

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 23rd November, 2011
Judgment delivered on : 12th December, 2011

+ RFA(OS) 79/2011

VIRENDER SINGH ...Appellant
Through: Mr.Ajay Verma, Advocate

versus

STATE BANK OF INDIA ...Respondent
Through: Mr.Prashant Mishra, Advocate for
Mr.S.N.Relan, Advocate

RFA(OS) 80/2011

BHUPENDER SINGH ...Appellant
Through: Mr.Ajay Verma, Advocate

versus

STATE BANK OF INDIA ...Respondent
Through: Mr.Prashant Mishra, Advocate for
Mr.S.N.Relan, Advocate

RFA(OS) 81/2011

RAJENDRA SINGH ...Appellant
Through: Mr.Ajay Verma, Advocate

versus

STATE BANK OF INDIA ...Respondent
Through: Mr.Prashant Mishra, Advocate for
Mr.S.N.Relan, Advocate

RFA(OS) 82/2011

PUSHPA SINGH ...Appellant
Through: Mr.Ajay Verma, Advocate

versus

STATE BANK OF INDIA ...Respondent
Through: Mr.Prashant Mishra, Advocate for
Mr.S.N.Relan, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Appellants in these four appeals are members of the same family who own different portions of property bearing No.1822/1 and 1822/2 Chandni Chowk, Delhi 110006. All of them inducted State Bank of India as a tenant in the respective portion of the property owned by them.

2. Bhupendra Singh, the appellant in RFA(OS) 80/2011, had let out an area admeasuring 1820 sq.ft and 315.84 sq.ft. to the Bank. The last agreed rent with respect to the tenanted premises was ₹50,050/- per month. Said Appellant terminated the tenancy by a notice dated 12.8.1997 under Section 106 of the Transfer of Property Act, 1882. The termination took effect from 5.9.1997. Appellants, Virendra Singh, Pushpa Singh and Rajendra Singh, who have filed RFA(OS) No.79/2011, 81/2011 and 82/2011 respectively, had each let out an area admeasuring 427 sq.ft. to the Bank. The last agreed rent with respect to each of the leased premises was ₹ 5,647/- per month. Said Appellants

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terminated the respective tenancy by separate notices dated 7.10.1997 issued under Section 106 of the Transfer of Property Act, 1882. The termination took effect from 15.11.1997.

3. Appellant, Bhupendra Singh filed Applications in September 1998 under Section 19 of the Slum Area (Improvement & Clearance) Act, 1956 (hereinafter referred to as the 'Slum Act') seeking permission to evict the respondent. Before the same could be decided the Bank vacated the leased premises in its possession on 02.09.1999 and thus the said application under the Slum Act became infructuous.

4. Appellant Bhupendra Singh filed CS(OS)No.1911/2000 on the Original Side of this Court seeking recovery of ₹27,95,386/- as damages alleging that occupation by the Bank for the period 05.09.1997 till 02.09.1999 in respect of the portion let out by him was unauthorized. For the same period, the other three appellants filed three suits praying for damages in sum of ₹4,39,404/- on the same ground. Pendente lite and future interest was prayed to be awarded.

5. The following issues were settled in CS(OS)No.1911/2000:

1. At what rate the plaintiff is entitled to mesne profits in respect of premises referred in para 4 to 7 of the plaint?

2. Whether plaintiff is entitled to interest? if so, at what rate, on which amount and for which period?

3. Whether tenancy of defendant was validly terminated by the notices dated 12th August, 1997?

4. Whether suit as framed is not maintainable as

alleged?

5. Relief?

6. In the other three suits similar issues as above were settled save and except the date of notice as per Issue No.3 was changed to 7th October, 1997.

7. Vide a common judgment and decree dated May 5, 2011, the learned Single Judge decided Issue No.3 in favour of the Appellants/Landlords and held that the notices validly terminated the tenancy.

8. But, answering Issue Nos.1, 2, 4 and 5 together, the Ld. Single Judge has held that notwithstanding the fact that the tenancies were validly terminated, because the property was in a slum area and was governed by the Slum Act, the Respondent Bank continued to be in possession of the demised premises as a 'tenant' since it enjoyed the protection under the Slum Act. The learned Single Judge has held that it would be a paradoxical situation that the Bank could not be evicted without permission from the competent authority under the Slum Act and yet would be liable to pay damages if the claim of the appellants was accepted. Consequently, all the four suits were dismissed.

9. Admittedly, each of the tenancies between the parties were with respect to rent payable by the Bank in excess of ₹3,500/- per month and thus the Delhi Rent Control Act 1958 was not applicable to the premises in question.

10. It is settled law that a tenancy is the result of a contract between the owner of a property called the lessor and the lessee

whereunder the lessor agrees that for an agreed rent the lessee shall enjoy the possession of the property. The relationship between the lessor and the lessee is governed by the Transfer of Property Act, 1882. Thus, upon expiry of the lease period the tenancy expires by efflux of time and if the tenant is allowed to continue to occupy the tenanted premises at an agreed rent and money is received by the lessor from the lessee as rent and is tendered by the lessee to the lessor as rent, a fresh tenancy comes into being and pertaining to the user being commercial, in the absence of a registered lease agreement, the tenancy is from month to month and is determinable by a notice contemplated by the Transfer of Property Act, 1882.

11. But, various countries had passed legislations, especially after the second World War on account of paucity of accommodation, to protect the possession of tenants and these 'Rent Control Legislations' superseded the contractual obligations between the lessor and the lessee as per the lease deed or as per the terms of the oral lease. Thus, notwithstanding the contractual tenancy being terminated, the tenants could not be evicted and were given the label of 'Statutory Tenants' i.e. the statute conferred upon them the status of a tenant. The law to said effect was very clearly enunciated by the Supreme Court in the decision reported as, (1976) 4 SCC 855 Damadilal v. Parashram, in the following words (para 11):

"A valid termination of contractual tenancy puts an end to the contractual relationship. On determination

of the contractual tenancy, the landlord becomes entitled under the law of the land to recover possession of the premises from the tenant in due process of law and the tenant under the general law of the land is hardly in a position to resist eviction, once the contractual tenancy has been duly determined. Because of scarcity of accommodation and gradual high rise in the rents due to various factors, the landlords were in a position to exploit the situation for unjustified personal gains to the serious detriment of the helpless tenants. Under the circumstances it became imperative for the legislature to intervene to protect the tenants against harassment and exploitation by avaricious landlords and appropriate legislation came to be passed..."

12. The object and purpose of a Rent Control Legislation was highlighted by the Supreme Court in the decision reported as 1985 (2) SCC 683 Gian Devi Anand Vs. Jeevan Kumar. In para 23 it was observed:-

"The Rent Acts which are indeed in the nature of social welfare legislation are intended to protect tenants against harassment and exploitation by landlords, safeguarding at the same time the legitimate interest of the landlords. The Rent Acts seek to preserve social harmony and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed."

13. In the context of the Delhi Rent Control Act, 1958, the word 'Tenant' is defined in clause (ii) of Section 2(I) of the Act, as follows:

"2 (I) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes . . .

(ii) any person continuing in possession after termination of his tenancy . . ."

14. It is apparent that the definition of 'tenant' in the Delhi Rent Control Act incorporates the concept of a statutory tenant. But since the Delhi Rent Control Act is not applicable to tenancies where the monthly rent payable is in excess of ₹3,500/-, the question of a tenant whose tenancy has expired by efflux of time or has been otherwise validly determined as per the Transfer of Property Act, 1882 becoming a statutory tenant does not arise.

15. The essential object of the Slum Act is entirely different. It was noted by a Full Bench of this Court in the decision reported as AIR 1972 Del 34 (FB) Bardu Ram v. Ram Chander. It was observed:-

"An essential object of the Slum Areas Act is to enable the poor, who have no other place to go to and who, if they were evicted to remain in their dwellings until provision is made for a better life for them elsewhere.."

16. For holding as aforesaid, reliance was placed by the Full Bench on the decision of the Supreme Court reported as AIR

1961 SC 1602 Jyoti Pershad v. U.T. of Delhi, wherein it was observed:-

“Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go to, and who if they were compelled to go out would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted to remain in their dwellings until provision is made for a better life for them elsewhere...The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed.”

17. It is because of the difference in the object and purpose of the Slum Act and the Delhi Rent Control Act that in the decision reported as AIR 1977 SC 789 Lal Chand (dead) by L.Rs. & Ors. Vs. Radha Kishan’, the Supreme Court observed as under:-

“15. The Slum Clearance Act was passed, inter alia, for the protection of tenants in slum areas from eviction. As observed by this Court in Jyoti Pershad v. Administrator for the Union Territory of Delhi, (1962) 2 SCR 125 = (AIR 1961 SC 1602) the Slum Clearance Act looks at the problem of eviction of tenants from slum areas not from the point of view of the landlord and his needs but from the point of view of tenants who have no alternative accommodation and who would be stranded in the open if they were evicted. The policy of the Slum Clearance Act being that the slum dweller should not be evicted unless alternative accommodation is available to him,

we are of the view that the word 'tenant' which occurs in Section 19 (1)(a) must for the purpose of advancing the remedy provided by the statute be construed to include a person against whom a decree or order for eviction has been passed. We might mention that a Full Bench of the Delhi High Court in Bardu Ram Dhanna Ram v. Ram Chander Khibru, AIR 1972 Delhi 34 (FB) has taken the same view, namely, that the word 'tenant' in Section 19 of the Slum Clearance Act includes a person against whom a decree or order of eviction has been passed."

18. The decisions referred to above clearly bring out that the purpose of the Slum Act is to protect the occupiers of properties in slum areas irrespective whether they were tenants or not and relevant would it be to highlight that the Slum Act only defines an occupier and does not define a tenant. The object of the Slum Act is to protect the occupiers from eviction unless permission is obtained from the competent authority and relevant would it be to highlight that as per Section 19, while granting or declining permission the relevant criteria is the means of the occupier. If the occupier has no means to relocate himself, permission for ejectment has not to be granted inasmuch as it would be presumed that upon ejectment the occupier would create a further slum. It is well settled that protection under Section 19 would be available to a person, whether he is a tenant or an occupier who is poor and is unable to arrange for alternative accommodation.

19. In the decision reported as 71 (1978) DLT 318 Dimple Pvt. Ltd. Vs. Harsh Kaur Aggarwal & Ors. it was observed that the

protection under Section 19 of the Slum Act is not available to a company. In paras 33 to 35 it was observed as under:-

“33. Learned Counsel for respondent No. 1, Mr. Ishwar Sahai, on the other hand has argued that the petitioner company are a jurisdiction. They are not a natural person. Thus the protection meant for the eviction of poor tenants from their respective accommodations cannot be made available to the petitioner. I find myself in perfect agreement with the learned Counsel for respondent No. 1.

34. Admittedly the petitioners are a company. Thus they are a juristic person. A Company is formed when certain persons join hands with a view to carrying on some commercial or industrial undertaking. Thus it can naturally be formed by those persons who have got sufficient funds to carry on their business. A Company cannot be run by poor persons with no financial means to run the same. The object and the purpose for the enactment of the Slum Areas (Improvement & Clearance) Act, 1956 was to clear the slums and to provide protection to poor tenants against harassment at the hands of landlords who bring forward and initiate proceedings for their eviction...

35. I am also tempted to cite the observations of a Single Judge of this Court as reported in Bismilla Jan v. Jain Tractors & Auto Spare, 1985 Rajdhani Law Reporter 477, (para 13).....“The Slum Act was enacted for giving protection to poor individual tenants who have small means and cannot afford to get alternate accommodation outside the slum area or within the slum if evicted. If a couple of persons with substantial means float a company which goes into losses, even if they are evicted from the premises, they cannot create slums, particularly when the same persons own other concerns which also have offices at different places”.

20. The view taken by the learned Single Judge was earlier on RFA (OS) 79/2011 & connected matters

taken by another Single Judge in the decision reported as 105 (2003) DLT 422 Shyam Kishore & Anr. Vs. Roop Saree Kendra.

21. The view is incorrect for the reason it ignores the law on the subject that the concept of a contractual tenancy is only applicable where the Rent Control Legislation so envisages and that ejectment of an occupier of a property in a slum area, be the occupier a tenant or otherwise is entirely different than the issue of payment of damages for unauthorized use and occupation. A person occupying a slum property upon becoming liable to pay damages may not be evicted from the property for non-payment of damages, but that would not mean that damages cannot be recovered. The Slum Act does not regulate the rent payable by a tenant or the charges payable for unauthorized use and occupation. If the Rent Act does not apply to a slum area, rent payable would be governed as per contract between the parties and damages for unauthorized occupation as per the general law applicable.

22. We highlight that under Section 37 of the Slum Act the jurisdiction of a civil Court is barred only insofar it relates to the ejectment of an occupier and no more.

23. The import of the definition of tenant under the Delhi Rent Control Act in the Slum Act by the learned Single Judge is accordingly contrary to law.

24. Besides, in the facts of the instant case it has to be noted that the bank frustrated the permission sought by the appellants from the competent authority under Section 19 of the Slum Act

by voluntarily surrendering possession. Obviously, the said application became infructuous at that stage.

25. The respondent State Bank of India is the largest bank having thousands of branches all over the country. The object of the Slum Act could never be to protect such giant juristic entities to claim protection under the Act. It continued to occupy the tenanted premises after tenancy was determined and its status was that of an unauthorized occupant and thus damages have to be paid.

26. The appeals are accordingly allowed. Impugned judgment and decree dated 05.05.2011 is set aside. CS(OS) No.1911/2011, CS(OS) No.2552/2000, CS(OS) No.2553/2000 and CS(OS) No.2554/2000 are restored with a direction to the learned Single Judge to decide the quantum of damages/mesne profits payable to the appellants.

(S.P.GARG)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

December 12, 2011
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