

* HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: March 11, 2011

+ CM(M) 1250/2010

Rajinder Prasad Sharma Petitioner
Through: Mr. Rajeev K Vermani, Sr. Adv. with
Mr. Vivek Sharma & Mr. Lokeshwar
Sharma, Advs.

-versus-

Hari Singh Respondent
Through: Mr. K. K. Sharma, Sr. Adv. with
Mr. Pradeep Sharma & Mr. Shubhashish
Kukreti, Advs.

CORAM:-
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Veena Birbal, J

1. Present is a petition under Article 227 of the Constitution of India for setting aside the impugned order dated 23rd August, 2010 passed by the Ld. District Judge (East) cum Additional Rent Control Tribunal wherein eviction order under section 14(1)(d) of the Delhi Rent Control Act, 1959 (hereinafter referred to as 'the Act') passed by the Ld.

Additional Rent Controller (E), Karkardooma Court, Delhi against the petitioner has been upheld.

2. The brief facts relevant for deciding the present petition are that respondent/landlord had filed an eviction petition against the petitioner/tenant under section 14(1)(d) of the Act alleging therein that he was owner/landlord of the premises bearing no.4/2706, Gali No.5, Bihari Colony, Shahdara, Delhi. Petitioner was a tenant in the above mentioned premises @ ₹ 715/- per month excluding electricity and water charges. It was stated that the tenanted premises comprised of two rooms, one kitchen, one store room, one bath room and one latrine and were let out to the respondent for residential purposes. It was further alleged that neither the respondent nor his family members had been residing in the tenanted premises since January, 2002 till the date of filing of the eviction petition. Respondent/landlord had alleged that petitioner/tenant had been residing along with his family members at A-51/1A, East Azad Nagar, Delhi-110 051 since January, 2002 and had refused to vacate the tenanted premises and same had been abandoned by the petitioner/tenant with an intention of not re-occupying the same. It was alleged that although no notice was required for filing the eviction petition, respondent/landlord served a notice dated 20.12.2005 on the petitioner/tenant. Respondent/landlord had prayed that an ejectment order be passed in his favour and

against the petitioner/tenant.

3. Petitioner/tenant had opposed the eviction petition by filing written statement wherein he contended that he had been continuously residing in the tenanted premises and the house bearing no. A-51/1-A, East Azad Nagar, Delhi was the residence of his younger son who was residing therein along with his family. Petitioner/tenant had further contended that he along with his wife and elder son were residing separately at the tenanted premises. In the written statement, on the one hand, petitioner/tenant had taken the stand that he had purchased the premises in question from the father of respondent/landlord, on the other hand, he had also accepted landlord-tenant relationship between the parties and paying rent to the respondent/landlord. Petitioner/tenant had alleged that a frivolous petition had been filed and the same was liable to be rejected.

4. Respondent/landlord had examined six witnesses including himself before the Ld.Additional Rent Controller whereas the petitioner/tenant got himself examined as the only witness i.e RW-1.

5. The Ld. Additional Rent Controller vide impugned judgment dated 25.5.2010 allowed the eviction petition under section 14(1)(d) of the Act in favour of the respondent/landlord and against the petitioner/tenant.

6. Aggrieved with the same, petitioner/tenant had filed an appeal

against the judgment dated 25.5.2010 contending therein that he had been residing in the tenanted premises along with his family and had not abandoned the same and the premises at A 51/1A, East Azad Nagar, Delhi belongs to his son and had never shifted there. The Appellate Tribunal dismissed the appeal by holding that respondent/landlord by way of documentary evidence had established that the petitioner/tenant was not residing in the premises in question at the relevant period and had not interfered with the order of the learned ARC and dismissed the appeal.

7. Aggrieved with the same, present petition is filed.

8. Learned counsel for the petitioner/tenant has contended that evidence of petitioner/tenant is completely ignored by the Ld. Addl. Rent Controller, as well as by Appellate Court and the same amounts to denial of justice to him. It is contended that petitioner has got a ration card (RW-1/2), voter's identity card (RW 1/3), Identity card of Regd. Society (RW 1/4), summon (RW1/5) issued by the Arbitrator in a dispute that arose in society which was duly served upon the petitioner/tenant at the tenanted premises and all these documents had been ignored by the learned trial court and finding given by the learned trial court that the petitioner/tenant had left the tenanted premises is a perverse finding. Learned counsel further submits that this court is competent to quash such finding in exercise of its

jurisdiction under Article 227 of the Constitution of India. In support of his contention, learned counsel has relied upon (i) Achutananda Baidya Vs. Prafulla Kumar & ors (1997) (5) SCC 76 (ii) State of West Bengal & Ors Vs. Samar Kumar Sarkar 2009 (15) SCC 444.

9. The respondent/landlord has contended that in the petition under Article 227 of the Constitution of India, this court does not act as a court of appeal and cannot upset the concurrent findings of facts given by the two courts below nor can the court re-appreciate the material finding and give its own finding. It is contended that the order passed by the Ld. Addl. Rent Controller is based on evidence on record. It is further contended that there is no perversity in the finding given by the two courts below nor any material evidence is ignored as is contended, as such, this court would not interfere in the exercise of jurisdiction under Article 227 of the Constitution of India.

10. In Mohd Yunus Vs Mohd Mustaqim and others reported in AIR 1984 SC 38 the Apex Court has held that:-

“The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior court or Tribunal functions within the limits of its authority, and not to correct an error apparent on the face of the record much less an error of law. In this case, there was in our opinion no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned subordinate judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure under Article 227, the High Court does not act

as an appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

The observations in **Surya Dev Rai Vs Ram Chander Rai & ors; JT 2003 (6) SC 675** also support the view that in exercise of such supervisory jurisdiction, this court is not to indulge in re-appreciation or re-evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. It is only where a subordinate court has assumed jurisdiction which it does not have or has failed to exercise jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted would the High court be required to step in.

11. Keeping in mind the above legal position, the matter is examined. To prove that the petitioner/tenant had left the tenanted premises and had shifted to A 51/1A, East Azad Nagar, Delhi, the respondent/landlord has led the evidence of six witnesses including himself before the Ld. ARC(E). Respondent/landlord has examined PW 2 Sh.S.K.Saini, Head Clerk from the office of Z.R.O, Water, North East, Delhi Jal Board Delhi who has deposed that the premises were found locked continuously for years during the relevant period and proved on record Ex.PW 2/1. Respondent/landlord has also examined a witness

from BSES Sh Ram Gopal, PW 3, who has proved on record relevant document Ex.PW 2/3 showing the consumption pattern of electricity for the relevant period i.e 10.5.2006 to 10.11.2006 on provisional basis. The Ld. ARC has also noted that the counsel for petitioner/tenant did not put any question or suggestion regarding consumption of electricity for the relevant period as was reflected in Ex. PW 2/3. Respondent/landlord has also examined PW5, a witness from MTNL who has deposed about shifting of Tel.No.2215330 from the tenanted premises to A 51/1A, East Azad Nagar, Delhi. Ld. Addl. Rent Controller had noted that there is an evidence on record to the effect that the gas connection which was in the name of petitioner/tenant at the tenanted premises has been disconnected due to not obtaining the gas cylinders on the said connection.

12. Considering the entire evidence on record, the Id. ARC has held that respondent/landlord has been able to prove that neither petitioner nor his family members have been living in the tenanted premises during the relevant period i.e 10.5.2006 to 10.11.2006.

13. The learned Addl. Rent Control Tribunal vide impugned judgment dated 23.8.2010 has also affirmed the above said findings and has held that the respondent/landlord by way of documentary evidence has established that petitioner/tenant and his family were not residing in the tenanted premises during the relevant period i.e 10.5.2006 to

10.11.2006. Tribunal has also held that the petitioner/tenant has failed to rebut the documentary evidence of respondent/landlord.

14. In view of the above, it cannot be said that the findings of fact have been arrived at by the learned ARC by not considering relevant material on record, as is alleged. The learned ARC has considered the entire evidence which was adduced by both the parties. It cannot be said that consideration of evidence, as is referred by learned counsel for the petitioner, could have led to opposite finding. The findings arrived at by the learned ARC cannot be said to be perverse finding or based on no evidence, as is alleged. In these circumstances, the judgments relied upon by learned counsel for the petitioner i.e. Achutananda Baidya Vs. Prafulla Kumar & ors (supra) & State of West Bengal & Ors Vs. Samar Kumar Sarkar (supra) are of no help.

15. The two courts below have given concurrent findings of fact as is noted above. Under Article 227 of the Constitution of India, this court cannot re appreciate the evidence and give its own findings. The law is well settled by various decisions of this court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material or resulting in manifest injustice.

16. In view of the above discussion, no case for interference is made out. Petition is hereby dismissed. Parties are left to bear their own costs.

VEENA BIRBAL, J.

March 11, 2011
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