transferred to the NDPL and Section 15(4)(b) in fact clearly stipulates that where any transaction is effected in pursuance to a transfer scheme, it shall be binding on all persons including a third party, even if that said party has not consented to it; emphasis being on the fact that this clearly shows that the transfer is by operation of law and is not a voluntary transfer. The notification date 20.11.2001 i.e. the transfer scheme has also been highlighted.

6. Definition of "assets" is contained in Section 2(a), Section 3 stipulates that all assets, liabilities and proceedings of the Board shall stand transferred and will vest in the Government absolutely. This section clarifies that there is an automatic transfer by operation of law of all the assets, liabilities and proceedings of the DVB to the Government and the same shall vest with the Government absolutely. Section 5 which deals with the "Transfer of Undertakings by the Government". The object clause of Schedule F inter alia states:-

Unless otherwise specified by the Government the Transmission Undertakings shall comprise of all the assets, liabilities and proceedings concerning Distribution consisting of:

which when read in conformity with Sections 14 and 15 of the Act show that the transfer by operation of law is only of the assets, liabilities and proceedings of the Board to the Government but thereafter from the Government to the private Discoms -3 (NDPL); it is not a transfer by operation of law. This can be gathered from the use of word "may" as appearing in the various parts of Sections 14 and 15 depicting the intent of the legislature that the transfer scheme may or may not be formulated by the Government in favour of the private DISCOMS. Further

Schedule F clearly states that the assets, liabilities and proceedings transferred from the Board to the NDPL are detailed in Schedule F where the disputed premises (i.e. the premises bearing No. 13-A(Southern Hall) bearing municipal No. 6323 and 6324 now known as Jagannath Market, Kamla Nagar, G.T. Road, Delhi-110007) do not find mention.

7. A wholesome reading of these various provisions thus shows that the transfer of the tenancy rights by the DVB to the NDPL was not a transfer under the operation of law; the assets, liabilities and proceedings of the DVB had by an operation of law vested with the Government but thereafter from the Government to the private DISCOMS; it was not a transfer governed by the operation of law. As such the finding in the impugned judgment holding that this amounted to a sub-letting entitling the landlord to a decree of eviction u/s 14(1)(b) of the Delhi Rent Control Act (DRCA) does not call any interference.

8. In *Singer India Ltd. Vs. Chander Mohan Chadha and Others*, , the Apex Court while dealing with the amalgamation of the companies under Sections 391 and 394 of the Companies Act in this context on the applicability of Section 14(1)(b) of the DRCA had noted as under:-

There is no ambiguity in the Section and it clearly says that if, without obtaining the consent in writing of the landlord the tenant has, on or after 9.6.1952, (i) sub-let, or (ii) assigned, or (iii) otherwise parted with the possession of the whole or any part of the premises, he would be liable for eviction. The applicability of the Section depends upon occurrence of a factual situation, namely, sub-letting or assignment or otherwise parting with possession of the whole or any part of the premises by the tenant. Whether it is a voluntary act of the tenant or otherwise and also the reasons for doing so are wholly irrelevant and can have no bearing. This view finds support from an earlier decision rendered in *Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another*, wherein Section 14(1)(b) of Delhi Rent Control Act came up for consideration. The tenant in the premises, was Laxmi Bank, which was ordered to be wound up and in that winding up proceeding, the Court appointed an Official Liquidator who sold the tenancy rights in favour of S.N. Jain on 16.2.1961. The sale was confirmed by the High Court and, as a result thereof, S.N. Jain took possession of the premises. Thereafter, the landlord filed a petition for eviction of Laxmi Bank. The High Court held that as the transfer in favour of S.N. Jain by the Official Liquidator was confirmed by the Court, he acquired the status of the tenant by operation of law and, therefore, the transfer of the tenancy rights was an involuntary transfer and the provision of Section 14(1)(b) of the Act would not be attracted. Reversing the judgment, this Court held that the Official Liquidator had merely stepped into the shoes of Laxmi Bank which was the original tenant and even if the Official Liquidator had transferred the tenancy interest to S.N. Jain under the orders of the Court, it was on behalf of the original tenant. It was further held that the sale was a voluntary sale, which clearly was within the mischief of the Section, and assuming that the sale by the

Official Liquidator was an involuntary sale, it undoubtedly became an assignment as provided by Section 14(1)(b) of the Act. The Court further held that the language of Section 14(1)(b) is wide enough not only to include any sub-lease but even an assignment or any other mode by which possession of the tenanted premises is parted and the provision does not exclude even an involuntary sale.

9. Reliance placed upon by the Learned Counsel for the petitioner on the judgment of Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others, as also another judgment of this Court reported in Mrs. Asha Rohtagi and Others Vs. Erstwhile New Bank of India, is misplaced. In the first judgment (*supra*), there was an acquisition of an undertaking of a foreign company by the Central Government and u/s 5 of the Esso (Acquisition of Undertakings in India) Act 1974 the Central Government on the appointed date had become a lessee/tenant in respect of this property; this was by way of a statutory enactment. The second judgment of Asha Rohtagi also does not help the case of the petitioner. In this case there was a merger of New Bank of India (NBI) with the Punjab National Bank (PNB) which was a merger under the Banking Companies (Acquisition and Transfer of Undertaking) Act 1980 wherein Clause 4 (2) clearly provided that the tenancy rights of NBI had been conferred upon the PNB.

10. In the instant case as noted *supra*, the Act of 2000 read with Notification of the NCT (dated 20.11.2001) has only vested the assets, liabilities and proceedings of the DVB in the Government by operation of law but thereafter from the Government to the private DISCOMS, the transfer scheme was a voluntary arrangement and not a transfer by an operation of law.

11. In this view of the matter, the ratio of Singer India Limited (*supra*) comes to the aid of the respondent. The eviction petition decreed u/s 14(1)(b) of the DRCA on the ground of sub-letting (the tenancy having been transferred from the DVB to the NDPL) thus suffers from no infirmity.

12. Petition is without any merit; it is dismissed.