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

Date of Reserve: September 19, 2008
Date of Order: March 23, 2009

+ CM (M) 516 of 2007

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MCD

Through: Ms. Madhu Tewatia and Ms. Sidhi Arora , Advocates

23.03.2009

...Petitioner

Versus

Jai Singh & Ors.

Through: Mr. Hemant Malhotra, Advocate for R-1 to R-3.
Mr. J.S. Bhasin, Advocate for R-4/DTC

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed the order of learned Additional Rent Control Tribunal (ARCT) dated 12th March 2001, upholding the order passed by learned Additional Rent Controller (ARC). It is submitted by the petitioner that the learned ARC illegally exercised the jurisdiction with respect to the premises resulting into gross miscarriage of justice. The order also suffers from non-application of mind showing overlooking of facts and law. The impugned order was contrary to the facts and documents on record and has resulted in grave miscarriage of justice. The claim of sub-tenancy, as raised by the respondent was neither proved nor established in view of the peculiar facts of the case.

2. The respondent raised an issue that this petition was not maintainable.

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The learned ARCT has not allowed the application of the petitioner under Section 5 of the Limitation Act for condonation of delay and found that the appeal filed before the learned ARCT was barred by limitation. However, learned ARCT still dealt with the appeal on merits and merely because the appeal has been dealt with on merits, would not mean that the appeal was within the period of limitation. The appeal preferred before the learned ARCT was miserably barred by limitation and, therefore, the merits in appeal could not have been considered by learned ARCT. However, the orders of learned ARC and learned ARCT do not suffer from any illegality and the petition was liable to be dismissed.

3. Brief facts relevant for the purpose of deciding this petition are that the respondent claiming himself to be the landlord in respect of the premises constructed on the plot of land no.2, Block B, Transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, filed an eviction petition under Section 14(1) (d) of the Delhi Rent Control Act, 1958. In the petition, it was stated that the premises was let out to respondent No.1 i.e. Delhi Transport Corporation on a monthly rental of Rs.3500/- per month and the respondent no.1 sublet /assigned the premises and parted with the possession in favour of respondent no.2 i.e. MCD without the written or oral consent of the petitioner and, therefore, the respondents No.1 and 2 were liable for eviction.

4. In the written statement, it was stated by both the respondents i.e. DTC and the MCD that Gwalior & Northern India Transport Company Limited (hereinafter referred to as "GNIT") was initially running transport/buses in Delhi and it approached Delhi Improvement Trust for giving land to it on a perpetual lease for a bus depot. Three plots bearing number 1,2 and 3 in

Jhandewalan Estate were given on perpetual lease to GNIT in February 1945 on the consideration that GNIT was running essential transport services in the capital city. GNIT, in violation of the terms of lease, according to which it could not have been subdivided or parted with the possession of leased land entered into an agreement with one Shri Bharat Singh. According to this agreement Shri Bharat Singh was to finance GNIT and to develop the area. Shri Bharat Singh agreed to construct the plot out of his own funds according to the plan duly approved and to lease out the same to GNIT on rent. Shri Bharat Singh constructed the said plot of land and leased out the same to GNIT on a monthly rental of Rs.3500/-. Later on, GNIT wrote a letter to Delhi Improvement Trust for permission to transfer the lease hold rights in plot numbers 1 and 2 to Shri Bharat Singh. However, this permission was not granted keeping in view the fact that the plots were allotted for running essential transport services. GNIT after construction of bus Depot by Shri Bharat Singh continued to pay rent of Rs.3500/- per month to Shri Bharat Singh as he had invested the amount for construction of superstructure.

5. The transport service in capital, after Independence, was nationalized by the Government with the result that all the assets of GNIT were acquired by the Government of India. Delhi Transport Authority Act came into existence and GNIT entered into an agreement dated 23rd April 1948 with Government of India regarding nationalization of its services. GNIT, therefore, executed all necessary papers of transfer of its entire assets and fleet of buses, stocks and liabilities, to the Government of India, including the premises held/ occupied by it and used by its agents and directors etc. This agreement was acted upon and all the employees of GNIT became employees of Government of India and all the fleet of buses etc including the premises in

question where the bus depot was being run by GNIT, came into possession of the Government of India and mutation of land was made in favour of successor of GNIT i.e. Government of India. The ground rent of the plot was being paid by DTS, an undertaking constituted by the Government of India for running transport services in Delhi.

6. In the year 1950, Delhi Transport Act, 1950 came into existence and under this Act Delhi Road Transport Authority came into existence and the transport services in the name of Delhi Transport Services started in Delhi. The premises in question acquired by the Government of India was taken over and was occupied by Delhi Transport Service as a Bus Depot. On 7th April 1958, the DMC Act came into force and by virtue of Section 516 (1) (a) of MCD Act, DRTA Act got repealed and the Delhi Road Transport Authority became an integral part of MCD. Transport service under the name and style of Delhi Transport Undertaking became a wing/ department of MCD and was being run by MCD. By virtue of merger of DTS in MCD and because of repealing of DRT Act, the entire transport fleet, depot and paraphernalia came into possession of MCD. Delhi Transport Undertaking (DTU) became a department of MCD. After 1958, DTU started releasing an amount of Rs.3500/- per month in favour of Shri Bharat Singh after taking this amount from MCD. After death of Shri Bharat Singh this amount of Rs.3500/- per month was continued to be paid to legal heirs and successors of Shri Bharat Singh. In 1971, another Act was passed viz Delhi Road Transport (Amendment) Act, 1971 and after passing of this Act, Delhi Transport Corporation (DTC) came into existence as a statutory body in view of Section (3) of the DRTC Act by a notification of Government of India and transport services came under the operation of DTC. However, the earlier arrangement

which was there between DTU and MCD regarding payment of rent was continued by DTC also as it continued paying rent of Rs.3500/- to the successors of Shri Bharat Singh and in turn used to receive this amount from MCD. It is the stand of the MCD that the possession of the bus depot on plot no.2 was though handed over to DTC but it legally continued in possession of MCD since it used to reimburse the amount of Rs.3500/- to DTC. DTC was only allowed to use the bus depot. The MCD was the lawful possessor of the premises. In the replication filed by the respondent who claimed to be the owner of the premises (the legal heirs of Shri Bharat Singh) there was no denial of the above facts stated by the petitioner herein.

7. The journey of transport services starting from GNIT, to DTS, then to DTU and then to DTC, was not denied. The promulgation of different Acts was also not denied. The stand of the petitioner/ landlord was that it was DTC who was its tenant and had been paying rent and the MCD was not its tenant. It is submitted that since it has been admitted by MCD that the legal possession was of MCD and rent was being paid by MCD to DTC, who was running a bus depot, thus the premises in question has been sublet, assigned or otherwise parted with to MCD and, therefore, a case of subletting was made out.

8. The learned Rent Controller in its order dated 11th November 1989 after discussing various contentions regarding relationship of landlord and tenant dwelled about the subletting in paragraph 19 of his judgment which reads as under:

"19. Admittedly it is respondent No.2 (MCD) who is in possession of the premises in question. It is also admitted that respondent No.2(MCD) pays a sum of Rs.3500/- as rent to respondent No.1 (DTC)

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by way of cheques. It is not the case of the respondent that any written consent of the petitioners was obtained in this regard. Therefore, it has to be held that respondent no.1 (DTC) has either sublet, assigned or otherwise parted with the possession of the tenanted premises illegally to respondent No.2 (MCD). It is well settled that in voluntarily transfers are also included within the meaning of sub-letting etc in Section 14(1)(b) DRC Act."

9. This order of learned ARC was upheld by learned ARCT by making following observations:

"15. After having heard up the matter in all its possible aspects I do not find any infirmity or illegality in the finding of the learned trial court by holding that there exists relationship of landlord and tenant between the parties and since the exclusive possession of the premises was handed over by the erstwhile tenant to the Municipal Corporation of Delhi i.e. respondent No.2 which is itself a separate and independent legal entity, it amounts to sub-letting."

10. The orders passed by learned ARC and the learned ARCT categorically show that neither the learned ARC nor learned ARCT has devolved upon the facts of the case and nor had even considered the concept of tenancy and sub tenancy in this case in the peculiar circumstances of this case.

11. The law concerning subletting is well established. In *Jagan Nath (deceased) through Lrs v.Chander Bhan & Ors. (1988) 3 SCC 57*, the Supreme Court held as under:

"6. The question for consideration is whether the mischief contemplated under section 14(1)(b) of the Act has been committed as the tenant had sublet, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord. There is no dispute that there was no consent in writing of the landlord in this case. There is also no evidence that there has been any subletting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well-settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession. This Court in *Smt. Krishnawati v. Shri Hans Raj*, [1974] 1 SCC 289 had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry on business in a part of it. The question was whether it amounted to sub-letting and attracted the provisions of sub-section (4) of

section 14 of the Delhi Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of section 14(1)(b) of the Act." (emphasis added)

12. This Court in *Asha Rohatgi v. Erstwhile New Bank of India* 199 2005 DLT 538 had considered the legal position in respect of acquisition of a tenant's rights under legislative mandate and observed as under:

11. It will thus be seen that consistent view of the Supreme Court has been that takeover of a company the Central Government under a statute stands on a different footing than merger of two companies under the provisions of Companies Act. Vesting of tenancy rights in the Central Government or a Government company by virtue of the provisions of the statute was upheld by the Apex Court in the case of HPCL case (Supra) and this decision was cited with approval in the case of Singer India Ltd. (Supra). Whereas in cases of later category i.e. transfer of tenancy rights under an Scheme of amalgamation under provisions of company Act has been consistently held to be subletting, assignment or parting with possession, in case falling in the former category viz, where tenancy rights of one company are taken over by the Government and are conferred on some other Government company under a statute have never been held to tantamount to subletting, assignment or parting with possession. The case in hand falls in this category. As

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already noticed leasehold rights on PNB have been conferred by Clause 4(2) of the notification dated 4.9.93 issued under Section 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 which scheme is legislative in character. It cannot fall in the category of any voluntary or involuntary transfer of interest by the tenant. Therefore, it does not amount to subletting assignment or parting with possession of tenancy rights by the tenant. The impugned order passed by the learned Tribunal therefore does not call for any interference."

13. In view of above settled legal position, the factual situation of the case in hand is to be considered. When the plot in question was leased to GNIT, a specific condition was put in the lease deed itself that the land and building that may be erected upon the plot during the lease term cannot be put to any other use except for the purpose of motor vehicles, without the consent in writing of the lessor. The lessor in this case was Union of India. Thus this plot was specifically leased out only for the purpose of running transport facilities in the city of Delhi. In 1948, when the transport company GNIT was nationalized, in the agreement between GNIT and the Government of India regarding sale of the assets of GNIT, it was specifically mentioned that all the stock in trade, lease hold premises and the benefits of subsidiary agreement and contracts, and all other assets of business, existing on the books of business including the goodwill shall stand transferred to the Union of India and on completion of sale of assets, owned by GNIT in Delhi in connection with the business of transport, shall stand transferred to UOI and the property therein shall pass to the vendee i.e. Union of India and UOI shall be entitled to take full possession of the assets including the premises in Delhi, held and occupied by GNIT or by agents or directors. In view of this agreement, the

entire leasehold rights, if any, existing in favour of GNIT in the property in question stood transferred to the Union of India. Since the structure over the plot was put by Shri Bharat Singh and he was getting Rs.3500/- per month as a reasonable return of the investment made by him in the form of rent despite the leasehold rights of the plot having been transferred to the Union of India, this amount was continued to be paid to Shri Bharat Singh. On the strength of this rent being paid to Shri Bharat Singh, learned ARC and learned ARCT had come to conclusion that there was a relationship of landlord and tenant. The issue of ownership of the property though has been raised by the petitioner but could not have been answered since the jurisdiction of the ARC and the ARCT is limited. However, without going into the question of ownership and whether the issue of landlord ship or tenancy was rightly decided or not, I consider that this petition can be disposed of on the issue of subletting and I wish to dispose of this petition only on the issue of subletting.

14. On the transport business of GNIT being nationalized, the entire assets were taken over by the Union of India and DTS came into existence. DTS started working in this premises. The DTS continued to pay Rs.3500/- per month to Shri Bharat Singh and from that it can be gathered that relationship of landlord and tenant continued. DTS was superseded by the Legislative Act and the transport business became the responsibility of MCD after MCD Act came into existence and the entire responsibility of running transport system in Delhi fell on MCD and a new entity DTU was constituted in place of DTS and DTU started running the transport business. The bus depot at this building which was earlier known as bus depot of DTS now became the bus depot of DTU, but neither the user changed nor the purpose changed and only the name of the entity changed from DTS to DTU. While the operator of the

business earlier was Delhi Transport Authority, subsequently the operator of the business was MCD. The earlier business was being run by DTS under legislature mandate and now DTU was running the transport business under a legislative mandate. The premises along with buses stood transferred to DTU i.e. MCD. Later on a corporation DTC was incorporated as a separate company wholly owned subsidiary for running the transport business. The amount of Rs.3500/- was being paid by DTC to Shri Bharat Singh and in turn being realized from MCD. It is at this stage, that an eviction petition was filed by the Lrs of the landlord on the ground of subletting.

15. Under no stretch of imagination it can be said that it was a case of subletting. The premises was under alleged tenancy of GNIT. On nationalization of the transport business, by a legislative enactment, the premises came in occupation of DTS. From DTS by another Act of Parliament it went to DTU (a part of MCD). By another enactment premises came in occupation of DTC, a corporation framed to run transport business. Merely because DTC is getting Rs.3500/- (the amount it was paying to respondent) from MCD, does not mean that there was subletting of premises by DTC to MCD. In fact the premises was owned by Union of India because the entire assets of GNIT were acquired by UOI under the sale deed and a compensation was paid to GNIT. This leasehold property also came in possession of the UOI. Rs.3500/- per month got continued to be paid by DTS, MCD, DTC unmindful of the legal status of the premises. It is settled law that anything constructed and embedded into the land belongs to the land. The structure standing on the land also belonged to the land and the structure could have no separate existence. The amount of Rs.3500/- being paid in fact could not have been rent and had to be considered as a compensation for the amount spent on the

structure.

16. I, therefore, consider that the entire premises of 'landlord and tenant' on the basis of which this eviction petition was decided was absent. Even if it is considered that there was a relationship of landlord and tenant, there was no subletting at all in this case because of above stated facts. DTS, DTU (MCD) and DTC were the creation of statute and the premises had come to them after it was acquired by Union of India from GNIT on nationalization of the business. It cannot be said that DTC parted with possession of the premises. It cannot be said that the premises was sublet to MCD. The DTC was incorporated in lieu of DTU as a separate company to facilitate running of transport business. Mere payment of Rs.3500/- per month by MCD to DTC does not show subletting or parting with possession.

17. In *Madras Bangalore Transport Co. (West) v Inder Singh & Ors.* AIR 1986 SC 1564, the premises was let out to a partnership firm namely Madras Bangalore Transport Company (West). The premises was being used by Caravan Goods Carrier Private Limited and was in possession of this private limited company whose directors were the partners of the firm. The Supreme Court after considering the various judgments, observed that the Madras Bangalore Transport Company (West) continued to be in occupation of the premises even after Caravan Goods Carrier Private Limited started business there since the partnership firm never effaced itself when the firm allowed Caravan Goods Carrier Private Limited to function from the same premises. The Caravan Goods Carrier Private Limited, though a separate legal entity was in fact creatures of the partners of the partnership firm and was the very image of the firm. The limited company and the partnership firm were only

two in name but one for all practical purposes and they were specifically identified under a limited company and the partnership firm and it was not a case of subletting, assigning or parting with possession of the premises of the firm to the company so as to attract Section 14(1) (b) of the Delhi Rent Control Act.

18. In the case in hand, the situation is much better. The alleged original tenant GNIT stood acquired by a Legislative Act and the premises went to DTS. DTS was then converted to DTU and DTU was further converted into DTC. The premises remained in occupation of the same entity which changed its form from one to another. Thus it cannot be said that it was a case of subletting under any circumstances. The orders passed by learned ARC and learned ARCT are liable to be set aside for non application of law and non consideration of facts at all.

19. The respondent in this case has strongly objected to entertaining the petition on the ground of limitation. The petitioner has filed this petition under Article 227 of the Constitution of India. In exercise of this power, interfering with the orders of the Court or tribunal has to be done where this Court finds that there was a serious dereliction of duty and blatant violation of the fundamental principles of law and justice and where, the order caused grave injustice and needs to be corrected. Although the petitioner herein had not been vigilant in prosecuting the appeal below but that cannot prevent this Court from correcting the patent illegality writ large on the face of the orders of the ARC and Tribunal below. Both the ARC and ARCT passed orders without considering the facts of the case in a very mechanical manner. Neither the learned ARC nor learned ARCT had taken into account the sequence of facts

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brought before them regarding acquisition of the entire assets of GNIT and conversion of DTS to DTU and then to DTC by the Legislative Act and the order has been passed merely on the ground that amount of Rs.3500/- was being remitted by the MCD to DTC. The Courts below did not even consider the issue as to who was the tenant and how MCD became the subtenant of respondent once the premises was owned by Union of India and the leasehold rights of the entire land vested in Union of India. This Court can set aside the findings and the orders of Tribunal below if there was no evidence at all to justify the findings and the findings were perverse. The order can also be set aside if no reasonable or prudent person can possibly come to such a conclusion despite the fact that the petition was not brought before this Court by the petitioner soon after the passing of the order. In *Badlu and another v Shiv Charan and others* (1980) 4 SCC 401, Supreme Court observed that the delay caused in prosecuting the case in bonafide and good faith in writing court due to mistake of law or facts can be condoned. I, therefore, consider that petition is not liable to be dismissed on the ground of delay, nor learned ARCT was justified in dismissing the application. Learned ARCT went wrong in dismissing the application of the petitioner for condonation of delay. The order of learned ARCT on this count also is liable to be set aside. It is ordered accordingly.

20. In the result, the petition is allowed and the order passed by learned Additional Rent Control Tribunal (ARCT) dated 12th March 2001, upholding the order passed by learned Additional Rent Controller (ARC) is hereby set aside.

March 23, 2009
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SHIV NARAYAN DHINGRA J.

- Transferred matter

CM(M)

((MCD))

- Disposed of
23.03.09

⇒ CM. 2004/10 (for release of amt.)