

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RSA 287/2013 & CM No. 20720/2013 (Stay)

DATE OF DECISION : 3rd January, 2014

BHAWANI SHANKER

..... Appellant

Through: Mr. G.V.Rao and Mr. A.K.Upadhyay, Advocates.

versus

SH. BAKSHISH SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 CPC has been filed against the judgment of the appellate court dated 16.11.2013. By the impugned judgment the appellate court allowed the appeal and set aside the judgment of the trial court dated 31.3.2011. The trial court by its judgment dated 31.3.2011 dismissed the suit for possession by holding that the suit property was covered under the Delhi Rent Control Act, 1958 and therefore, civil court had no jurisdiction. Appellate court relying upon the judgment of the Supreme Court in the case of Mitter Sen Jain Vs. Shakuntala Devi (2000) 9 SCC 720 (and which judgment was with respect to the same area where the present suit property is situated) has held that the suit property did not fall within the jurisdiction of the Delhi Rent Control Act and therefore civil suit was maintainable. The appellate court has also noted that no doubt there can be no estoppel against law ordinarily, however, the trial court noted that the appellant/defendant was a respondent in the earlier proceedings initiated by the respondent herein (plaintiff in the trial court) under the Delhi Rent Control Act, and the appellant-defendant got those proceedings under the Delhi Rent Control Act dismissed on this very ground

that the suit property did not fall within the scope of the Delhi Rent Control Act.

2. The suit property in question is RZ-23-A/284, Geetanjali Park, Gali No.3, West Sagarpur, Nehru Market, New Delhi-46. The issue is whether this property is covered under the Delhi Rent Control Act by issuing of a notification extending the operation of the Delhi Rent Control Act to the area in question. This very aspect was the subject matter of the judgment of the Supreme Court in the case of Mitter Sen Jain (supra) and since the judgment is a short judgment I reproduce the same as under:-

“1. The appellant herein is a tenant of the premises situated at Sagarpur in Delhi, whereas the respondent is the landlord. The landlord let out the premises to the appellant on a monthly rent of Rs. 400/- per month. Subsequently, the landlord terminated the tenancy by giving notice under Section 106 of the Transfer of Property Act. The landlord thereafter brought a suit for ejectment of the tenant as well as for recovery of arrears of rent and mesne profit. Before the Trial Court the tenant filed a written statement wherein one of the pleas taken was that the premises which was let out to him was covered by Delhi Rent Control Act, 1958 and as such the suit is not maintainable. The Trial Court held that the premises was not covered by the Delhi Rent Control Act, 1958. Consequently, the suit was decreed. First Appeal was preferred to the learned District Judge, which was dismissed. Thereafter the appellant filed a Second Appeal before the High Court and the same was also dismissed. It is in this way the appellant is before us in appeal.

2. The only argument raised on behalf of the appellant is that since the premises of which the appellant is a tenant is covered by Delhi Rent Control Act and therefore, the suit filed by the landlord in Civil Court was not maintainable and decree passed therein is void ab initio. In order to appreciate the argument, it is worthwhile to extract the relevant provisions of Delhi Municipal Corporation Act as well as Delhi Rent Control Act, which are as follows:

Section 507 of Delhi Municipal Corporation Act:

“507 (a) the Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;”

Sub-section (2) of Section 1 of the Delhi Rent Control Act:

“1. (2) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.

3. Subsequently, by a notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur when the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.

4. No other point was pressed. The appeal fails and is dismissed accordingly. No costs.

5. However, the appellant shall not be evicted from the premises in dispute till 31st December, 2000 provided he files usual undertaking within four weeks. He shall deposit the arrears of rent within one month and continue to pay the rent/damages for the period he continues in possession of the premises, failing which the interim order shall stand vacated without further order of the Court.” (emphasis added)

3. It is therefore clear that area of Sagarpur in Delhi no doubt is urbanized, but there is no notification extending operation of the Delhi Rent Control Act to Sagarpur where the suit property is situated. As already stated above, in fact appellant/defendant is guilty of blowing hot and cold and abusing the process of law because for as many as 10 years time was taken in the earlier proceedings under the Delhi Rent Control Act initiated

by the respondent-plaintiff (and who was the petitioner in the cases filed under the Delhi Rent Control Act) and the same were got dismissed on account of the contention of the appellant/defendant that Delhi Rent Control did not extend to the property in question which is situated in Sagarpur. I may note that there is no notification whatsoever filed before this Court that the scope of operation of the Delhi Rent Control Act has been extended to the area of Sagarpur, and the only notification which the trial court relied upon in its judgment, is for urbanization of the area in question. Urbanization of an area is different than extending the operation of the Delhi Rent Control Act to the area in question namely Sagarpur, Delhi and which is so also noted by the Supreme Court in the case of Mitter Sen Jain (supra).

4. In view of the above discussion, there is therefore no substantial question of law for this appeal to be maintainable under Section 100 CPC.

5. There are some litigants who are bent on abusing the process of law. Appellant is one such litigant. It is time that courts sent out a strong message to litigants such as the present appellant that there is after all a limit to which judicial process can be accessed. The appeal therefore being wholly without any merit is dismissed with costs of Rs.50,000/- and which costs will be deposited by the appellant within a period of four weeks with the Delhi High Court Legal Aid Services Committee.

6. List before the Registrar General for ensuring compliance of this order of deposit of costs on 6th March, 2014. In case the appellant does not deposit the costs, the Registrar General will be entitled to treat the costs as arrears of the land revenue and recover the same as arrears of land revenues for being deposited with the Delhi High Court Legal Aid Services Committee.

JANUARY 03, 2014

Sd/-
VALMIKI J. MEHTA, J.