

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

% *Date of Judgment: 18.8.2011*

+ **CM (M) No.1556/2010 & CM Nos.11091/2005, 15042/2010**

**SURINDER KUMAR & ORS.** .....Petitioners  
Through: Mr.J.C.Mahendroo, Advocate.

Versus

**BHAGWAN DASS NASA THROUGH L.Rs. & ORS.**  
.....Respondents  
Through: Mr.Himal Akhtar with  
Mr.Arshad Ali, Advocate.

**AND**

**CM (M) No.1557/2010 & CM Nos.14257/2005, 16013/2009,  
1504/2010**  
**CM (M) No.1558/2010 & CM Nos.14282/2005, 15040/2010**  
**CM (M) No.1559/2010 & CM Nos.14262/2005, 15042/2010**

**BRIJ BHUSHAN SETHI** .....Petitioner  
Through: Mr.J.C.Mahendroo, Advocate.

Versus

**BHAGWAN DASS NASA THROUGH L.Rs. & ORS.**  
.....Respondents  
Through: Mr.Himal Akhtar with  
Mr.Arshad Ali, Advocate.

**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. These are the four petitions preferred under Article 227 of the Constitution of India impugning the common order passed by the learned Additional Rent Control Tribunal (ARCT ) dated 13.5.2005. Learned ARCT had endorsed the findings of the Additional Rent Controller (ARC) dated 14.5.2003.

2. Facts as emanating are as follows:

i. Nanak Singh was the erstwhile owner and landlord of the suit premises i.e. the property being No.2, Shivpuri, Patpatganj, Delhi which comprises of tenanted accommodation. He had agreed to sell this property vide agreement to sell dated 16.12.1981 for a consideration of Rs.76,000/- to Ajit Singh; thereafter he had entered into a subsequent agreement to sell with Brij Bhushan Sethi, for which a separate suit being suit No.235/1981 had been filed. Nanak Singh expired on 06.5.1981. His sole surviving

daughter Gurmeet Kaur compromised the civil suit. Pursuant thereto Brij Bhushan Sethi returned all documents relating to this transaction back to Gurmeet Kaur. Gurmeet Kaur had thereafter sold this property to Bhagwan Dass Nasa through her attorney holder Ram Kishan. The new owner i.e. Bhagwan Dass Nasa along with Gurmeet Kaur had thereafter filed the present eviction petitions( six in number) against their tenants under Sections 14(1)(a) and 14(1)(j) of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA').

ii. Brij Bhushan Sethi in his defence did not dispute that he had in fact entered into a compromise arrangement with Gurmeet Kaur pursuant to which the documents purported to have been executed by the parties had been taken back by Gurmeet Kaur; this was vide a deed of compromise dated 16.5.1981 (Ex.A-37).

iii. Record further shows that a will dated 10.8.1973 had been executed by Nanak Singh in favour of his daughter Gurmeet Kaur; this document has been proved as Ex.A-47 vide Ex.A-38. Nanak Singh had addressed a communication to Brij Bhushan Sethi (dated 31.8.1973) informing him that

by a General Power of Attorney executed in favour of his

daughter Gurmeet Kaur; she had been authorized to collect all rents of the aforementioned suit property on his behalf; further request was that all payments henceforth be made to her. As noted supra this communication is of the year 1973.

iv. Oral and documentary evidence was led. The fate of the six eviction petitions was as follows:-

i. Eviction Petition no.10/1983 Bhagwan Dass Nasa Vs.Brij Bhushan Sethi-

This was a petition under Sections 14(1)(a) and 14(1)(j) of the DRCA. The claim under Section 14(1)(j) had been dismissed; notice Ex.A-2 dated 4.10.1982 had not been denied; respondent had also noted denied that he was in arrears of rent w.e.f. 01.6.1981. Admittedly respondent has not paid or tendered the rent within two months from the date of the service of this demand notice; 14(1)(a) stood proved against him; on 16.4.1985 orders under Section 15(1) of the DRCA had been passed directing the tenant to pay the rent. However, since this was a case of first default; benefit of section 14(2) of the DRCA had been granted.

ii. Eviction Petition No.11/1983, Bhagwan Dass Nasa Vs. Brij Bhushan Sethi -

This petition has been filed under Section

14(1)(a) and 14(1)(c) of the DRCA. Grounds under Section 14(1)(c) stood dismissed; demand notice Ex.A-5 and its receipt Ex.A-6 had stood proved. The deposition of RW-1 had evidenced that rent had been paid by the tenant only up to 01.6.1981. Order under Section 15(1) of the DRCA had been passed on 16.3.1985; this being a case of first default benefit under Section 14(2) of the DRCA had been granted to the tenant.

- iii. Eviction Petition No.12/1983 Bhagwan Dass Nasa Vs. Surinder Singh (substituted by his LEGAL HEIRS Brij Bhushan Sethi) -

This petition had been filed under Section 14(1)(a) of the DRCA. Demand notice Ex.A-11 dated 04.10.1982 had been served upon the tenant; AD card and certificate of posting had been proved as Ex.A-12 to Ex.A-14. Testimony of RW-1 showed that the rent had been paid only up to 01.6.1981; order under Section 15(1) of the DRCA had been passed on 16.3.1985; however this being a case of first default the matter had been kept for consideration of benefit under Section 14(2) of the DRCA.

iv. Eviction Petition No.23/1983, Bhagwan Dass Nasa Vs. Ajit Singh-

This eviction petition had been filed under Section 14(1)(a) and 14(1)(j) of the DRCA. On both counts the landlord was granted eviction order; this was under Section 14(1)(a) as also under Section 14(1)(j) of the DRCA was decreed. The ARC on the basis of the evidence led had noted that in spite of notice dated 08.10.1982 rent has not been tendered by the tenant from September 1981; benefit of Section 14(2) of the DRCA had already been given to the tenant in an earlier eviction petition i.e. Eviction Petition No.261/1970 vide order dated 08.10.1970 which has been proved as Ex.PX-P10. The ARC had further noted that on 16.3.1985 order under Section 15(1) of the DRCA had been made. In spite of the demand notice dated 08.10.1982 no rent was paid by the tenant; in fact no rent was paid after September 1981; benefit of first default had already been given to the tenant vide order dated 08.10.1970 (Ex.PX-P10). This is not disputed by the tenant. The tenant thus being in arrears of rent for three

consecutive months and the rent not having been tendered within two months from the date of the service of the notice as also the fact that the benefit of Section 14(2) had already been given to the tenant, the ARC had passed eviction order under Section 14(1)(a) of the DRCA. On the ground of substantial damage contention of the landlord was that the tenant had constructed two rooms measuring 20x3 feet and 17x6 feet; Civil Suit for mandatory injunction i.e. the Suit No.839/1975 had been filed which had been decreed on 25.8.1977; the tenant had been directed to demolish this unauthorized construction. The appeal against this order had led to a compromise; appeal was disposed of in terms of this compromise dated 05.12.1978 wherein the tenant had agreed to pay Rs.1380/- as damages as also licence fee of Rs.40/- per month for this additional construction with a further undertaking that he would not raise any other construction or encroachment upon any other portion of the property. Further contention of the landlord was that even thereafter unauthorized construction was raised on the first floor of the premises by putting

asbestos sheets; bathroom and latrine was made. This unauthorized construction has been depicted in the site plan Ex.PW-7/6 in green colour. Evidence led on this score had been held to be substantiated and was relied upon by the ARC. This evidence as noted supra led by the landlord had been held to be credible and eviction order under Section 14(1)(j) had also been passed against the tenant.

3. The other two eviction petitions i.e. the Eviction Petition No.13/1983 and Eviction Petition No.52/1996 are not the subject matter of the present case.

4. All these findings of the ARC were endorsed in toto by the ARCT. ARCT had again examined the respective cases of the parties as put forth by them and had endorsed the finding of the ARC.

5. The aforementioned petitions under Article 227 of the Constitution have now been preferred impugning the order of the RCT. The main grievance of the petitioner is that the proceedings before the Rent Controller can be entertained only once it is agreed between the parties that there does exist a relationship of landlord and tenant between the parties; this was a disputed

factum; contention of the tenant is that after the death of Nanak  
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Singh although Gurmeet Kaur had put forth herself as the sole legal heir of Nanak Singh yet this was not correct and the other legal heirs whose affidavits had been filed on record had not been proved in accordance with law; they had not come into witness box; the title of Gurmeet Kaur was under a cloud; her subsequent sale of this property in favour of Bhagwan Dass Nasa was thus a void transaction; the tenant did not recognize either Gurmeet Kaur or Bhagwan Dass Nasa as his landlord; these being disputed questions of fact, they could not be decided by the ARC; they could only be adjudicated upon by a Civil Court. To support this submission learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reported in V(2004) SLT 187 Vijay Lata Sharma Vs. Rajpal & Anr. Reliance has also been placed upon 1998 X AD(SC) 105 Satish Kumar Grover Vs. Surinder Kumar Grover; as also another judgment reported in AIR 1982 (SC) 1213 Devi Das Vs. Mohan Lal; for the same proposition reliance has also been placed upon 2005 1 AC(Delhi) 83 MCD Vs. Harish Chander & Ors. Submission is that where the original landlord has died, and there is a dispute about the title of the next new landlord, this dispute cannot be adjudicated upon by the ARC; the Civil Court alone could have decided this; ARC delving into this controversy has committed an illegality; this finding has

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been upheld by the RCT which finding being illegal is liable to be set aside.

6. Arguments have been refuted. It is pointed out by learned counsel for the respondent that apart from the fact that this Court is sitting in a supervisory jurisdiction under Article 227 of the Constitution, it is not an appellate forum; even otherwise on merits, the two concurrent findings of fact call for no interference.

7. Record has been perused. Admittedly Nanak Singh was the owner of the entire property i.e. 2 Shiv Puri, Patpatganj, Delhi. He had left a will dated 10.8.1973 in favour of his sole surviving class-I legal heir i.e. his daughter Gurmeet Kaur. As per her averment she was his only legal heir. This was substantiated by Ex.A-38 dated 31.8.1973 which was communication written by Nank Singh to Brij Bhushan Sethi confirming that vide a power of attorney his sole legal heir Gurmeet Kaur would be entitled to receive rents on his behalf and henceforth all rents should be paid to her. This document as noted supra is of the year 1973. That apart the brothers and sister of Nanak Singh had also filed their affidavit (mark H,I,J & K) to support this submission that Nanak Singh had left behind no other class-I legal heir. The tenant in these circumstances had no right to lay any challenge to the will

executed by deceased Nanak Singh in favour of Gurmeet Kaur;  
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the will had also been duly proved as Ex.A-47. One attesting witness had been examined as PW-3 Kartar Singh. PW-6 Didar Singh was yet another attesting witness. In the judgment reported in 1991 RLR 322 Ishwar D. Rajput Vs. Chaman P.Puri a Bench of this Court relying upon the observation of the Supreme Court in a judgment reported in 1977(2) SCC 814 Kanta Goel Vs. B.P.Pathak had held that the Rent Controller has no jurisdiction to allow a tenant to lay challenge to a will of the deceased landlord. Gurmeet Kaur being the sole surviving legal heir of her deceased father had thereafter vide sale deed Ex.A-23 sold this property in favour of Bhagwan Dass Nasa in November 1982. This was a registered document and was proved through the version of PW-2, who had been summoned from the Office of the Sub-Registrar, Kashmere Gate.

8. The notices of demand in all the eviction petitions (as noted supra) had been proved; in Eviction Petition Nos.10/1983, 11/1983 and 12/1983 benefit of Section 14(2) of the DRCA had been granted as this was a case of first default.

9. In Eviction Petition No.23/1983 benefit under Section 14(2) of the DRCA already being given to the tenant in an earlier eviction petition {no.261/1970 decided on 08.10.1970 (Ex.PX-P10)} and this being a case of three consecutive defaults eviction Cm(m) Nos.1556-1559/2010

order under Section 14(1)(a) of the DRCA had been passed. A decree under Section 14(1)(j) of the DRCA had been passed; substantial damage to the property had been proved through the testimony of PW-4 and Pw-7; the site plan Ex.A-17 had depicted the unauthorised construction.

10. The RCT had noted all these facts in the correct perspective; it had endorsed the finding of the ARC noting that the registered will of Nank Singh Ex.A-47 stood proved coupled with the intimation (Ex.A-38) given by Nanak Singh to his tenants during his lifetime that even during his life time Gurmeet Kaur as his sole legal heir was entitled to receive the rents of the property being his daughter; RCT had rightly noted that Gurmeet Kaur had the right to transfer this property she had done so by executing Ex.A-23 in favour of Bhagwan Dass Nasa. Further Gurmeet Kaur had been arrayed as a petitioner only by way of an abundant precaution.

11. As a last ditch effort, learned counsel for the tenant/petitioner has submitted that the suit for mandatory injunction filed by the plaintiff had been decreed on 25.8.1977; this decree had been modified by the appellate court on 05.12.1978; in terms thereof this had created a fresh tenancy;.

the eviction order passed in the eviction petition suffers from an

infirmity as new terms of tenancy had now been created. To support this submission learned counsel for the petitioner has drawn attention of this Court to the order dated 05.12.1978 passed by the appellate court where for the user of the unauthorized construction the tenant had agreed to pay Rs.40/- per month.

12. This submission of the learned counsel for the petitioner is bereft of any force. The tenant in terms of this compromise had agreed to pay a sum of Rs.40/- per month as user charges for the additional construction which had admittedly been carried out by him; that additional construction which had been made had been condoned by the landlord up to that extent; this order of the appellate court creating a fresh tenancy between the parties does not arise.

13. It has further been urged by the learned counsel for the petitioner that this ground had also been urged before the ARCT but was not answered. An appeal before the ARCT is an appeal under Section 38 of the DRCA which is an appeal only on a substantial question of law; facts cannot be looked into by the ARCT; these facts were thus rightly not adverted to by the ARCT.

14. This court is sitting in supervisory jurisdiction. It is not an appellate forum. The right of second appeal under Section 39 of Cm(m) Nos.1556-1559/2010

the DRCA has now been abrogated; the supervisory jurisdiction of this court is not a substitute for an appellate forum; unless and until there is a patent illegality or a manifest error apparent on the face of the record which has caused a grave injustice to another, interference is not warranted. This is not one such case where interference is called for.

15. The judgments relied upon by the learned counsel for the appellant are all distinct. In the judgment of Vijay Lata Sharma (supra) the Apex Court had noted that where the original landlord had died and there was a dispute inter se between the legal heirs; it was not for the tenant to make a final decision as to who would be his landlord. This judgment is wholly inapplicable. The judgment of Satish Kumar Grover (supra) is also distinct; this was a case where again there was a dispute inter se between the legal heirs of the deceased; in the present case there is only one class-I legal heir; apart from Gurmeet Kaur no one is staking any claim to the property of Nanak Singh. In the judgment of Devi Dass (supra) the Apex Court had noted that where the purchase was based on a sham transaction the tenant was held entitled to stake his objections to it. In the case of Harish Chander (supra) there were again rival claims to the title of the property of the erstwhile

landlord; in these circumstances court had noted that the proper

court would be the Civil Court to adjudicate on such a disputed title. This is not so in the instant case.

16. Petitions are without any merits. Dismissed.

**INDERMEET KAUR, J.**

**AUGUST 18, 2011**  
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