

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

% *Date of Judgment: 06.9.2011*

+ **CM(M) No.2103/2005**

NAZEER AHMAD Petitioner

Through: Mr.Sunil Ahuja, Advocate.

Versus

NAZAR MOHAMMAD Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET 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. (Oral)

1. The order impugned before this Court is the order of the Additional Rent Control Tribunal (ARCT) dated 01.7.2005 which had reversed the finding of the Additional Rent Controller (ARC) dated 19.10.2002. Vide order of the ARC dated 19.10.2002 the eviction petition filed by the landlord namely Nazeer Ahmad had been decreed under Section 14(1)(b), (d) and (h) of the Delhi Rent Control Act (hereinafter referred to as "the DRCA"). The ARCT

had reversed this finding. The ARCT was of the view that the disputed property is a government property having been declared to be a evacuee property and under Section 3 of the DRCA it is excluded from the purview of the DRCA; eviction petition had been dismissed. This order is the subject matter of the present petition.

2. Record shows that the present eviction petition has been filed by landlord Bashir Ahmad son of Dost Mohd. Khan and father of Nazeer Ahmad. Premises in dispute is a portion of house No.2805, Gali Tehsildar Wali, Pahari Bhojla, Bazar Sita Ram, Delhi; in the grounds of eviction it has been stated that the suit premises had been sublet and assigned by the tenant Nazar Mohd. in favour Mohd.Shahid; the tenant is not residing there since last six years; moreover he had already acquired another vacant possession of House No.2789, Gali Jot Wali, Pahari, Bhohla, Delhi; eviction order under Section 14(1)(b), 14(1)(d) and 14(1)(h) of the DRCA had been prayed for.

3. In the written statement the tenant had denied the status of the petitioner as owner or landlord; it was specifically contended that the suit property is owned and managed by the Rehabilitation Department; contention was that Mohd. Shahid is in an independent possession in respect of a separate and independent

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property; further contention was that the property had been let out for commercial purpose and the respondent was never residing therein; in the written statement it has further been contended that after the tenant had received a letter dated 12.10.1987 from the Rehabilitation Department, he had stopped paying Rs.20/- per month which he was paying to the petitioner earlier. He had categorically denied that any rent note was executed by him on 04.10.1965 as has been alleged by the landlord; contention was that this document was forged and fabricated.

4. Oral and documentary evidence was led by the respective parties. Petitioner Nazeer Mohd. had examined himself as AW-1; he had proved Ex.AW-1/1; in his cross-examination he denied that this document does not bears the signature of the respondent; he denied that the disputed property has been declared to be a custodian property; however he gave evasive replies to the question as to whether his father and grandfather appeared before the Custodian. The respondent in defence had produced Mohd. Shahid the alleged sub-tenant; he had deposed that he was a tenant in his individual capacity on the ground floor of the property bearing No.2805, Gali Tehsildar and he had been paying

rent to the Custodian; letters received from the Custodian had

been proved by him as Ex.RW-1/2 and Ex.,RW-1/3; the order passed by the Assistant Custodian qua the said property is dated 31.1.1956 and has been proved as Ex.RW-1/4. Perusal of this order shows that proceedings under Section 7 read with section 2(d)(i) of the Administration of Evacuee Property Act 1950 (hereinafter referred to as "the said Act") Act 31 of 1950 had been taken place qua the said property i.e.property No.IX/1745, Delhi; these proceedings had noted that notice under Section 7 of the said Act had been issued to Dost Mohd.Khan (grandfather of the petitioner); he had contested the proceedings but thereafter he had chosen not to appear; vide this order dated 31.1.1956 this property was held to be an evacuee property. Admittedly this order has attained a finality. Learned counsel for the petitioner has pointed out that he has filed an appeal against the said order but the appeal is yet to be adjudicated upon. It was this document which had weighed in the mind of the ARCT to upset the finding of the ARC; the Tribunal had correctly noted that since this property had been declared to be an evacuee property in terms of Ex.RW-1/4, it is a government property and under Section 3 of the DRCA its operation is excluded from the DRCA.

5. Section 3 of the DRCA reads as follows:

3.Act not to apply to certain premises- Nothing in this Act shall apply-

(a) to any premises belonging to the Government;

6. A plain reading of this section shows that all properties which are government properties are excluded from the purview of the DRCA. The order of the ARCT in no count suffers from any infirmity.

7. Learned counsel for the petitioner further submitted that the notification under Section 7 of the said Act had necessarily to be passed before the property can be declared to be an evacuee property. Admittedly the order which had been passed by the Assistant Custodian on 31.1.1956 was after due notice to Dost Mohd. Khan (grandfather of the petitioner); Dost Mohd. had appeared and in fact contested the proceedings. There are two stages in the process of a notification under Section 7 of the said Act; i.e. before the property can be declared to be an evacuee property; the first is in the issuance of the notice to the persons interested and thereafter an inquiry is to be followed; proceedings commence only after the issuance of the notice. In this case Ex.RW-1/4 clearly shows that the notice had been issued to the petitioner's grandfather namely Dost Mohd. Khan; the purpose of this notice is to ensure that the principles of natural justice are followed and the persons interested are given a hearing before the property can be declared to be an evacuee property. This

procedure had been adhered to. This is evident from Ex.RW-1/4. The Apex Court in AIR 1979(3) SCC 189 Sir Fazalbhoy Currimbhoy Vs. Official Trustee of Maharashtra and in 1952 SC 319 Ebrahim Abookbakar Vs. Custodian General of Evacuee Property have noted the two stages of Section 7 of the said Act; both the stages had been completed; after the issuance of notice the necessary inquiry had been conducted before the order was passed on 31.1.1956 under Section 7 declaring the property to be an evacuee property. The Tribunal had noted that no evidence was forthcoming by either party as to whether the subsequent notification had followed or not; however, in view of the twin proceedings i.e. the proceedings of notice and the inquiry under Section 7 of the said Act having been completed the property was deemed to be an evacuee property. Order of the ARCT calls for no interference. Interference under Article 227 of the Constitution of India is warranted only if there is a patent illegality or a manifest injustice has been caused. This is not one such case. This petition has no merits.

8. Dismissed.

INDERMEET KAUR, J.

SEPTEMBER 06, 2011
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