

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : DELHI RENT CONTROL ACT**

Judgment reserved on : 31.01.2012

Judgment delivered on: 06.02.2012

CM(M) 642/2010 & CM Nos.941/2009, 28/2001 & 7629/2009

MAHESHWAR DAYAL(DECED)

..... Petitioner

Through: Mr.Sanjay Jain, Sr. Advocate with Mr.Atul Jain and Ms.Ruchi Jain, Advocates.

versus

SHANTI DEVI & ORS.

..... Respondents

Through: Mr.Vijay Kishan Jetly, Mr.B.B.Gupta and Mr. Vikram Jetly, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The order impugned before this Court is the judgment and decree dated 31.05.1989 passed by the Additional Rent Control Tribunal (ARCT) endorsing the finding of the Additional Rent Controller (ARC) dated 15.02.1986 whereby the eviction petition filed by the landlord Maheshwar Dayal (through legal representatives) seeking eviction of the tenant Shanti Devi (legal heirs of the original tenant) under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA) had been dismissed. The reasoning of the ARCT was however a reasoning different from that adopted by the ARC. Both the two Courts below had dismissed the eviction petition filed by the landlord.

2 The aggrieved party is the landlord. He has filed this petition under Article 227 of the Constitution of India. At the outset, learned counsel for the respondent has pointed out that the right of second appeal as contained in Section 39 of the DRCA has since been abrogated and the powers of superintendence as contained under Article 227 of the Constitution are not the powers of an appellate forum; fact findings cannot be interfered with;

unless and until there is a patent illegality or a manifest injustice which has been caused to one party qua the other, interference under the powers of superintendence are not called for. This legal position is undisputed.

3 It is in this background that this petition shall be viewed.

4 Record shows that the landlord had filed an earlier eviction petition on 20.06.1963 (Suit No. 560/1963); this was on the ground of subletting; it was directed against Mohan Lal; contention was that Mohan Lal had sublet these premises to Anand Parkash; this petition was dismissed on 11.06.1966 by the ARC primarily on the ground that notice prior to the filing of the eviction petition had not been sent to the tenant. Appeal preferred against this order was dismissed on 19.07.1970 by the ARCT. The view of the ARC that requirement of notice not having been complied with was endorsed; eviction petition of the landlord stood dismissed.

5 On 01.02.1971, legal notice under Section 14 (1)(b) of the DRCA was served by the landlord upon the tenant (Ex.PW-7/2); contention was that the tenant Mohan Lal has sublet these premises to Anand Parkash and others including 'Parkash Trading Corporation' through Ram Parkash; eviction was accordingly prayed for. Reply to this legal notice was sent by the tenant on 25.02.1971 (Ex.PW-7/5); this contention was denied; stand of the tenant was that the premises in question had been taken on rent by Mohan Lal only for his son Anand Parkash and this was with the consent of the landlord who was living in the same premises and who was fully aware of the fact that Anand Parkash is carrying on the business from the said premises; there was no subletting.

6 Present eviction petition was thereafter filed on 03.04.1973. Premises in dispute is one Baithak in property bearing No. 1876, Haveli, Jugal Kishore, Gali Ghantewali, Chandni Chowk, Delhi which had been rented out to the tenant at a rent of `75/- per month excluding house-tax and other charges. Averments made in the legal notice were reiterated in the eviction petition; it was contended that Mohan Lal has sublet these premises to Anand Parkash and others including 'Parkash Trading Corporation' through Ram Parkash and also to 'Mohan Lal Anand Parkash' without the knowledge and consent of the petitioner. Needless to state that these averments were disputed.

7 Oral and documentary evidence was led by the respective parties which included five witnesses examined on behalf of the landlord and six witnesses examined on behalf of the tenant. AW-4 had proved the electricity connection in the name of Mohan Lal; rent receipt was also in favour of Mohan Lal. AW-5 had proved the telephone record to show that M/s Parkash Trading Corporation had a telephone installed in the disputed premises up to 21.05.1963 whereafter the firm was dissolved and the telephone was thereafter shifted from the said premises. Attention has been drawn to that part of the testimony of AW-5 wherein he has stated that the premises had been taken on rent by Mohan Lal for the business of his son. The tenant had produced six witnesses. Anand Parkash, the son of Mohan Lal was examined RW-5. He was a partner in the firm M/s Anand Parkash Ganga Prasad; prior thereto he was the sole proprietor of 'Mohan Lal Anand Parkash' which business was closed in 1952; further deposition being to the effect that the landlord was living in the same premises and he very well knew that Anand Praksh was carrying on his business from the disputed premises; counter-foils of rent receipts Ex. AW-7/11 to Ex. AW-7/19 were proved showing the same to be either in the name of Mohan Lal or by Anand Parkash on behalf of Mohan Lal. Partnership deed of M/s Parkash Trading Corporation Ex. RW-5/X13 was proved substantiating the averment that Anand Parkash was a partner in the said firm; thereafter this firm was dissolved and another partnership deed was executed Ex. RW-5/X15.

8 The ARC on the basis of the oral and documentary evidence had returned a finding that it was the deceased Mohan Lal who was the tenant in the premises but since Anand Parkash was carrying on business in these premises from the very beginning which was also admitted by the landlord, no inference of parting with possession/subletting/assignment by Mohan Lal in favour of Anand Parkash could be made; the landlord was well aware of the fact that Anand Parkash was carrying on his business from the disputed premises as he used to see Anand Parkash in the premises as he himself was living in the same premises; the ground of subletting was not made out in favour of the landlord. This eviction petition was dismissed.

9 An appeal was preferred before the ARCT. The ARCT had examined oral and documentary evidence and drew a conclusion that the tenant was Mohan Lal; he had parted with possession of the premises in favour of his son Anand Parkash who was carrying on business in the same premises; ground of subletting under Section 14 (1)(b) stood confirmed in favour of the landlord. Mohan Lal had died during the pendency of the eviction

proceedings and the premises being commercial premises and Anand Parkash being the son and legal heir of deceased Mohan Lal had inherited this tenancy from his father; the judgment of Gian Devi Vs. Jiwan Kaur, AIR 1985 SC 796 was relied upon to return a finding that such a tenant i.e. Anand Parkash being in possession of the premises in the capacity as legal representative of deceased father Mohan Lal, he could not be evicted from the suit premises. Petition of the landlord accordingly stood dismissed.

10 This judgment is the subject matter of present proceedings before this Court. On behalf of the petitioner, vehement arguments had been addressed; his contention is that ARCT has returned a finding in favour of the landlord holding that a ground of subletting is made out; once that stood established the protective umbrella of inheritable tenancy could not be granted to the tenant as the tenant at best could only step into the shoes of his deceased father; once the father has been found guilty of having contravened the provisions of Section 14 (1)(b) of the DRCA and a right had accrued in favour of the landlord, no better right could accrue in favour of the legal representative/son of tenant and as such Anand Parkash is liable to be evicted forthwith. Reliance has been placed upon a judgment of the Apex Court reported as AIR 2003 Supreme Court 1863 Imdad Ali Vs Keshav Chand and Others to support this argument; contention being that the heirs of deceased tenant could only step into the shoes of deceased tenant and all rights and obligations of the deceased tenant devolved upon such a tenant; the original tenant admittedly having been contravened the provisions of Section 14 (1)(b) of the DRCA, no better right could accrue in favour of his legal representative. Learned counsel for the petitioner has pointed out that the judgment relied upon by the RCT in Civil Revision No. 1877/1987 Ram Sarup (deceased) represented by Harish Kumar & Another VS. Lal Chand & Others is a half page judgment which judgment was at best per-incuriam; it is not a ratio which can per-se be made applicable to the present case.

11 Per contra, the respondent submits that the evidence recorded in the court below both oral and documentary has in fact established that a case of sub-letting was not made out and the findings of the ARC on this ground which was the first fact finding returned on reasoned grounds could not be interfered with by the RCT which has to hear an appeal under Section 38 of the DRCA only on a substantial question of law. The submission of the respondent being that ground under Section 14 (1)(b) was not established; further submission being that the present petition has even otherwise been filed in the year 1973 when admittedly even as per the case of the petitioner,

the sub-tenancy was created in the year 1950; bar of limitation is also applicable. To support this submission reliance has been placed upon AIR 1987 SC 2016 Ganpat Ram Sharma and Others VS. Smt. Gayatri Devi, AIR 1987 SC 2230 Kashi Ram Vs. Rakesh Arora and JT 1995 (5) S.C. 296 Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker; submission being that Article 66 of the Limitation Act, 1963 contemplates a period of 12 years for filing of a suit for possession by a landlord against his tenant which period has long since expired; subletting as per the case of the landlord is of the year 1950 and the present petition having been filed on 03.04.1973 i.e. 23 years later suffers from delay and laches as well. The judgment of the RCT on no count calls for no interference.

12 Record has been perused. The landlord Maheshwar Dayal had been examined as AW-7 wherein in his cross-examination he has admitted that Mohan Lal had taken the premises for the business of his son Anand Parkash; further that Anand Parkash right from the inception of the tenancy was using these premises. The ARC had returned a finding that Mohan Lal was a tenant; in para 25, it has been noted that there was no evidence on record to suggest that Anand Parkash or for that matter M/s Mohan Lal Anand Parkash or Parkash Trading Corporation ever paid any rent to Mohan Lal; there was nothing to show that there was any transfer of any interest in the estate of Mohan Lal in favour of Anand Parkash or Parkash Trading Corporation; there was also nothing to show that Mohan Lal had divested himself of all rights as a tenant. In para 26, the ARC had noted that premises in dispute were being used by Anand Parkash for carrying on his business as a sole proprietor of M/s Mohan Lal Anand Parkash. From his version (examined as RW-5), it is clear that this business was being carried out by Anand Parkash from the very beginning; after discussing the case law in para 27, the ARC had returned a finding that no inference could be drawn that there has been any subletting or parting with possession of the premises by Mohan Lal in favour of Anand Parkash; the landlord was in fact living in the same building as the tenant and he very well knew that from the beginning that Anand Parkash was running his business from the premises in dispute showing that the landlord was well aware that the premises had been taken by Mohan Lal for the business of his son Anand Parkash. This is the conclusion of the ARC in para 29. Thereafter in para 30, the ARC had noted that in view of judgment of Gian Devi (supra) since the original tenant had expired, his son i.e. Anand Parkash has stepped into his shoes and the commercial tenancy being an inheritable asset, he has inherited this tenancy and as such the ground of subletting is even otherwise not made out. The ARC had dismissed the eviction petition on the aforementioned reasons.

13 This reasoning arrived at by the ARC was a sound reasoning based on the facts deduced from the evidence both oral and documentary. An appeal under Section 38 of the DRCA is an appeal which lies only on a question of law. In a judgment of this Court reported as 136 (2007) DLT 219, Shyam Sunder Dawa Vs. J.D. Kapoor & another, a Bench of this Court had noted that where the reasoning of the ARC is based on the appreciation of evidence and no question of law has been raised, the Tribunal should not interfere with the finding of the Rent Controller.

14 Oral and documentary evidence was re-appreciated by the Tribunal; in para 5, the RCT after examination of the documentary evidence which included the partnership deeds Ex. RW-5/1, Ex. RW-5/3 & Ex. RW-5/15 had returned a finding that Mohan Lal, the original tenant had no concern with the business being run in the premises; it was Anand Parkash who was carrying on the business under the name of M/s Mohan Lal Anand Parkash and this was right from 1953; in the same paragraph, the RCT has recorded that he has no reason to disagree with the finding recorded by the ARC that the tenancy had not been created in the name of Mohan Lal but in the name of Anand Parkash; this finding in fact appears to be contrary to the earlier discussion noted by the RCT which was that merely because Anand Parkash had signed on the counter foils would not confer tenancy rights upon him; further part of the RCT judgment has recorded a finding that it was the case of the landlord himself that it was Anand Parkash who had been carrying out the business in the suit premises and has been paying rent from the beginning; Mohan Lal has never claimed any right or interest in the demised premises; however in the later part of this paragraph, the RCT had observed that obvious conclusion in view of the discussion is that the tenancy right has been assigned and the possession of the premises has been parted with by Mohan Lal in favour of his son Anand Parkash and the case squarely falls within the ambit of Section 14 (1)(b) of the Act. This finding of the RCT is not only contrary to his own observation and finding returned in the earlier part of the paragraph but is also contrary to the record; it is clearly perverse.

15 The ARC was the first fact finding court. It has on balance of probabilities after weighing the evidence both oral and documentary rightly noted that the tenancy although was in the name of Mohan Lal but right from the inception Mohan Lal had taken these premises for the business purpose of his son Anand Parkash and this had in fact been admitted by the landlord (AW-7) himself in his cross-examination (as noted supra); the

landlord was living in the same premises as the tenanted premises; he was well aware of the fact that right from the beginning it was Anand Parkash who was carrying on the business from the demised premises; the ARC had returned a correct and cogent finding that the premises had been taken on rent by Mohan Lal for the business of his son Anand Parkash and as such the question of parting with possession/assigning/subletting by Mohan Lal in favour of his son Anand Parkash in this factual scenario did not arise. The RCT has reversed this finding for no plausible reason; in fact the discussion (as noted supra) of the RCT is contrary to the conclusion drawn by him; in one breath, the RCT was of the view that the premises had been taken on rent by Mohan Lal for the business purpose of his son Anand Parkash which fact was well known to the landlord who was living in the same premises; the RCT had also noted the cross-examination of the landlord (AW-7) wherein he had admitted this fact that the premises had been taken on rent by Mohan Lal from the very inception for the business purpose of his son Anand Parkash; yet after this discussion, he had returned a contrary conclusion holding that the ground under Section 14 (1)(b) of the DRCA has been made out in favour of the landlord. In this scenario this finding returned by the RCT is a gross illegality bordering on perversity; it has to be set aside.

16 It is well settled that to make out a case for sub-letting or parting with possession, it means giving of possession to persons other than those to whom the possession had been given by the original lessor and that parted with possession must have been made by the tenant. In this factual scenario this had not been made out.

17 Section 14 (1)(b) of the DRCA 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 and court or Controller in favour of the landlord against a tenet:

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:-

(a) xxxxxxxxxxxx

(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise without obtaining the consent in writing of the landlord;

18 Although admittedly no cross-objections have been filed by the respondent/landlord in the present proceedings yet this Court in its power of superintendence has the power to cure all injustice, manifest errors and illegalities committed by the Tribunal and are the subject matter of power of superintendence of this Court.

19 In (2003) 6 SCC 675 Surya Dev Rai Vs. Ram Chander Rai & Ors. in the context of the power of superintendence available to the High Court has noted herein as under:

“On the other hand, supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.”

20 The contrary conclusion arrived at by the RCT which is wholly opposed to the discussion noted by him in his preceding paras is a manifest perversity which is borne out from the record and has to be cured. This is clearly one such case. The premises had been taken on rent by Mohan Lal for the business of his son Anand Parkash who was in fact running this business right from the inception. Rent receipts were also signed either by Mohan Lal or by Anand Parkash on behalf of Mohan Lal. Although Mohan Lal was himself not carrying on any business from the said premises yet it is apparent that he had complete supervisory control over this business which was being run by Anand Parkash for which purpose premises had been taken on rent by Mohan Lal. Ground under Section 14(1)(b) of the DRCA was clearly not established

21 The Apex Court in the case of Gian Devi (supra) had examined the question of inheritance of statutory tenancies; this constitutional Bench judgment had inter-alia noted as follows:-

“It is not in dispute that so long as the contractual tenancy remains subsisting, the contractual tenancy creates heritable rights; and, on the death of a contractual tenant, the heirs and legal representatives step into the position of the contractual tenant; and, the same way on the death of a landlord the heirs and legal of a representatives of a landlord become entitled to all the rights and privileges of the contractual



tenancy and also come under all the obligations under the contractual tenancy.”

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“Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.”

22 The Punjab & Haryana High Court in similar facts in the case Ram Sarup (supra) applying the ratio of Gian Devi, while dealing with an eviction petition under Section 14 (1)(b) of the DRCA had noted that since the original tenant during the pendency of the eviction petition has died, his son having inherited the tenancy was entitled to the protective umbrella of the DRCA he being a tenant within the meaning of Section 2 (1) of the DRCA; grounds of subletting under Section 14 (1)(b) which although stood established initially had to be given a go-bye because of this supervening event. The submission of the learned counsel for the petitioner before this Court is that the argument propounded by the petitioner has not been taken care of in this judgment which is only a half page judgment; his submission is that the protective umbrella of the DRCA is not available to such a sinful tenant; contention being that this tenant i.e. Anand Prakash has no better rights than that of his deceased father namely Mohan Lal; since it has been held by the RCT that Mohan Lal has contravened the provisions of Section 14 (1)(b) and has sublet the premises in favour of Anand Prakash, Anand Prakash cannot stand on a better footing than that of Mohan Lal and as such Anand Prakash is liable to be evicted forthwith; similar submission being reiterated that the legal heir tenant inherits both the rights and obligations of the original tenant.

23 This submission of the petitioner is without force. Beside the fact that this Court has affirmed the finding of the ARC holding that the ground under Section 14 (1)(b) has not been established; even otherwise this submission of the petitioner has been dealt with in para 2 of the judgment which reads inter-alia as follows:-

“2. Shri R.L. Sarin vehemently contends that once a ground of eviction is established in favour of the landlord no supervening facts can take away that right of the landlord. This broad-based argument to my mind, is not applicable on the peculiar facts of this case. The alleged sub-tenant has become, a tenant in his own right during the pendency of the proceedings. Now he cannot be held to be a sub-tenant. Otherwise the rule laid down by the Supreme Court in Gian Devi’s case (supra) would become meaningless. Accordingly, I am of the view that the decision of the Appellate Authority is perfectly just and legal this revision is dismissed.”

Thus this contention has no merit.

24 Eviction petition has been filed on 03.04.1973. Even as per the case of the landlord (as is evident from the grounds of appeal in the eviction petition) it has been contended that Mohan Lal has illegally sublet these premises to Anand Parkash after 09.06.1952; this is the specific averment made in this eviction petition which was filed almost 21 years later. The Apex Court in Ganpat Ram Sharma (Supra) while dealing with a petition under Section 14 (1)(h) of the DRCA had inter-alia noted as follows:-

“The other aspect apart from the question of limitation to which we shall briefly refer is that the landlord must be quick in taking his action after the accrual of the cause of action, and if by his inaction the tenant allows the premises to go out of his hands then it is the landlord who is to be blamed and not the tenant.

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The next aspect of the matter is which article of the Limitation Act would be applicable. Reference was made to Article 66 and Article 67 of the Limitation Act, 1963 (hereinafter called the Limitation Act) which stipulates that for possession of immovable property the cause of action arises or accrues when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition. Article 67 stipulates a period of twelve years when the tenancy is determined. Article 113 deals with suit for which no period of limitation is provided elsewhere in this Schedule. On the facts of this case it is clear that Article 66 would apply because no determination in this case is necessary and that is well-settled now. Determination by notice under section 106 of the Transfer of Property Act is no longer necessary.”

25 Article 66 of the Limitation Act, 1963 was held applicable i.e. period of 12 years was available to the landlord to seek eviction of his tenant. In the judgment of Mukri Gopalan (Supra), the Apex Court while dealing with the powers of the Appellate Authority under the Kerala Buildings (Lease and Rent Control) Act, 1965 had in this context noted as follows:-

“22. As a result of the aforesaid discussion it must be held that appellate authority constituted under Section 18 of the Kerala Rent Act, 1965 functions as a court and the period of limitation prescribed therein under Section 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963 such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings”

26 In JT 2000 (1) SC 317 Corporation Bank & Anr. Vs. Navin J. Shah, the Apex Court while examining the question as to whether the law of limitation is applicable to the Consumer Courts has held that although there is no limitation period prescribed under the Consumer Protection Act; a claim petition nevertheless has to be preferred within a reasonable time and 'reasonable time' would be a period of three years as is prescribed under the Limitation Act for a claim of that nature; the principle being that the grievance has to be addressed within a reasonable time. Even on this count, the claim of the petitioner must fail.

27 In this factual scenario, the impugned judgment suffers from no infirmity. Dismissed.

Sd/-  
INDERMEET KAUR, J