

S-3A

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 24.11.2010

Judgment Delivered on: 30.11.2010

+ **RSA No.153/2005 & CM No.11183/2006**

CHET RAM MAURYA

.....Appellant

Through: Mr.V.K.Rao Sr. Advocate with
Mr.Saket Sikri, Advocate for the
appellant.

Versus

SHRI BHUSHAN KUMAR & ORS.

.....Respondents

Through: Chaudhary Ranjit Singh,
Advocate for the respondent.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

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

INDERMEET KAUR, J.

CM No.11183/2006 (u/O 5 R.20 CPC)

Defendant no.1 is appearing. This application has become infructuous; it is dismissed.

RSA No.153/2005

1. This appeal has impugned the judgment and decree dated 08.02.2005 which had reversed the finding of the Trial Judge dated 19.07.2004. By the judgment and decree dated 19.07.2004, the suit of the plaintiff Chet Ram Maurya for possession and permanent injunction had been decreed in his favour. The impugned judgment had set-aside the said findings; the suit of the plaintiff stood dismissed.

2. The factual matrix is as follows:

i. Plaintiff is stated to be the owner of the suit property i.e. Flat No. 107, BP (Second Floor), Poorvi Pitam Pura, Delhi allotted to him by the DDA. He had let -out this property to defendant no. 1 at a rental of Rs.1,300/- per month. The tenancy was for a period of 22 months commencing w.e.f. 02.12.1989.

ii. Defendant no. 1 had sublet the premises to defendant no. 2. Rent was not paid w.e.f. 01.01.1992. The present suit for possession and injunction had been filed against the defendants.

iii. Plaintiff had claimed exemption from the purview of the Delhi Rent Control Act, 1958 (hereinafter referred to as the "DRCA"). His contention in the plaint was that the premises had been let- out to the defendant on 02.12.1989 i.e after the commencement of the Delhi Rent Control (Amendment) Act, 1988 which had come into effect on 01.12.1989. He was exempted from the purview of the said Act.

iv. Written statement filed on behalf of both the defendants had contested the suit. It was stated that the parties are governed by the provisions of the DRCA; rent being below Rs.3,500/-; they were squarely covered by the bar of Section 50 of the said Act; the present suit was not maintainable.

v. Counter-claim had also been filed stating that the rent agreement dated 02.12.1989 is null and void.

vi. The Trial Court had framed the following nine issues.

They *inter alia* reads as follows:-

1. Whether the plaintiff has no cause of action to file this suit against defendants in view of objections taken by the defendants in their W.S.? OPD

2. Whether this court has no jurisdiction to try the suit as per objection taken in the WS by the Defts? OPD

3. Whether the plaintiff had allowed the deft. No. 1 to continue possession in the suit premises after expiry of lease period on humanitarian grounds and any legal notice terminating the tenancy was served by the plaintiff? If so, its effect? OPP

4. Whether the defendants had deposited a sum of Rs.5,000/- as security? OPD

5. Whether deft. No. 2 has paid Rs.1,00,000/- (one lakh) as security sale consideration/Pagri to the plaintiff. If so, its effect? OPD-2

6. Whether deft. No. 2 is in possession of the suit premises from the beginning i.e. w.e.f. 2.12.1989 as claimed by deft. No. 2 or he is in possession of the premises w.e.f. after the expiry of lease period in between the plaintiff and deft. No. 1 and whether the deft. No. 2 has occupied the premises in connivance with deft. No. 1? (onus on parties)

7. Whether defendant No. 2 is entitled for the relief of declaration as claimed in the counter-claim? OPD

8. Whether the plaintiff is entitled for the relief possession, damages and injunction as prayed? OPP

9. Relief.

vii. On the basis of the oral and the documentary evidence led before the Court, the suit of the plaintiff was decreed in his favour.

viii. Issue no. 1 and Issue no. 2 are relevant for the controversy now raised before this Court. While disposing of these issues, Trial Judge had held the provisions of the DRCA are not applicable. The suit is maintainable and was accordingly decreed in favour of the plaintiff.

ix. This finding was assailed before the first Appellate Court. The impugned judgment had reversed the finding of

the Trial Judge. The relevant extract of the impugned judgment on this issue reads as follows:-

“A short and interesting question which arises in the present appeal is what is the meaning of word “constructed” appearing in S.3(d) DRC Act. The said section grants exemption from applicability of DRC Act to buildings constructed after 1.12.1988 for a period of ten years.

Similar phraseology was introduced by way of section 14(hh) in the DRC Act by way of Said Amendment Act i.e. DRC (Amendment) Act, 1988. There is word used is ‘built’. Section 14 (1) (h) provided for eviction for a tenant who has built, acquired possession of or been allotted a residence. The word ‘built’ from the same was omitted and section 14 (1) (hh) containing the said word was added. Section 14 (1) (hh) provided exemption from eviction for ten years from building alternative residence by tenant. The said word came up for scrutiny before our own Hon’ble High Court in R.K. Rastogi Vs K.S. Gupta 49 (1993) DLT 548. It was held that for availing benefit of exemption of ten years requirement is of house building built, allotment of flat by DDA stood on different footing and could not attract the exemption.

To my mind the word ‘constructed’ in section 3 (d) must be given the same interpretation. Exemption from applicability of DRC Act should be confined to private house constructed by individual of his own on his land. There is a logic behind it. The object of introducing section 3 (d) on the statute book was to give boost to construction of house to meet shortage of accommodation. The legislature intended to provide an incentive to those owners who built their own house after the amendment Act so that they may feel secure in evicting their tenant without restriction imposed by DRC Act. The said exemption should not apply to house built by DDA and allotted to private person because in such cases the only participation of the allottee is that of financier and that too given at dictate of DDA.

Even if it is held that section 3 (d) is applicable to houses allotted by DDA, still the requirement of construction having been completed after 1.12.1988 is not fulfilled in the present case. The counsel for the appellant submitted that date of completion of construction of the flat in question is 31.3.1988 as is mentioned in certificate Ex-PW-1/1 filed and proved by respondent No. 1.

On the other hand the counsel for the respondent No. 1 submitted that the flat as on date of allotment was not fit for habitation as fittings and fixtures were not complete. The possession by DDA was delayed only on that account and the flat should be deemed to have been constructed on 23.12.88 when the fittings and fixtures were completed and the possession was handed over to respondent No. 1.

The counsel for the appellant refuted arguments of counsel for respondent No. 1 by submitting that fitting and fixtures has nothing to do with the completion of construction. The same is part and parcel of finishing and furnishing. The certificate Ex-PW-1/1 unequivocally recites actual date of completion as 31.03.1988. The same leaves no doubt about completion of construction.

I have carefully weighed the rival submissions and find that the arguments advanced by the counsel for the applicant are

more germane. The emphasis of legislature was on completion of construction and not on completion of finishing and furnishing. Thus I am unable to endorse the finding of the Ld. Trial Court on issue No. 2. I hold that exemption u/s 3 (d) was not applicable. Consequently jurisdiction of civil court was barred u/s 50 DRC Act.

The appellant has placed reliance on Vineet Kumar Versus Mangal Sain Wadhera (1984) 3 SCC 352 to make out that if exemption period expires during pendency of the litigation, Rent Act would become operative. The said authority does help appellant but a different view has been taken in subsequent case reported as 1998 (1) Judgment Today 633.

In view of the above discussion the appeal succeeds and is accepted. The impugned judgment and decree are set-aside. The suit filed by the respondent No.1 is rejected u/s 7 R 11 (d) CPC."

3. This is a second Appellate Court after the admission of the appeal on 13.04.2010. The following substantial question of law was formulated. It inter alia reads as follows:-

"Whether the findings of the Appellate Court are perverse in law on facts?"

4. On behalf of the appellant, it has been urged that the impugned judgment calls for an interference. Attention has been drawn to Section 3(d) of the DRCA. It is pointed out that this provision had been engrafted in the statute for the benefit of landlords; the provision of Section 14(1) (hh) of the said Act was a provision which had been enjoined in the statute by the same amendment i.e. of 112, 1988 which is a beneficial provision for the tenants. Both the said provisions work within different parameters and have different connotations. The impugned judgment has perversely held that the definition of "construction" as contained in Section 3(d) of the Act can be read in the same manner as the word "built" as contained in Section 14 (1) (hh) of the said Act. The inter changeable meaning given to the said two words holding that the word "construction" must be given the same meaning as the word "built" is a misunderstanding of the said statutory provisions; this has raised a substantial question of law. Reliance has been

placed upon a judgment of this Court reported in 7(1971) DLT 183 Smt.Shanti Rani Vs. Mohan Lal to substantiate his submission that the definition of the word “construction” is distinct from the word “built”. It is pointed out that the impugned judgment had returned two alternate findings; in para 8, it had viewed that the provision of Section 3(d) of the DRC Act would not apply to houses built by the DDA, whereas, alternatively in para 9 of the impugned judgment, it had held that even if the said provision i.e. Section 3(d) is made applicable to DDA allotted houses, the said provision in the circumstances of the case is inapplicable. It is submitted that the plaintiff alone has appealed against the impugned judgment ; the defendant is not aggrieved by this finding; he has not filed any cross-objections; it can thus be accepted that the provision of Section 3(d) would be applicable not only to private buildings but also to houses allotted by the DDA as this finding has not been challenged. It is submitted that the finding returned in the impugned judgment that the date of completion is 31.03.1988 which is the date of allotment is a wrong finding as admittedly possession of this property had been taken by the plaintiff only on 23.12.1988 which is evident from the document Ex-PW-5/1. Section 3(d) of the DRCA grants exemption from the applicability of the DRCA to premises constructed after 1.12.1988; the possession of the suit property having been delivered to the plaintiff only on 23.12.1988, it is clear that the DRCA would be inapplicable in the present scenario.

5. These arguments have been countered by the learned counsel for the respondent. It is pointed out that the impugned judgment suffers from no infirmity. The impugned finding had

relied upon the law enunciated by this Court in 49 (1993) Delhi Law Times 548 N.K. Rustogi vs. K.S. Gupta & Ors., where a finding had been returned to the effect that a flat which has been allotted by the DDA would not amount to the building of a residence as envisaged under Section 14 (1) (hh) of the DRCA. The suit premises in the instant case, being a DDA allotted flat would not be exempted from the purview of the DRCA. The judgment suffers from no infirmity.

6. The DRCA, 1958 is a legislation enacted to provide for control of rents and evictions in certain area of the Union Territory of Delhi. It is an Act which is beneficial as also restrictive in its nature. The Courts are under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlords and the obligations of the tenants towards each other. The Bill of XXV 1988 had amended certain provisions of the DRCA. The second objective of the bill states that it was with a view to give boost to house building activity and to provide maintenance of existing housing stock in a reasonable state of repair. As a result of this amendment all newly constructed premises i.e. w.e.f. 01.12.1988 were exempted for a period of 10 years from the purview of the DRCA. The impetus was to encourage fresh construction.

7. Section 14(1)(h) of the existing Act was amended and the word "built" had been omitted from Clause (h). Section 14(1)(hh) was enacted; where a tenant, after the amendment of 1.12.1988 had built a residence, he could not be evicted till after a lapse of 10 years. Section 3(d) was also introduced by the same amending provision of 1988. Section 3(d) of the DRCA reads as follows:

Section 3(d) “to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction”

It provides that this Act will not apply to premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of 10 years from the date of completion of such construction. This amendment came into force on 01.12.1988.

9. Section 3(d) of the Act lays emphasis on the words “constructed” “premises” whereas Section 14(1)(hh) has emphasized the words “building” “residence”. Section 3(d) would be applicable to premises irrespective of whether they are residential or commercial. The object of these amendments as aforementioned was to give benefit to such individuals who had either “constructed” a “premises” or “built” or cause to be built a “residential” unit; such a person would be entitled to a 10 year benefit and would be excluded from the purview of the DRCA. This benefit was for both class of persons i.e. irrespective of whether he was a landlord or a tenant.

8. The Supreme Court in AIR 1984 SC 87 Punjab Tin Supply Co., Chandigarh & Ors. Vs. Central Government and Ors. while interpreting the provisions of the East Punjab Urban Rent Restriction (Amendment) Act 1974 and its subsequent notification exempting newly constructed buildings from the said Act had held as follows:

“..... The acute problem of shortage of urban housing as we all know has become a permanent feature throughout India. It is on account of the shortage of the number of houses in urban areas, the landlords get an opportunity to exploit tenants who are in need of housing accommodation by compelling them to enter into

unconscionable bargains. The Act is passed as one of the measures taken to mitigate the hardship caused to the tenants. The policy and object of the Act generally is mitigation of hardship of tenants. Such mitigation can be attained by several measures, one of them being creation of incentive to persons with capital who are otherwise reluctant to invest in the construction of new builders in view of the chilling effect of the rent control laws. As a part of the said scheme in order to persuade them to invest in the construction of new buildings exemption is granted to them from the operation of the Act for a short period of five years so that whatever may be the hardship for the time being to the tenants of the new buildings, the new buildings so constructed may after expiry of the period of exemption be available for the pool of housing accommodation controlled by the Act.”

9. The amendment of 1988 to the DRCA had the same objective in mind.

10. Admittedly, in the present case, suit premises is a DDA accommodation. It is an allotment by a government body. In the judgment of N.K. Rustogi (supra) this position has been set at rest; a DDA allotted flat would not be encompassed within the purview of Section 14(1)(hh) of the DRCA such an accommodation has not been “built”; it is an allotment where the owner has no role to play except of financing the project. The word “built” had come up for consideration before a Bench of this Court in this judgment of N.K. Rustogi (supra). It was held that a flat which has been allotted by the DDA would not come within the purview of a residence which had been “built” by the tenant and as such on the allotment of such an accommodation the benefit of Section 14(1)(hh) cannot enure to the tenant; his case would be covered under Clause 14(1)(h) of the said Act. Reliance in the impugned judgment on the ratio of this judgment was also for the purpose of importing the definition of the word “built” as contained in Section 14(1)(hh) of the DRCA to

the word “construction” as contained in Section 3(d) of the said Act.

11. The word “construction” has not been defined in the Act; it has to be given its natural and ordinary meaning; no technical rule can be adopted. As per the definition in the Oxford Dictionary of the word “built” means “construction by putting material together”; “construction” means “putting parts together”; “build”; “erect”. One is analogous and synonymous to the other. The finding in the impugned judgment that the word “construction” as contained in Section 3(d) has to be given the same meaning as the word “built” does not suffer from any infirmity.

13. It is thus clear that a DDA allotted flat not being a “construction” would not be exempted from the purview of the DRCA under Section 3(d) of the said Act.

14. On the second count also the case of the appellant must fail.

15. The question for decision in the present case is as to when in the instant case the premises were “constructed”. The submission of the appellant/plaintiff/landlord is that the construction of this DDA allotted house was completed only on 23.12.1988 when possession of the same had been handed over to the plaintiff; as such he would be excluded from the purview of the DRCA. Vide Ex.PW-1/1 on 31.3.1988 the flat was allotted to the plaintiff and possession was given. Ex.PW-1/1 categorically states that the “actual date of completion” is 31.3.1988 and the “date of allotment” is 30.5.1988. There is no dispute about this document. It is also not in dispute that because of certain exigencies, the flat was finally completed with the fittings and fixtures and possession

was handed over vide possession slip Ex.PW-5/1 only on 23.12.1988.

17. Section 3(d) of DRCA gives an exemption of 10 years and excludes the operation of the Act for a period of 10 years, for premises constructed after 01.12.1988. This period has to be counted from the date of the completion of such a construction. This construction as is evident from Ex. PW-1/1 stood completed on 31.3.1988 when the vacant possession of the same was handed over to the allottee duly recording his signatures; as such the exemption from the operation DRCA under Section 3(d) was not available which was to be made applicable to all premises which had been constructed only after 01.12.1988. Section 50 of the DRC Act stood attracted. This section specifically bars the jurisdiction of a Civil Court. The present suit was not maintainable.

18. The impugned judgment suffers from no infirmity. Plaint was rightly rejected.

19. There is no merit in the appeal. It is dismissed.

INDERMEET KAUR, J.

NOVEMBER 30, 2010
rs/nandan