

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 16.02.2012.

CM(M) 89/2012 & CM Nos.1343-44/2012 & 2693/2012

BABU LAL

Petitioner

Through Mr. C.S. Rathore, Adv.

versus

SIR SOBHA SINGH & SONS PVT LTD

Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the judgment dated 06.09.2011 passed by the Additional Rent Control Tribunal (ARCT) which has endorsed the finding of the Additional Rent Controller (ARC) dated 04.02.2008 whereby the eviction petition filed by the landlord Sir Sobha Singh & Sons seeking eviction of their tenant Babu Lal under Section 14 (1)(i) of the Delhi Rent Control Act (DRCA) had been decreed. Premises in dispute is a servant quarter behind Gurdwara Singh Sabha, Sujan Singh Park, New Delhi measuring 14'X18' feet which as per the averments in the eviction petition had been given by the landlord to Budha (father of the petitioner) who was in the service and employment of the landlord company; Budha had since

expired; premises are in unauthorized occupation of his son Babu Lal; the ground of eviction as contained in Section 14 (1)(i) of the DRCA had been pleaded in the eviction petition.

2. The written statement filed by the tenant has been perused; his contention in the written statement is that he is living in the demised premises in his own independent capacity; what is that independent capacity has not been disclosed the entire written statement; defendant has claimed ownership by way of adverse possession as well. Not a whisper of this submission i.e. of adverse possession has been made by the tenant in his evidence which had been led in the court below. In fact even today before this Court he has not advanced any argument on this submission. His contention before this Court is that his defence right from the inception was that although his father Budha was an employee of the landlord but the premises in dispute had not been given to Budha in his capacity as an employee of the landlord as the present petitioner (who is the son of Budha) is living there in his independent capacity since the last 30 years. At the cost of repetition, it is noted that what is that independent capacity in which the defendant is living in the demised premises which admittedly belong to the landlord has not been disclosed. The contention of the petitioner is that these premises is actually a tin shed/jhuggi and even does not have a pucca structure; the tenant is living there since more than three decades. This submission now mooted before this Court that these premises is a tin shed/jhuggi which does not have a pucca structure does not find mention in the written statement filed by the tenant.

3. Oral and documentary evidence was led before the trial Court. Four witnesses had been examined on behalf of the tenant of whom two were the summoned witnesses i.e. officers from NDMC and L&DO who had proved the perpetual lease deed Ex. PW-4/1 and lease agreement Ex. PW-4/2 in favour of the landlord and challan Ex.PW-3/P1 raising a

house tax demand upon the landlord. There is also no dispute to the fact that the landlord is the owner of the disputed premises; the defence of the defendant being that he is living in the demised premises in his own independent capacity but as noted supra what is that independent capacity has neither found mention in the written statement and nor does it find mention in his evidence. Affidavit by way of evidence of Babu Lal has been perused. In the evidence it has vehemently been stated that the demised premises are a jhuggi covered with wooden balis; his father had in fact encroached upon this portion of the land; this part of the evidence of RW-1 is contrary to his pleadings i.e. to the averments made in the written statement wherein he has specifically stated that he is living in the demised premises in his own independent capacity; it was never his contention that his father had encroached upon these premises which was actually a government land. Evidence beyond pleadings cannot be viewed.

4. This court is sitting in its powers of superintendence under Article 227 of the Constitution of India; unless and until there is a patent illegality or a manifest injustice caused to be one party qua the other interference is not called for; this court is not a third fact finding court; it is not a substitute for the appellate forum. This Court is also conscious of the fact the right of second appeal has since been abrogated as the Section 39 of the DRCA has been deleted and the powers superintendence of the High Court are not a substitute for an appellate forum. The concurrent findings of fact returned by the two courts below in no manner suffer from any infirmity.

5. The landlord is admittedly the owner of the suit premises. On the basis of evidence both oral and documentary adduced before the trial court clear and categorical finding had been returned that Budha (father of the petitioner) was in the service and employment of the respondent; this fact has been admitted by the petitioner

himself; clear finding had also been returned that these premises had been given to Budha for residential purpose because he was an employee of the respondent; after his death, his son is in unauthorized occupation of the suit premises; he has no right, title or interest in the suit premises. In these circumstances, the eviction order passed against the tenant and in favour of the landlord by the two fact finding courts does not call for any interference. No perversity or illegality has been pointed out before this Court which calls for an interference.

Petition is without any merit. Dismissed.

Sd./-
INDERMEET KAUR, J

FEBRUARY 16, 2012