

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

% R.C.REV.NO. 96/2010

+ Date of Decision: 6th July, 2011

BHUSHAN KUMAR JHANB ...Petitioner
! Through: Mr. Y.P. Luckria, Advocate

Versus

\$ JWAHAR LAL TALWAR ...Respondent
Through: Mr. Diwan Singh Chauhan, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

- 1. Whether Reporters of local papers may be allowed to see the judgment? (No)**
- 2. To be referred to the Reporter or not? (No)**
- 3. Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J:

This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 is by a tenant whose application for leave to contest the eviction petition filed against him by his landlord on the ground of his *bona fide* requirement of the premises under his tenancy has been rejected by the learned Additional Rent Controller vide order dated 18-3-2010 and an eviction order has been passed.

2. The respondent-landlord had filed an eviction petition under section 14(1) (e) of the Delhi Rent Control Act, 1958 with the averments that he is the owner of property no. 5319, Hardhiyan Singh Road, Karol Bagh, New Delhi and one shop on the ground floor in this property was let out to the petitioner herein. It was an old tenancy and at the time of letting out the shop the petitioner was a minor and his father did not require the same and was lying vacant. After completing his education the petitioner had joined some service and subsequently he had taken voluntary retirement on account of his ill health and was getting a meager pension of Rs. 3833/- per month which was not sufficient to support his family consisting of four members including himself. The petitioner's one daughter, who had attained majority, was doing the course of interior decoration which was likely to be completed in a year's time and so he *bona fide* required the shop in possession of the petitioner-tenant for his daughter to start her own business from there since he had no other source of income and funds to hire another accommodation for his major daughter.

3. The petitioner-tenant filed an application seeking leave to contest the eviction petition. That application was supported by his affidavit, as required under Section 25B(5) of the Delhi Rent Control Act, 1958. According to the petitioner-tenant the respondent-landlord had not stated correct facts in the eviction petition and had concealed material facts and that the eviction petition had been filed with the *mala fide* intention of putting pressure on him either to vacate the shop in question or to enhance the rent. The landlord had knowingly and willfully suppressed the fact that he was having a shop adjacent to the shop in question in which he was doing his business. It was also pleaded that the respondent-landlord was not the owner of the premises in question and the Will relied upon by him for claiming himself to be the owner was a forged and fabricated document. It was further claimed that it was also not shown as to how the executant of that Will, Ms. Dhan Devi Seth, had acquired ownership of the house in question. Further plea taken was that even as per that Will, Ms. Dhan Devi had bequeathed two built up properties in favour of the respondent-landlord and others(all of whom were the nephews of Ms. Dhan Devi). One of those properties was at Hardhyan Singh Road, Karol Bagh, New Delhi, which includes the shop in question, and the other one

was in Sat Nagar, New Delhi and, therefore, the respondent-landlord was, in any event, already having more than sufficient accommodation in his possession and so he did not require any additional accommodation for any purpose.

4. The respondent-landlord in his reply had reiterated his case as was pleaded in the eviction petition. Regarding the petitioner's claim that he was also having one property in Sat Nagar the respondent-landlord replied that that property had been sold long time back in the year 1985-86 and now he was having the property at Hardhian Singh Road only. Regarding the petitioner's claim that the respondent was doing his business in the shop adjoining to the shop in question the respondent's reply was that the space where he was doing his business was a very small space having a width of 4 feet only and so it could not be said to be a proper shop.

5. The learned Additional Rent Controller, as noticed already, dismissed the petitioner's application for leave to contest the eviction petition. While rejecting the petitioner's claim that his landlord was not entitled to an order of eviction on the ground of *bona fide* requirement because he was not the owner of the premises in question the learned

Additional Rent Controller gave his findings in para nos. 8 to 11 of the impugned order and those paragraphs are re-produced below:-

“8. The respondent has disputed the ownership of the petitioner over the property in question and the respondent has contented that the Will is forged and fabricated and no probate has been obtained by the petitioner. Therefore, on the basis of alleged Will the petitioner cannot claim the ownership of the property in question. On the other hand, the petitioner is claiming ownership over the suit property on the basis of Will which has been executed by Smt. Dhan Devi in favour of the petitioner and the said Will is the registered one.

9. It is not in dispute that the suit premises was let out by the petitioner to the respondent 41 years ago. The petitioner has categorically stated in the petition as well as in the reply to the leave to defend application that the suit premises was let out to the respondent and the respondent has not controverted the same. The petitioner has also placed on record the rent receipt issued to the respondent and therefore, when the property has been let out by the petitioner to the respondent there exist relationship of landlord and tenant between the petitioner and the respondent.

10. In view of above, when the respondent has been making the payment of rent to the petitioner, the respondent is estopped from disputing the title of the petitioner over the property in question by virtue of Section 116 of Indian Evidence Act. It has been held in ***Ramesh Chand Vs. Uganti Devi, 157 (2009) DLT 450*** by the Hon'ble High Court of Delhi that, “It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14 (1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord.

Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly.”

11. So far as the contention of the respondent that the Will is forged and fabricate is concerned, the respondent has no right to challenge the Will. It has been further held in ***Plasticchemicals Company Vs. Ashit Chadha & Anrs., 114 (2004) DLT 408 (DHC)*** that, “*Bonafide requirement : Locus standi to maintain petition : Ownership of premises on basis of Will : Challenge against : Once landlord able to show there is testament in his favour landlord deemed to have discharged his burden of ownership, visavis Rent Control Act Landlord able to prove testament made in his favour by previous owner which at best could be challenged by heirs of that owner and not by tenant”*”.

6. Dealing with the petitioner’s claim that the respondent had concealed that he was already in possession of sufficient accommodation the learned Additional Rent Controller observed in para nos. 14 to 16 as under:-

“14. Now, the respondent has contended that the petitioner does not require the suit premises bonafidely. As per the Will the petitioner is having two property, one property is House no. 11704, Gali no. 3, Sat Nagar, New Delhi and another property is House no. 5319, Hardhyan Singh Road, Ward no. XVI, Karol Bagh, New Delhi and the petitioner knowingly has not disclosed the status of these two properties in detail to the extent how much accommodation is available in these two properties. The petitioner has stated in the reply that the property no. 11704, Gali no. 3, Sat Nagar, New Delhi was sold by the petitioner long back in the year 1985-86 by way of executing Sale Deed. In this regard, he has placed on record the photocopy of the sale deed to show that the property no. no. 11704 has been sold in the year 1985-86. As such the said property is not in possession of the petitioner. So far as another property is concerned i.e. property in question, the

petitioner has categorically stated that apart from suit property he is not in possession of any other property. The petitioner has also stated in the reply that except these two properties out of which property no. 11704 has already been sold out by the petitioner in the year 1985-86, he is not in possession of any other property.

15. Another contention of the respondent is that the petitioner is having shop adjacent to the shop of the respondent in his possession and the petitioner is doing the business of selling cotton cloth which is used in shoes and chappals. In this regard, the petitioner has categorically stated that the petitioner is in possession of a narrow space width of 4' wide leading to his residence and in this space even one can hardly sit. The petitioner in para 14 of the counter affidavit has categorically stated this fact that he is in possession of narrow space width 4'. In the rejoinder affidavit, the respondent has not denied the factum of size of the said shop which is in possession of the petitioner. Therefore, it cannot be said that the petitioner is having sufficient accommodation for running the business.

16. Moreover in the present case, the petitioner has stated that he requires the suit premises for the purpose of business for her daughter who has completed her interior decoration course and also for himself. The respondent has not disputed in the leave to defend application that said daughter has not completed her interior decoration course and she does not want to carry out the business.”

7. Feeling aggrieved, the petitioner-tenant has invoked the revisional jurisdiction of this Court under Section 25-B(8) of the Delhi Rent Control Act, 1958.

8. In this petition the petitioner-tenant has pleaded some facts, which were not specifically pleaded in his leave to contest application, regarding the ownership of the property at Hardhian Singh Road and those points

only were urged seriously and with lot of emphasis by the learned counsel for the petitioner during the course of hearing before this Court. It has been pleaded by the petitioner in this petition that the property at Hardhian Singh Road was built on leasehold land and Delhi Development Authority had in January, 1984 cancelled the lease and had also taken over the possession on 9th February, 1984. That action of Delhi Development Authority was challenged by the lessee of the land (late Ms. Dhan Devi Seth) by filing a writ petition in this Court (being C.W.P. No. 2859/1985) but that writ petition was not pursued and was withdrawn and, therefore, the lease in respect of the property in question remained cancelled and had not been restored by the Delhi Development Authority and since all that had taken place before the death of Ms. Dhan Devi Seth the petitioner, in any case, could not acquire ownership of the property in question on the basis of the Will allegedly executed by her. Learned counsel had also argued that the respondent was not entitled to an order of eviction also for the reason that he had not stated in the eviction petition the extent of accommodation in his possession as also the fact that he was already carrying on some business in another shop in the same property. Learned counsel also cited some judgments of the Supreme Court in

support of his submission that the petitioner – tenant had raised a very strong triable issue regarding the ownership of the premises in question and, therefore, he was entitled to leave to contest the eviction petition. Those judgments are reported as *“Inderjeet Kaur vs. Birpal Singh”, (2001) 1 SCC 706; “Santosh Devi Soni vs. Chand Kiran”, (2001) 1 SCC 255; “Liaq Ahmed and others vs. Habeeb-Ur-Rehman”, AIR 2000 SC 2470* and *“Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal”, AIR 1982 SC 1518.*

9. Learned counsel for the respondent – landlord had submitted that the submissions made by the counsel for the petitioner to the effect that the Delhi Development Authority had cancelled the lease of the property in question many years back and for that reason the lessee of the land, namely, Late Ms. Dhan Devi had ceased to be its owner and consequently she could not have bequeathed his property in favour of her nephews including the respondent herein should not be entertained since the same had not been pleaded by the petitioner – tenant in his affidavit filed in support of the application seeking leave to defend the eviction petition. It was contended that if this plea has been taken by the petitioner the

respondent would have responded to the same before the trial Court itself. In any event, counsel submitted, no benefit can be derived by the petitioner from these new facts since the Delhi Development Authority has already restored the lease and has also mutated the property in question in the year 2005. Learned counsel submitted that the Delhi Development Authority had mutated the premises in question in favour of the respondent and his brother in the year 2005 and in this regard he drew my attention to the letter of mutation issued by the Delhi Development Authority which she placed on record of the present petition. It was also contended by learned counsel for the respondent that even if there had been no requirement of the cancellation of the lease of the premises in question by the Delhi Development Authority the right of the respondent to claim eviction from the petitioner – tenant on the ground of *bona fide* requirement of the shop in his possession would not have been impaired in view of the fact that undisputedly actual physical possession of the premises had always remained with late Ms. Dhan Devi and after her death with the beneficiaries of her Will. In support of this submission, learned counsel had cited one judgment of the Supreme Court in “*Shanti Sharma and Ors. Vs. Ved Prabha and Ors.*”, AIR 1987 SC 2028 and my

special attention was drawn to para nos. 7 to 9 and 19 of the said judgment and the same are reproduced below:

“7. It is admitted that this question was not raised in the trial court and the parties had no opportunity to lead evidence. It is only based on two papers and an affidavit which has been considered by the High Court. On the basis of these papers what appears to be, is that notice was issued to the landlord for cancellation of the lease and later on their representation the further proceedings have been stayed and it has been further observed in the subsequent paper from the DDA that the Authority is considering the restoration of the lease on the basis of payment of penalty or other dues that may ultimately be settled. It is nobody’s case that ultimately the matter has been disposed of and it is also not in dispute that the landlord – respondent’s possession has not been taken by the DDA. It is also not in dispute that although the land beneath the property is of the DDA given on lease to the landlord but the structure thereupon is of the ownership of the respondent – landlord. It is also not in dispute that the portion of the premises only stands on the plot of land the lease of which is alleged to have been cancelled but later on the proceedings for restoration are pending and the matter has been stayed. Nothing further has taken place.

8. Arguments were advanced at length on behalf of appellant that as the lease has been terminated and therefore the landlord could not claim to be the owner of the property and therefore the decree for eviction on the ground of bona fide requirement could not be maintained. Learned counsel for the respondent, on the other hand, contended that although some notice appears to have been issued but subsequently the matter remains stayed and admittedly the respondent – landlord continues to be in possession and therefore it could not be said that the respondent ceases to be the owner of the property. It was also contended on behalf of the respondent that unless and until the respondent’s possession is taken it could not be said that he ceases to be the owner as possession is substantially the ownership of the property.

9. It was also contended by learned Counsel for the respondent that even if the lease of the respondent – landlady is terminated by the DDA, DDA has to file a suit for possession and

so long as she continues to be in possession, it could not be said that she is not the owner of the property.

19. Before going into the legal questions as to whether this question could be raised at this stage and also as to the question of estoppels or whether the tenant has a right to challenge the title of the landlord, as quoted above from the two documents which are the basis of all this controversy if are carefully examined, it appears to be certain that a notice for determination of the lease appears to have been issued by the DDA sometime before 1981. The document which is purporting to be a notice in 1981 shows that this notice is issued showing the cancellation of the lease and the subsequent letter from the DDA addressed to the legal representatives of the original allottee i.e. the present respondents indicates that on their representation the DDA is working out the penalties and details of payment which have to be recovered and on the payment being made and Indemnity Bond being filed the restoration of the lease will be considered and no further steps are being taken either for dispossession of the allottee or for any other purpose. In view of these two documents what appears to be clear is that although there were some proceedings for the cancellation of the lease but at present it could not be contended that the lease has come to an end. It is also clear that no steps have been taken for dispossession and the second document which has been quoted above clearly shows that only the formality of depositing the penalties which are being worked out in the Office of the DDA and the filing of the Indemnity Bond remains thereupon the lease will be restored in the name of the legal representatives. Under these circumstances at the best what could be contended is that so far as plot No. 35 is concerned some shadow was cast on its title. That shadow also appears to be very thin. Apart from it the subsequent letter from the DDA indicates that what remains is only a formality of depositing the penalties and the Indemnity Bond. It is also clear that so far as the structure in the building is concerned it is not disputed that that is one of the ownership of the respondent. It is also not in dispute that the premises mainly stand on plot No. 34 about which there is not even a shadow of doubt about its title either of the property or of the land and in this view of the matter, on the basis of the two documents put together in the context of the circumstances as they stand it could not be said that the respondent – landlord has ceased to be the owner thereof, in view of broad meaning of term ‘owner’ as has been discussed and considered above. In our opinion, it could not be said that the

landlord is not the owner of the premises and therefore we see no substance in the contention advanced by learned Counsel for the appellant.”

10. After having considered the submissions of the learned counsel for the parties and the reasons given by the learned Additional Rent Controller for declining leave to defend to the petitioner – tenant I am of the view that the impugned order cannot be said to be not in accordance with law justifying any interference by this Court in exercise of its revisional jurisdiction. The main point which had been urged by learned counsel for the petitioner was that the lease of the land in question having been cancelled by the Delhi Development Authority the original lessee late Ms. Dhan Devi had ceased to be the lessee/owner thereof and consequently the respondent could not have become its owner under her Will in respect thereof. Though this point was not taken in the leave to contest application but without going into that aspect I am of the view that this point has no substance since undisputedly the physical possession of the entire property is still with the respondent it cannot be said that he could not maintain the eviction petition claiming himself to be the owner of the premises in question. This view is fully supported by the decision of the Supreme Court relied upon by the learned counsel for the

respondent in Shanti Sharma's case(supra). Since there is no triable issue raised by the petitioner – tenant various judgments cited by his counsel are of no help to him as in those decisions it has been held that if triable issues are raised by a tenant then leave should be granted to him to contest the eviction petition on the ground of *bona fide* requirement of the tenanted premises. This revision petition is, therefore, dismissed.

P.K. BHASIN,J

July 6, 2011
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