
(2002) 03 DEL CK 0073

In the Delhi High Court

Case No : Regular First Appeal No. 250 of 1982

Ram Chander Aggarwal

APPELLANT

Vs

Hans Raj Banga

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Citation : (2002) 4 AD 453 : (2002) 97 DLT 564 : (2002) 63 DRJ 7

Hon'ble Judges : Usha Mehra, J;Om Prakash Dwivedi, J

Bench : Division Bench

Advocate : B.P. Aggarwal, for the Appellant; K.C. Mittal, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Hans Raj Banga Vs. Ram Chander Aggarwal, AIR 2005 SC 2384 : (2005) 3 CTC 40 : (2005) 5 JT 38 : (2005) 141 PLR 185 : (2005) 4 SCC 572 : (2005) 3 SCR 994

Usha Mehra, J.—Shri Bhagwan Dass, predecessor in interest of the appellant was in occupation of a shop at Qutab Road, Delhi. The Ministry of Rehabilitation decided to raise new construction on the said site with assurance to the evictees from the area that they would be given alternative accommodation in the new construction thus made. After evicting Bhagwan Dass and others, Ministry of Rehabilitation constructed shops/flats known as New Qutab Road properties. The shops were allotted on ownership basis to the displaced persons and allotted on rent basis to the evictees like Bhagwan Dass and others.

2. Bhagwan Dass was allotted shop No. 114 New Qutab Road vide allotment letter dated 6th August, 1955 Ex.D-1. His eligibility was confirmed by the Government of India vide letter dated 8th August, 1955 Ex.D-2 and with that he was given the terms of tenancy for the shop in question vide Ex.D-3. The tenancy with the terms as offered by the Government of India was accepted by Bhagwan Dass vide his acceptance letter Ex.D-4. Since Bhagwan Dass was allotted the shop as an evictee of the area, Therefore, he was to give a

declaration in this regard which he gave vide Ex.D-5 on 8th August, 1955.

3. Subsequently the Ministry of Rehabilitation decided to dispose off these ships in occupation of the evictees by public auction. Evictees were debarred from participating in the auction. Bhagwan Dass challenged this bar by filing a writ petition in the High Court of Punjab, Circuit Bench at Delhi. It was listed as Civil Writ No. 4385/D/58 on which an order was passed on 21st September, 1960 to the following effect:-

"After some adjournments the parties have arrived at a compromise. The terms on which the parties have settled this dispute are thus:

A compromise has been arrived at between the petitioner and respondents in this case to the effect that if the Government decides to sell the shop in question by auction, whether public or private, or by calling tenders the petitioner will also be given equal opportunity to give his bid or tender, as the case may be, and that the bid or tender of the petitioner will be considered on merits along with other bidders or tenderers, if any."

4. With these observations the writ petition of Bhagwan Dass, predecessor in interest of the appellant was disposed off. Bhagwan Dass died in the year 1962 and the appellant being his son and legal heir stepped into his shoes and occupied the ship in question and started running business in the said shop.

5. As per the terms of tenancy the predecessor in interest of the appellant was to pay rent at the rate of Rs. 19.80P per month. Since Government demanded higher rent @ Rs. 40/- per month, appellant challenged the same. He filed a suit against the Union of India in 1970 which was listed as Suit No. 223/70. That suit was also settled wherein the Union of India made a statement that rent would be charged at the agreed rate i.e. Rs. 19.80P per month. Accordingly a demand notice was issued to the appellant claiming rent at the rate of Rs. 19.80P per month vide Ex.D-6. The appellant paid the amount claimed Ex.D-6 within the stipulated period vide Ex.D-7.

6. On 26th July, 1973 respondent herein filed a suit (which was renumbered as S.No.781/76) seeking possession and damages against appellant herein. Case of the possession and damages against appellant herein. Case of the respondent/ plaintiff before the Trial Court was that he purchased the property by submitting tender on 25th December, 1960 in response to an advertisement by the Ministry of Rehabilitation. He being the highest bidder his bid was accepted on 27th July, 1961. A Sale Certificate Ex.PW-4/1 dated 27th July, 1961 was issued in his favor by which the title in the property was transferred to him.

7. After the service of the notice the appellant appeared. He came to know from that suit that respondent/ plaintiff was claiming ownership of the shop. He challenged the sale of the shop in question before the Settlement Commissioner, inter alia, on the grounds that the sale was in breach of the undertaking given by the Union of India in C.W.No.438-D-58. According to the appellant as per the

compromise recorded on 21st September, 1963 the Union of India was to give notice to the appellant before auctioning or sell in the shop. Having not done so the Union of India committed breach of the undertaking. The Settlement Commissioner and subsequently on appeal the Chief Settlement Commissioner repelled these arguments and dismissed his application filed u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) as well as the Revision filed u/s 33 of the Act holding therein that notice for the sale of the shop was not required to be personally served on the appellant. sufficient it was to give notice in the newspaper and that was a sufficient intimation to appellant. Separate notice was not required to be given. Therefore, there was no breach of the order passed by the High Court in Civil Writ No. 438-D/58. Against that order the appellant came up in the High Court but his petition was dismissed against which he went to Supreme Court which SLP he ultimately withdrew.

8. The learned Civil Judge on the suit filed by the respondent/plaintiff decreed the same for possession and damages relying on the Sale Certificate Ex.PW-41/1 and at the same time disbelieved Ex.D-1 to D-7 the documents filed by the appellant herein. He also fixed damages amounting to Rs. 3,600/- for use and occupation.

9. Aggrieved by the impugned order of possession and damages the present appeal is preferred by the appellant, inter alias on the grounds that impugned judgment is based on no evidence. That Ex.PW-4/1 the alleged Sale Certificate is fabricated and bogus. That the learned Trial Court fell in error in relying on unexhibited documents marked "PX" and "PY" namely the alleged Lease Deed and Supplement Deed respectively. That documents produced by the appellant Ex.D-1 to D-7 though proved through the testimony of Government witness, still without basis and on surmises and conjectures rejected by the trial Court. And finally learned trial Court despite overwhelming evidence proving appellant's predecessor in interest to be tenant of the shop rejected the documentary and oral evidence without valid reason.

10. Admittedly the shop in question was not sold in public auction. Hence, Sale Certificate dated 17th October, 1963 Ex.PW-4/1 produced by respondent/plaintiff by no means conveyed the title nor it can be accepted as document of title nor can be relied upon. To our mind, trial Court failed to appreciate that as per respondent's own showing tender for purchase of the shop in question was submitted which means that shop was not purchase don public auction. Perusal of EX.PW-4/1 Sale Certificate, show that respondent/plaintiff being the highest bidder at "public auction" held on 5th January, 1961 purchased the property. If the shop was not sold in "public auction" then how Sale Certificate Ex. PW-4/1 could be issued? This aspect was not got clarified from Mr.S.B. Lal (PW-4). This aspect has been completely ignored by the trial Court. Trial Court ignoring these facts accepted Ex.PW4/1 to be a document of title conveying ownership of the shop to the respondent/plaintiff.

11. In fact this Sale Certificate, does not convey title because property in question was not sold by public auction, whereas Ex.PW-4/1 which is reproduced as under indicates that shop in question was sold in public auction and price of the shop was adjusted from compensation due to the plaintiff/respondent. This is contrary to the pleading so of the plaintiff/respondent and the stand taken by the Union of India in its counter/reply filed in writ as well as in the suit filed by the appellant.

APPENDIX XXIII

CERTIFICATE OF SALE (LEASE-HOLD PROPERTIES)

(Rule 90(15))

This is to certify that Shri Hans Raj Banga s/o Sh. Jawahar Mal having given the highest bid at a sale by public auction held in pursuance of the power conferred upon me u/s 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) on the 5th of January, 1961 of the property describe din the schedule and his bid having been accepted and the value thereof having been paid by him in cash Rs. 350.00 and Rs. _____ by adjustment of compensation due on his claim and Rs. 2900 Rs. 3750.00 by adjustment of compensation due on the claim of his associates Sarvshri Lalit Kumar Dhawan/Lajja Ram Wahi has been declared the purchase of the said property with effect form 27th July, 1961. The terms and conditions on which the site will be held are specified in the Lease Deed appended hereto.

Given under my hand sand the seal of my office, this 17th day of October, 1963.

Shop No. 114, New Qutab Road, New Delhi.

SCHEDULE

Area Line plan attached

Bounded by:-

North: Shop No. 113 Signatures Sd/- South: Shop No. 115 Name -----
East : Open Space Designation of West : Road Officer----- Appendices XI, XII and XIII are to be used for the sites leased in the States of Delhi only."

12. NO such lease deed was produced nor proved by the testimony of govt. witness or by the testimony of the plaintiff. Even otherwise the Sale Certificate Ex.W4/1 cannot be relied upon because as per plaintiff/respondent/s own showing he purchased the property in response to notice inviting tender. It is the case of the Union of India also that the property was sold in response to notice inviting tenders. Therefore, reliance on Ex. PW-4/1 as title document is not only contrary to record but makes the document doubtful.

13. Trial Court, to our mind, fell in error in giving weightage to documents marked "PX" and "PY". These documents marked were taken on record at the time of final arguments and marked for identification purposes. These documents

were not put up to S.B. Lal (PW-4) Clerk of the office of Settlement Commissioner when he appeared as plaintiff's witness. That apart document marked "PX" shows that it did not pertain to the shop in question. It pertains to a shop No. 114, New Rajinder Nagar, Delhi and not to a shop in New Qutab Road. Counsel for respondent/ plaintiff contended that vide document Marked "PY" Supplement Deed, correction was carried out. We are afraid this argument is without force. Mark "PY" also not relate to mark "PX" because it is a supplement deed to a lease deed executed on 22.2.1964 whereas mark "PX" the alleged lease deed is dated 17th October, 1963 pertaining to property situated at New Rajinder Nagar. Moreover, these documents were not put up at the time of evidence of PW-4 and PW-6 nor these were confronted to the appellant when he appeared as DW-6. Therefore, these documents marked could not be relied upon. In fact perusal of the record show that plaintiff/respondent himself did not rely on these documents.

14. Once the Sale Certificate has been found to be unreliable there is no material on record to prove that respondent/plaintiff is the owner of the property in question. To our mind, this issue ought to have been decided against the plaintiff/respondent.

15. So far as the question of purchasing the property by plaintiff/respondent by submitting tender is concerned that is also doubtful. It was plaintiff/respondent's own case before the Trial Court that he submitted that tender on 25th December, 1960 whereas according to evidence available on record the notice inviting tender was published in the Newspaper n 28th December, 1960. The plaintiff/respondent could not have imagined that notice inviting tender was going to be published nor in anticipation he could have submitted the tender three days before the notice inviting tender was published. Even otherwise it is a fact on record that along with tender earnest money was not deposited by the plaintiff/respondent/ One of the essential terms of the notice inviting tender was that the tender should accompany deposit of earnest money. In view of non-compliance of essential term of the notice inviting tender it can be said that it was not a valid tender submitted by plaintiff/respondent. That apart the plaintiff/respondent failed to prove on record that he deposited the earnest money on 8th February, 1961. Hence, on the basis of invalid tender property in question could not have been transferred to the plaintiff/respondent. In fact by the testimony of S.B.Lal (PW-4) plaintiff/ respondent failed to prove his title and/or ownership by any legal, valid and cogent evidence. Even plaintiff/respondent's conduct makes his ownership doubtful. If he had purchase the property in July, 1961 then why he did not issue any notice to the appellant either claiming possession or damages for use and occupation. He pleaded that he was not aware who was in occupation of the shop in question, Therefore, asked govt. to clarify the position. But appearing as PW-6 he admitted that he knew that the shop in question was in occupation of an old man. And thereafter appellant was running business from this shop. Therefore, it does not lie in his mouth to say he was not are who was occupying the shop and, Therefore, could not serve notice. Even when Mr.S.B. Lal

(PW-4) appeared it was not put up to him that plaintiff/respondent asked the department as to who was occupying the shop or that the department never informed him. In this view of the matter no reliance can be placed on the testimony of the plaintiff/respondent that he was not aware who was occupying the shop and, Therefore, could not serve the notice.

16. So far as the documents produced by the appellant/defendant Ex.D-1 to D-7 are concerned to our mind, the trial Court fell in error in observing that the documents produced by appellant were a mess or manipulated. Reasoning given by the learned trial Court to reject documents Ex.D-1 and D-3 appears to be figmentation of his own imagination. Rejection of these documents appears to be based on surmises and conjectures. It has not been proved by the plaintiff/respondent that appellant or Bhagwan Dass failed to pay rent regularly. No such question was put to Mr. S.B. Lal (PW-4) when he appeared as DW-3. The rent at higher rate was demanded from appellant, Therefore, the necessity arose for filing a suit in which the Government conceded that the actual rent was 19.80P per month and, Therefore, correct demand could be raised against the appellant. This rectified demand could not be the basis for the trial Court to conclude that appellant failed to pay the rent regularly. It is only after the suit was settled that fresh demand was raised vide Ex.D-6 and the appellant paid the amount demanded vide Ex.D-7 which was paid within time. Therefore it was erroneous on the part of the trial Court to conclude that the appellant or his predecessor in interest Bhagwan Dass could not be called tenant under the govt. or that since Bhagwan Dass failed to pay the rent as per terms of tenancy, hence, he was not a tenant. Had it been so the appellant would not have won the suit No. 223/70. The conclusion arrived at by the learned Trial Court that since Bhagwan Dass committed a default in making the payment of rent, Therefore, the question of attornment did not arise is devoid of merit. There is no evidence placed on record by the plaintiff/respondent that the Government at any stage informed Bhagwan Dass that the shop had bene sold to the plaintiff/respondent herein and that he was to attorn to the plaintiff/respondent or that he was liable to pay rent to the plaintiff/ respondent. At no stage the plaintiff/ respondent ever issued any notice to Bhagwan Dass claiming possession of the premises in question on the basis of alleged ownership. On the contrary if the property had been sold to the plaintiff/respondent then how could the Union of India accept the rent vide Ex.D-7? In the suit filed by the appellant, Union of India never pointed out nor brought on record that the shop in question has already been sold to the plaintiff/respondent. Bhagwan Dass was a contractual tenant under the Government of India at the time of alleged sale, Therefore, he was protected under the Delhi Rent Control Act. Mere challenge to the sale by tender being vocative of the under taking given in the writ petition, Bhagwan Dass could not have been deprived of the protection nor his successor in interest. Tenancy of Bhagwan Dass at no stage was terminated during his life time. There is nothing on record from which it could be inferred that the lease of Bhagwan Dass stood terminated automatically because Bhagwan Dass failed to pay the rent @ Rs.40/- p.m.

Observations of the trial court and his conclusion in this regard are contrary to the documentary and oral evidence available on record. As already pointed out above there was a dispute with regard to the rate of rent which was ultimately settled in Suit No. 223/70 when the Union of India admitted that rate of rent was not Rs. 40/- per month but Rs. 19.80P per month. Even otherwise in the counter filed by the Union of India, it was admitted that Bhagwan Dass had been paying rent and he was a tenant in the shop in question. Therefore, trial court without any material and substance concluded that because of non payment of rent lease of Bhagwan Dass stood terminated automatically. The documents produced by the appellant Ex.D-1 to D-7 have in fact been admitted by Shri S.B.Lal (PW-4), Senior Clerk, office of the Settlement Commissioner. Mr. S.B. Lal (PW-4) also appeared as DW-3 and produced rent register. No question was asked from him that rent was not paid by Bhagwan Dass.

17. In either case it is a fact on record that Bhagwan Dass, predecessor in interest of the appellant was a tenant under Govt. of India. He paid the rent and his tenancy had not stood terminated at any time. Therefore, even if we presume for the sake of arguments that shop was transferred in favor of he plaintiff/respondent, Bhagwan Dass" tenancy could only be terminated by a legal notice. His tenancy having not been terminated during his life ti,e the tenancy on his death has been inherited by his legal heirs hence appellant protected under the Delhi Rent control Act. Trial court on erroneous presumption held that Delhi Rent Control Act as not applicable.

18. Learned counsel for the respondent contended that sale and transfer of ownership in question has been duly established and cannot be rejected in view of the fact that petition filed by Bhagwan Dass u/s 24 of the Act and Appeal u/s 33 of the Act had been dismissed. The matter has attained finality when the SLP was got dismissed as withdrawn from the Supreme Court. We find no substance in this argument. As already pointed out above, the application u/s 24 of the Act filed by the appellant before Settlement Commissioner, he had only challenged the sale of the shop which according to him was in violation of the undertaking given by the Government to the High Court. His contention was that personal notice ought to have been given before selling the shop. This assertion of Bhagwan Dass was rejected by the authority on the ground that public notice was given as per the undertaking given to the High Court. That no individual notice was required to be given to Bhagwan Dass. So far as the ownership of plaintiff/respondent is concerned that as not the issue in his application u/s 24 of the Act or in the appeal u/s 33 of the Act nor in the writ petition nor in the SLP. Therefore, the contention of the respondent that his ownership attained finality because of above proceedings is without substance. In the facts of this case question of attaining finality did not arise nor the question of ownership of the plaintiff/ respondent had been determined earlier than this suit. That was to be determined in the suit only.

19. The trial Court in fact appreciated that Bhagwan Dass was a contractual

tenant of the property in question and on his death the tenancy was inherited by his son. This has been so observed by trial Court himself as under:-

Admittedly, by the parties defendant No. 1 is the son, and there is no evidence that tenancy of Bhagwan Dass was terminated. The learned counsel has contended while placing reliance upon 1977 2 RLJ 348 wherein Hon"ble Mr. Justice Avadh Behari also observed that the successor of an allottee of a government land becomes a tenant under the purchase. With due respect to his Lordship, there is no dispute about this proposition of law. Even, if it is taken to be true that M/s Bhima Mal Dina Nath was allotted the shop in dispute with proprietor Bhagwan Dass and after his death defendant No. 1 comes in and that applying the law referred to above, he became a tenant at the time of purchase by the plaintiff, I am constrained to comment that most of the documents produced by the defendants appear to be completely a mess and manipulated ones.

(underlining is ours)

20. Having observed that Bhagwan Dass tenancy was not terminated and appellant inherited the same it is not understood as to how the trial Court of his own without any basis observed that tenancy of Bhagwan Dass stood terminated or that he was not a tenant under the Government. In fact observation of the trial court that documents Ex.D1 to D6 produced by the appellant were a mess and manipulated ones. In fact observations in this regard are nothing but surmises. In fact these documents produced by appellant stood duly proved on record by the testimony of Ms. S.B. Lal (PW-4). Not a single witness appearing either for the plaintiff or defendant ever said that Ex.D-1 to D-7 are manipulated documents. Mere fact that two different dates were mentioned on Ex.D-1, no adverse inference can be drawn. No question was put to S.B. Lal (PW-4) to explain two dates on Ex.D-1. Counsel for the appellant has explained the reason for two different dates on the letter Ex.D-1. Admittedly allotment was made on 6th August, 1955. However, possession of the shop was handed over on 31st October, 1955 along with "No Objection Letter" dated 31st October, 1955 for obtaining electricity connection which was issued at the request of Bhagwan Dass. Therefore, two different dates appear on this letter Ex.D-1 i.e. 6th August, 1955 and 31st October, 1955 showing that the allotment letter was delivered to Bhagwan Dass along with "No Objection Letter". It was not put up to Shri S.B.Lal (PW-4) that this was not a true copy of the original available on record or that it was a manipulated document. In the absence of having put any such question to the official witness the Court on this own could not have drawn adverse inference against the document Ex.D-1 nor it could be said to be manipulated document. On the contrary Shri S.B. Lal (PW-4) in no uncertain words stated that these documents were issued from his office, original of the same were available on the record still no question was put to him as to how two dates appear on Ex.D-1. The trial Court to our mind could not for his reason hold Ex.D-1 as a manipulated document nor could concluded that Ex.D-3 was not a tenancy deed because it

was not signed by President of India. In fact this question was not put to Mr. S.B. Lal (PW-4) that Ex.D-3 is not a tenancy document or the original of it is not a valid document. In the absence of any evidence Ex.D-3 could not have been discarded.

21. The contention of learned counsel for the respondent that payment of rent will not confer tenancy is without merits. His reliance on the decision in the case of Smt. Shanti Devi v. Mela Ram 1971 RLR 65 is also misplaced. In fact as already observed above the provision of Section 29 of the Act are not applicable to the facts of this case. It was not an evacuee property. In any case it was a new construction raised by the Government and allotted to the evictees on payment of rent. Rent deed Ex.D-3 was executed, terms of which were confirmed by Bhagwan Dass. Bhagwan Dass was a tenant under the Government of India, hence on facts the case of Smt. Shanti Devi (Supra) is distinguishable. That was a cause relating to evacuee property. But that is not the case in hand. Similarly reliance by respondent on the case of Gurcharan Singh v. Shri Devki Nandan and Ors. 1970 Current Law Journal page 49, is of no help to him. Bhagwan Dass was not a licensee. He was a tenant which is apparent from the reply by the government of India, in court in 1959 wherein it admitted that the rent was being paid by Bhagwan Dass who was tenant under the government. Therefore, it cannot be said that Bhagwan Dass was not a tenant or that he was merely an allottee of the shop on license basis. Hence, on facts the case in hand is distinguishable from the case of Gurcharan Singh (Supra).

22. As regards the contention of counsel for the respondent that documents Ex.D-1 and D-3 are not reliable, we find no substance in this argument. The Government of India in its counter affidavit filed to the writ petition No. 438/D/58 in no uncertain words admitted that shop was allotted to Bhagwan Dass and he is in occupation of the same as tenant. He was paying the rent. Therefore, observation of this Court in the case of Shyam Kishore v. Union of India 1995 RLR 480 are not applicable in the facts of this case. The Government of India always treated Bhagwan Dass to be a tenant and admitted the tenancy agreement as well as the allotment letter and handing over of the possession of the shop to Bhagwan Dass. Therefore, neither document Ex.D-1 nor Ex.D-3 could be doubted in the facts of this case. Government of India in its counter affidavit admitted the letter of allotment as well as the tenancy of the shop in favor of Bhagwan Dass. Similarly, the decision of this Court in the case of Baldev Raj Batra and Others Vs. Krishan Lal and Others, relied on by the respondent is of no help to him because the appellant and his predecessor in interest, are in lawful occupation of the property in question. Bhagwan Dass was a contractual tenant as discussed above. The rent receipts Ex.D-7 stood proved on record and there is no evidence produced by the respondent/plaintiff to show that Bhagwan Dass committed any breach of the term of tenancy or that he did not challenge the demand of enhanced rent @ Rs.40/- p.m. vide his suit No. 223/1970. These facts clearly show that rent was regularly paid by the appellant and his predecessor in interest. It is only the enhanced rent which was challenged and subsequently

agreed rent was paid vide Ex.D-7. It was only after the settlement arrived at in the suit that rent demanded vide Ex.D-6 was paid vide Ex.D-7.

23. It is in fact the respondent/plaintiff who miserably failed to establish that he was lawful owner of the property in question or that he legally purchased the shop in question or that the property stood transferred in his name in the record of the Government of India. The observation of the learned Trial Court that ownership of plaintiff/respondent stood proved is on the face of it erroneous and contrary to the evidence available on record, Therefore, this conclusion of the trial court cannot be sustained. The same is accordingly set aside.

24. Having held that respondent/plaintiff failed to establish his ownership and transfer of property in his favor, Therefore, trial court not have decreed the suit of possession and damages in favor of the respondent/plaintiff. The suit ought to have been dismissed on this ground itself. We accordingly accept the appeal and set aside the impugned decree and judgment but with no order as to cost.