IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Reserved on: 30th September, 2011

Date of decision: 27th February, 2012

RFA NO.74/2002

NAEEM AHMED .....Appellant
Through: Mr. B. Mohan, Advocate with Ms. Shashi Saxena and Mr. Shant Kumar Jain, Advocates.

-versus-

YASH PAL MALHOTRA(DECEASED) THROUGH LR'S AND ANR. … ..Respondent
Through: Mr. Jagdish Dhawan, Advocate.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present Regular First Appeal laid challenge to the impugned order dated 28th August, 2001, by which the preliminary issue was decided, by holding that the civil court has no jurisdiction, as the parties would be governed by the Delhi Rent Control Act, 1958, since the rate of rent is Rs.1,200/- per month i.e. below the cut off rate of rent of Rs.3,500/- per month.

2. The learned Single Judge has referred the present appeal to us for considering the validity of the ratio of the judgment in the case of S. Makhan Singh v. Smt. Amarjeet Bali, 154 (2008) DLT 211 and asking for its reconsideration, inasmuch as it ignores the decision given by a Constitution Bench of seven Judges of the Supreme Court in the case of V. Dhanapal Chettiar v. Yesodai Ammal, (1979) 4 SCC 214.

3. Firstly, the brief facts are:-

(a) The appellant is the landlord of the Property No.5009, Rui Mandi, Sadar Bazar, Delhi-110006 by virtue of agreement of sale dated 24th September, 1994 entered into between the plaintiff and respondent no.2.

(b) The appellant claims to have let out a portion of the said property on or about the 1st July, 1994 to the respondent no.1 at a monthly rent of Rs.1,200/- per month.

(c) Since, the respondent no.1 neglected and failed to pay the arrears of rent to the appellant, the latter vide legal notice dated 26th/29th August, 1997 demanded arrears of rent and terminated the tenancy as required under Section106 of the Transfer of Property Act.

(d) In response to the said legal notice the respondent no.1 admittedly sent reply thereof through his advocate Mr. Jagdish Dhawan dated 1st November, 1997 denying the relationship of landlord and tenant and further denying that the appellant had let out the premises in the suit to the respondent no.1.

(e) Since, the respondent no.1 repudiated and renounced the relationship of landlord and tenant and set up his own title in the property, the appellant filed a suit for recovery of possession and arrears of rent as well as for recovery of damages against the respondent no.1 as a trespasser.

(f) The respondent no.1 appeared in the aforementioned suit and filed written statement. In the written statement the respondent no.1 set up an independent title in the property in suit and claimed that he was the owner of the property in suit and so he was not liable to pay rent or damages to the appellant.

(g) By the impugned order the Trial Court vide its order dated 28th August, 2001 rejected the entire plaint holding that in the present case there exists the relationship of landlord and tenant between the parties and as the rent was below Rs.3,500/- per month the civil court had no jurisdiction to try the present suit.

4. In the present appeal, the learned counsel for the appellant argued that the respondent no.1, having denied the title of the appellant and, therefore, having repudiated the relationship of landlord and tenant, the relationship of

landlord and tenant between the parties comes to an end and the parties therefore would not be governed by Delhi Rent Control Act, 1958. It was thus argued that the subject suit was maintainable for recovery of possession from the respondent no.1 as a trespasser, arrears of rent and mesne profits with respect to the subject premises.

5. Learned counsel for the appellant placed reliance upon S. Makhan Singh case (supra) where a learned Single Judge of this Court held that once a tenant denies the title of the landlord, then by virtue of Section 111(g) of the Transfer of Property Act, 1882, the relationship of landlord and tenant comes to an end and the suit can therefore be filed in a civil court for possession of the property from the erstwhile tenant. The relevant paragraph of the said judgment being paragraph 5 reads as under:-

"A tenant has been given protection under Delhi Rent Control Act from eviction only where the jurial relationship of tenant and landlord was not disputed and the tenant claims himself to be the tenant and not the owner. A perusal of Section 14, which gives protection to a tenant against eviction, clearly shows that this protection is available only to the person who is undisputedly a tenant and does not claim himself to be the owner of the premises. The moment a person refuses the title of the landlord and claims title in himself he ceases to be a tenant in the eyes of law and the protection of Delhi Rent Control Act is not available to him. Section 111(g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision under Section 111(g) is based on public policy and the principle of estoppels. A person who takes permission on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal tenant in the premises. A lease may come to an end by termination of lease by or by efflux of time. Where the rent is below Rs.3,500/-, a landlord cannot recover possession from tenant whose term of lease comes to an end or whose tenancy is terminated by a notice because such a tenant is a protected tenant. The landlord can recover possession only if the case falls within the ambit of Section 14 of DRC Act. Where a tenant repudiates the title of the landlord and does not recognize him as landlord or as a owner of the premises, the protection from eviction under Delhi Rent Control Act is not available to him. Where the tenant does not recognize anyone as landlord or owner and

claims ownership in himself he cannot seek protection of Delhi Rent Control Act against the true landlord or owner. The Trial Court therefore rightly held that the petitioner was not entitled to protection under Section 50 Delhi Rent Control Act."

6. In the opinion of the learned Single Judge the ratio in S. Makhan Singh case (supra) ignores the decision given by the Constitution Bench of seven Judges of the Supreme Court in the case of V. Dhanapal Chettiar(supra).

7. In V. Dhanapal Chettiar case (supra) the question before the Constitution Bench of the Supreme Court was whether, in order to get a decree or order of eviction against a tenant under any State Rent Control Act, it is necessary to give a notice under Section 106 of the Transfer of Property Act. The Hon'ble Supreme Court after considering various decisions of the High Courts and the Supreme Court taking contrary views, came to a conclusion that notice to quit was unnecessary under Section 106 of Transfer of Property Act. In paragraphs 5 and 6 of the said Report the Supreme Court observed as follows:-

"5. Under the Transfer of Property Act the subject of "Leases of Immovable Property" is dealt with in Chapter V. Section 105 defines the lease, the lessor, the lessee and the rent. Purely as a matter of contract, a lease comes into existence under the Transfer of Property Act. But in all social legislations meant for the protection of the needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the authority concerned. Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision. Section 108 deals with the rights and liabilities of lessors and lessees. Many State Rent Acts have brought about considerable changes in the rights and liabilities of a lessor and a lessee, largely in favour of the latter, although not wholly. The topic of Transfer of Property other than agricultural land is covered by Entry 6 of List III to the Seventh Schedule to the Constitution. The subject being in the concurrent list, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non-obstante clause have done away with regard to

to any matter which is not provided for in the State Act either expressly or by necessary implication.

6. Section 111 deals with the question of determination of lease, and in various clauses (a) to (h) methods of determination of a lease of immovable property circumstances and at the end are added the words "and in any of these cases of lessor or his transferee gives notice in writing to the leassee of his intention to determine the lease". The notice spoken of in clause (g) is a different kind of notice and even without the State Rent Acts different views have been expressed as to whether such a notice in all cases is necessary or not. We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions. Only in those State Acts where a specific provision has been made for the giving of any notice requiring the tenant either to pay the arrears of rent within the specified period or to do any other thing, such as the Bombay Rent Act or the West Bengal Rent Act, no notice in accordance with clause (g) is necessary. A lease of immovable property determines under clause (h):

On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

It is this clause which brings into operation the requirement of Section 106 of the Transfer of Property Act. Without adverting to the effect and the details of waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non-payment of rent, etc. as provided for in Sections 112 to 114-A of the Transfer of Property Act, suffice it to say that under the said Act no ground of eviction of a tenant has to be made out once a contractual tenancy is put to an end by service of a valid notice under Section 106 of the Transfer of Property Act. Until and unless the lease is determined, the lessee is entitled to continue in possession. Once it is determined it becomes open to the lessor to enforce his right of recovery of possession of the property against immovable property did not stand determined under any of the clauses (a) to (g) of Section 111, a notice to determine it under Section 106 was necessary. But when under the various State Rent Acts, either in the one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise? If the State Rent Act requires the giving of a particular type of notice in order to get a

particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of Section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in accordance with law."

8. Before us, the learned counsel for the appellant has relied on the decision of the Supreme Court in Kurella Naga Druva Vudya Bhaskara Rao v. Galla Jani Kamma alias Nacharamma, 2008 (11) SCALE 160. In that case the respondent/plaintiff claimed that she was the owner of the suit schedule property having purchased it under a registered sale deed from the previous owners. In the year 1971 the defendant offered to take the suit land on lease on an annual rent of 40 bags of paddy. Since the defendant did not pay the rent by way of share in produce, the respondent plaintiff issued a registered notice dated 12th July, 1979 through her counsel demanding payment of agreed rent and possession of the land. The defendant in notice reply dated 13th July, 1979 alleged that he was not the tenant of plaintiff and was

cultivating the land in his own right. As the defendant claimed ownership and denied being a cultivating tenant under the plaintiff, the plaintiff treated the defendant to be a trespasser and filed a suit praying for a decree of possession of the schedule land and consequential relief. On the contention urged by the defendant appellant the following question, inter alia, arose for the consideration of the Supreme Court:- Whether the plaintiff's suit for possession in the civil court was not maintainable and whether the remedy was only by way of an eviction petition under Section 13 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956. The Supreme Court holding that the defendant had asserted that he was the owner and having denied that he was a cultivating tenant at any point of time, "only a civil suit was a remedy to obtain possession from a trespasser". The relevant paragraphs of the Report read as under:-

"11. The appellant-defendant contended that as he had denied the title of the plaintiff, the case would squarely fall under Section 13 (e) of the Act. He submitted that Section 13(e) contemplated termination of tenancy and filing of an eviction petition against the cultivating tenant, if the cultivating tenant wilfully denies the landlord's title to the land; and therefore the remedy of the landlord was to terminate the tenancy and seek eviction of the cultivating tenant by making an application under Section 13(e) of the Act, and a civil suit was not maintainable. Termination of tenancy and eviction petition under Section 13(e) are contemplated only where (a) the defendant is the cultivating tenant; and (b) the defendant wilfully denies the landlord's title to the land. In this case the defendant denied that he was the cultivating tenant of the suit land and plaintiff claimed that defendant was a trespasser. Hence the first requirement for application of Section 13 (e) was not satisfied. If the case of plaintiff had been that the defendant was the cultivating tenant under her and that defendant was claiming to be the cultivating tenant under someone else by setting up title in someone other than the plaintiff-landlord, Section 13(e) would have certainly been attracted. In this case, as noticed above, the plaintiff alleged she was the owner and the defendant was a trespasser. The defendant asserted that he was the owner by adverse possession and denied that he was a cultivating tenant at any point of time. When neither party to the suit claimed that defendant was the cultivating tenant, and as the suit was not for eviction of a cultivating tenant, the mere denial of the title of the plaintiff by the defendant in respect of an agricultural land, would not mean that only the authorities under the Act will have jurisdiction and that plaintiff should sue for eviction under the Act by approaching the Special Officer. Only a civil suit was the remedy to obtain

possession from a trespasser. Therefore the contention that the suit was not maintainable, is liable to be rejected.

12. We are fortified in this view by a decision of this Court in Abdulla Bin Ali v. Galappa [1985 (2) SCC 54]. In that case, the appellants had filed a suit for possession and mesne profits, treating the defendants - respondents as trespassers. One of the defences in the written statement filed by the respondents therein was that the civil court had no jurisdiction to try a suit as plaintiffs had pleaded in the plaint that the second defendant was the tenant of the disputed plots and therefore they could seek possession only by filing an application in the Revenue court under the Tenancy Act. This Court did not agree. This Court found that though the plaintiffs had referred to the tenancy of the second defendant in the plaint, they had filed a suit treating the defendants as trespassers, as the defendants had denied their title. This Court held that a suit against the trespassers would lie only in the civil court and not in the revenue court. This Court observed:
"6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy, the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiff had alleged that defendant 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.

7. We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction."

9. In Kurella's case (supra) the Supreme Court also affirmed the decision in Abdulla Bin Ali v. Galappa, 1985 (2) SCC 54. In that case the appellant had filed a suit for possession and mesne profits treating the defendants/respondents as trespassers. One of the defences in the written statement filed by the respondents therein was that the civil court had no jurisdiction to try the suit as plaintiff had pleaded in the plaint that the second defendant was tenant of the disputed plot and therefore they could seek possession only by filing an application in the Revenue court under the

Tenancy Act. The Supreme Court in that case found that though the plaintiff had referred to the tenancy of the second defendant in the plaint, they had filed a suit treating the defendants as trespassers, as the defendants had denied their title. The Supreme Court held that a suit against the trespassers lie only in the civil court and not in the Revenue court.

10. Now turning our attention to the ratio of the decision in V. Dhanapal Chettiar case (supra) it is observed that in the said decision it was held that determination of lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act. It is trite to state that a decision is an authority for what it holds and not what flows from it.

11. From the above, it is observed that the decision in V. Dhanapal Chettiar case(supra) is not an authority for the proposition that even if a tenant denies the title of the landlord and claims himself to be owner, he continues to be a tenant in the eyes of law and the protection of the Delhi Rent Control Act is still available to him.

12. As aforesaid, in Kurella's case (supra) and Abdulla Bin Ali's case (supra) when the tenants deny the title of the landlord and the tenancy, the suit filed for recovery of possession is not on the basis of the relationship of landlord and tenant between the parties, and would lie only in the civil suit and not otherwise. In the present case also it is observed that in response to the legal notice, the respondent no.1 denied the relationship of landlord and tenant and denied that the appellant had let out the premises in suit to the respondent no.1. Consequently, the respondent no.1 had repudiated and renounced the relationship of landlord and tenant and set up his own title in the property. Therefore, the appellant had filed the suit for recovery of possession in the civil court since the occupation of the respondent no.1 had become unauthorized and that of a trespasser.

13. In view of the above we hold that the ratio of the decision in S. Makhan Singh case (supra) does not warrant reconsideration. We are, therefore, of the considered opinion that in the facts and circumstances of the case the suit was cognizable by the civil court and the impugned order was

erroneous, inasmuch as it held that the same was barred by provisions of Section 50(4) of the Delhi Rent Control Act. The appeal is allowed accordingly. Consequently, the impugned order is set aside. The case is remanded back to the Trial Court with directions to readmit the suit under its original number in the register of civil suits and to proceed to determine the suit from the stage when the impugned order was passed in accordance with law. A copy of this order and judgment along with Trial Court record be transmitted to the court of the concerned District Judge with directions that the matter to be posted before the concerned civil judge for further proceedings.

Sd./-
SIDDHARTH MRIDUL, J.

Sd./-
ACTING CHIEF JUSTICE

FEBRUARY 27, 2012/mk