

(1967) 12 DEL CK 0011

In the Delhi High Court

Case No : Second Appeal No. 224D of 1963

Parkash Chander Gupta

APPELLANT

Vs

Tara Chand Malik

RESPONDENT

Date of Decision : 11-12-1967

Acts Referred:

Citation : (1968) 4 DLT 200

Hon'ble Judges : I.D. Dua, C.J

Bench : Single Bench

Advocate : A.R.Wig, D.K. Kapur and S.N.Chopra, for the Appellant;

Judgement

I.D. Dua, C.J.

(1) This is the tenant's second appeal u/s 39 of the Delhi Rent Control Act 59 of 1958 from the order of the Rent Control Tribunal dated 18th November 1963 affirming on the tenant's appeal the order of the Rent Controller dated 12th June 1963 directing eviction of the tenant and ordering recovery of possession of the suit premises in favor of the landlord.

(2) The appellant, a tenant under the Respondent in the premises bearing Municipal No. 8014 situated in Ramjas Road, Karolbagh, New Dehi at Rs. 250/ per mensem, took the said premises on rent on 31st March 1955, The eviction proceedings were started on 10th January 1962 on a two fold ground namely, (i) that the premises had been let for residential purposes but the tenant had started running a College therein known as Gupta College and (ii) that in spite of previous notice, the tenant. bad used or dealt with the premises in a manner contrary to the conditions imposed on the landlord by the Delhi Development Authority at the time of giving him the lease of the land on which the premises are situated. The main point considered by the Rent Controller to require determination was as to the purposes for which the building in question had been let to the tenant. both the Rent Controller and the Tribunal have come to the concurrent conclusion that the premises had been let to the tenant for residential

purposes but the tenant changed its user later on and he did not stop the misuse in spite of service of notice. The misuse was held to be detrimental to the interest of the landlord because the lease of the land on which the building is constructed is likely to be forfeited if the misuse is not stopped.

(3) On second appeal, the learned counsel for the appellant, to begin with, submitted that the Rent Controller and the Rent Control Tribunal have both failed to notice the distinction between the nature of the property which is leased out and the purposes for which it is leased out. According to him, the mere fact that in Exhibit A. 7 dated 31st March 1955, which evidences the lease, it is stated that Shri Parkash Chander the tenant had undertaken to Take on rent as a tenant Shri Tara Chand Malik's residential house does not necessarily mean that the said house was let out for residential purpose. But when Shri A. R. Wig, the learned counsel for the tenant appellant, was confronted with Exhibit P. 9 in which it is expressly stated that the premises in question had been let out to Shri Parkash Chander for his personal residence only, he was constrained to drop this argument and to concede that the premises in question had been initially let out for residential purpose.

(4) Shri Wig next contended that the tenant had started using the premises for a College in July, 1955 and the landlord was fully aware of this user from the very start and he must, Therefore, be deemed to have acquiesced in it. As a matter of fact, the initial argument put forth by Shri Wig was that consent of the landlord must be presumed in these circumstances and he referred me to a decision of the Supreme Court in *Dr. Gopal Dan v. Dr S. K. Bhardwaj*, but this decision is, in my view, wholly unhelpful to the appellant. not only are the facts of the reported case different, but there the Court was concerned with the provisions of the Delhi and Ajmer Rent Control Act, 1952, whereas in the case in hand clause (e) (i) of the proviso to section 14(1) of the Delhi Rent Control Act, 59 of 1958 calls for determination. According to this clause, if the premises had been let, on or after 8th June 1952, the tenant can use the premises for a purpose other than for which they were let only after obtaining the consent in writing of the landlord. Failure to do so is, according to section 14, a ground for rendering recovery of premises on the landlord's application to the Rent Controller. The decision of the English Court of Appeal in *Hyde v. Pimley*, may also be ignored because that decision obviously deals with Rent and Mortgage Interest Restrictions (Amendment) Act of 1933 of the British Parliament and not with the statute-which concerns us. No attempt has been made to bring out any analogy between the two provisions, with the result that I must hold the decision of the English Court of Appeal to be wholly unhelpful and irrelevant.

(5) Shri Wig next contended that the landlord must be held to have waived his right to claim an order of eviction against the appellant on the ground of section 14(1) proviso (e) (i) because he had ever since July, 1955 known of the use of the premises as a college by the tenant-appellant and had indeed been corresponding with the appellant sending to him letters c/o the Gupta College. It

was contended that a plea, of fact and law and, Therefore, on the admitted facts, such a plea can be argued in a Court of Appeal and even in a Court of second Appeal u/s 39 of the Delhi Rent Control Act. According to Shri Wig, the argument that the Rent Controller and the Rent Control Tribunal were bound in law to consider the efface of the documents which show knowledge on the part of the landlord about the premises being used as a College on the tenant's contention that the landlord had waived his right, raises a substantial question of law and it is emphasised that an argument on these lines was actually raised in the grounds of appeal. This submission has been sought to be supported by the ratio of the Supreme Court decision in Nedunuri v. Sampati It was observed in that decision that a construction of documents (unless they are documents of title) produced by the parties to prove a question of fact does not involve an issue of law, unless it can be shown that the material evidence contained in then was misunderstood by the court of fact and that the legal inference from the proved facts may still raise a question of law. It was argued on behalf of the appellant that this decision has brought about a change in the earlier legal position that inference of fact from basic conclusions of fact still remains a question of law and does not become a question of law because now a legal inference from proved facts must always be considered to be a question of law. I must express my complete inability to agree with the submission that this decision of the Supreme Court was intended to bring about any change in the settled legal position about the nature of the inference drawn from proved facts. The legal position on the point canvassed before me is settled beyond doubt and decisions are a legion which have authoritatively established that even in case of a mixed question of fact and law, an inference leading to a conclusion of fact must nevertheless be a finding of fact not challengeable on second appeal, if there is no legal infirmity in drawing such inference from evidentiary or proved basic facts. It is only when the existence of certain facts give rise to a legal right or liability that the inference from these existing facts becomes an inference of law. If, Therefore, the inference is not drawn in a legal manner, it would amount to an error of law reviewable on second appeal. As is obvious, a mixed question of fact and law arises when to come to a conclusion it would necessitate answering both question of fact and a question of law and such a conclusion would be open to second appeal only if an error on the matter of law can be made out. The question of fact requiring answer can by no means be open to revaluation by the Court of second appeal. Of course, when a document is one of title or one on which a party's cause of action is founded its construction would raise a question of law, and in case of other documents, there misreading would also similarly raise a question of law. In other cases, interpretation or construction of documents, which are not documents of title or on which the cause of action is not founded, would merely amount to a question of fact, without giving rise to any question of law which can be agitated on second appeal. In a case of this type, the Court merely evaluates documents as pieces of evidence. The legal position just enunciated appears to me to be settled beyond doubt and the ratio of the Supreme Court decision does not state the legal position differently. And

then, u/s 39 of the Delhi Rent Act of 1958, the scope of challenge is further restricted by sub-section (2) thereof which shuts out a second appeal unless some substantial question of law is involved therein. A substantial question of law, it is again beyond dispute, does not mean a mere question of law. In order to be "substantial", a question of law must at least be such that there is some doubt or difference of opinion or there is room for difference of opinion on the legal aspect, though generally a question of law of general public importance or even one which may affect materially the rights of the parties has been considered to be substantial in some decisions. However, the law is well-settled, the mere application of the settled principles to a particular set of facts would scarcely constitute a substantial question of law. The appellant has, Therefore, still another hurdle to cross by showing that the impugned order is tainted with a legal infirmity of a substantial nature.

(6) Now I quite agree that acquiescence is not a pure question of fact but of legal inference from basic facts found and upon the question of acquiescence, the judgment of the Court of first Appeal drawing the inference may not be final. But the plea of acquiescence or waiver must be raised in the pleadings, put into issue and adjudicated upon at trial, for, the facts on which such a plea is to be founded must find place in the pleadings. The appellants' learned counsel, however, argued that if basic facts are pleaded, even though for sustaining another plea which has failed, then on such admitted or founded facts, the arguments for sustaining the plea of acquiescence or waiver, which is a mixed question of fact of law. would be permissible even on second appeal, its restricted scope as provided by section 39 and 21 of the Delhi Act of 1958 notwithstanding, with the object of substantiating this contention. Shri Wig has taken me through his client's written statement and also through the application for eviction. I must confess that I do not find any foundation of factual pleas in the pleadings which can sustain a plea of acquiescence or waiver in this Court. But be that as it may, the plea of acquiescence or waiver was not even remotely argued before the Rent Controller and of course the parties did not seem to have realised that facts considered necessary for establishing such a plea were the subject matter of controversy. Even before the Rent Control Tribunal. the plea of acquiescence or waiver was not argued because there is no discussion on this aspect in the impugned order.

(7) The next question are the facts on the basis of which the aforesaid plea is sought to be established in this Court, admitted or established? The only point which the learned counsel for the appellant Shri Wig and Shri D. K. Kapur have been able with their industry and research to make out is that the landlord must have known by reason of the address on which he used to correspond with the tenant after July, 1955 that a College was being run in the premises and, Therefore, he must be assumed to have acquiescence in such user and waived his right to have the premises vacated u/s 14(1) provision(1) of the Delhi Act of 1958. The counsel has of course very eloquently asserted that a reading of these letters must necessarily amount to acquiescence or waiver, but my attention has

not been drawn to any precedent or principle on which acquiescence or waiver can be thus supported. Of course nothing has been said at the bar as to how the tenant has suffered or been prejudiced by the knowledge on the part of the landlord that a College was being run in the premises, it is noteworthy that in September, 1956, the landlord was served with a notice from the Delhi Improvement Trust calling upon him to close the Gupta College within 30 days as it was being run in contravention of the condition of the lease in his favor. This notice was apparently forwarded by the landlord to the tenant on 12th December, 1956 per Exhibit A. 14. This document, in my view, completely demolishes any plea of acquiescence or waiver as is sought to be made out now for the first on second appeal in this Court on behalf of the tenant. On 11th January, 1957, a registered notice by Shri Naubat Rai Suri, Advocate, on behalf of the landlord. Exhibit A. 15 was also served objecting to the cause of the demised premises as College known as Gupta College. It is expressly repeated in this notice that the landlord has been threatened by the Delhi Improvement Trust with the termination of his lease if the breach of its trust is not stopped. It is also mentioned in this notice that the tenant was in arrears of rent. Without going into the other material on the record, in my view, these two notices are sufficient to expose the futility of the contention sought to be raised now. I am on this view refraining to express any opinion on the question if the landlord's right could in law be defeated by a plea of waiver or acquiescence.

(8) I need not and that even if there were a question of law of the kind suggested on behalf of the appellant, it would be a matter for consideration if it constituted a substantial question of law because the essential ingredients of acquiescence and waiver are very well settled. A question of this type, even it arose, may not stand the test of section 39(2) of the Rent Act. Of course, no other substantial legal infirmity has been pointed out in this context.

(9) In regard to the applicability of section 14(5) and (II) of the Delhi Rent Act of 1958, Shri Wig with his usual ingenuity submitted that if the user of the house for a different purpose was waived by the landlord, then these sub sections would be wholly inapplicable. Here I am afraid the learned counsel is unaware, of the record, of the notices, to which I have adverted a little earlier. Those notices are a complete answer to this plea, though, in my view if on the first ground discussed above, the order of eviction is to be sustained, the second ground would lose much of its importance. The submission that according to section 14(5) unless the misuse of the premises by the tenant amounts to a public nuisance, this provision would not be attracted, also ignores the last alternative in the sub-section which attracts its applicability if the misuse detrimental to the interest of the landlord. It is undeniable that the threat of terminating the landlord's lease would be detrimental to the landlord's interest.

(10) In view of what I have observed on the necessity of the plea being raised in the pleadings, it is unnecessary to refer to the decisions in *Ram Gopal v. Mohan Lal* and *Siri Chana v. Jto Ram*, on behalf of the respondent.

(11) For the foregoing reasons, in my view, the order of eviction is fully justified and there is no cogent ground for not granting to the landlord the relief claimed by him.

(12) After the arguments were concluded by the parties, the appellant expressed his willingness to give up ruining the College in the premises, but for that purpose he wanted time up to March, 1963 because, according to him, the students attending the College would sit at the matriculation Examination in that month. The respondents learned counsel, however, felt hesitant in arguing to this suggestion because he apprehended conciliation of his lease on the continuance of the use of the premises as a College. In my view, the attitude adopted by the tenant does not entitle him to any indulgence, but the only consideration that is weighing with me is the lot of the students who are studying in this College and are preparing for their examination to be held in March, 1958. In my opinion, some time must be given to the tenant to make suitable arrangements for the benefit of the students and I would accordingly give him six weeks from today to vacate the premises. The respondent is entitled to his costs in this Court.