

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

+ **RFA No.74/2002**

% **19th August, 2011**

NAEEM AHMED

..... Appellant

Through: Mr. Shashi Saxena and
Mr. S. K.Jain, Advocates.

VERSUS

SH. YASHPAL MALHOTRA (DECEASED) Respondents
THROUGH L.RS. & ANR.

Through: Mr. Jagdish Dhawan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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**

VALMIKI J. MEHTA, J (ORAL)

1. By means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC), challenge is laid by the appellant/plaintiff to the impugned order dated 28.8.2001, by which, the preliminary issue was decided by holding that the civil court has no jurisdiction as the parties would be governed by the Delhi Rent Control Act, 1958 (in short 'the Act') since the rate of rent is Rs.1200/- per month i.e. below the cut off rate of rent of Rs.3500/- per month.

2. Learned counsel for the appellant argued that the respondents/tenants having denied the title of the appellant/landlord, and therefore, having repudiated the relationship of landlord and tenant, the

relationship of landlord and tenant between the parties comes to an end and the parties therefore would not be governed by Delhi Rent Control Act, 1958. It was therefore argued that the subject suit was maintainable for recovery of possession, arrears of rent and mesne profits with respect to the subject premises. Learned counsel for the appellant places reliance upon ***S. Makhan Singh Vs. Smt. Amarjeet Bali 154, (2008) DLT 211*** in which judgment, a learned Single Judge of this court (Shiv Narayan Dhingra, J.) held that once a tenant denies the title of the landlord, then by virtue of Section 111 (g) of the Transfer of Property Act, 1882, the relationship of landlord and tenant comes to an end and a suit can therefore be filed in a civil court for possession of the property from the erstwhile tenant. The relevant paragraph of the said judgment is para 5 and the same reads as under:-

“A tenant has been given protection under Delhi Rent Control Act from eviction only where the jurial relationship of tenant and landlord was not disputed and the tenant claims himself to be the tenant and not the owner. A perusal of Section 14, which gives protection to a tenant against eviction, clearly shows that this protection is available only to the person who is undisputedly a tenant and does not claim himself to be the owner of the premises. The moment a person refuses the title of the landlord and claims title in himself he ceases to be a tenant in the eyes of law and the protection of Delhi Rent Control Act is not available to him. Section 111(g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision under Section 111(g) is based on public policy and the principle of estoppels. A

person who takes permission on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal tenant in the premises. A lease may come to an end by termination of lease by or by efflux of time. Where the rent is below Rs.3,500/-, a landlord cannot recover possession from tenant whose term of lease comes to an end or whose tenancy is terminated by a notice because such a tenant is a protected tenant. The landlord can recover possession only if the case falls within the ambit of Section 14 of DRC Act. Where a tenant repudiates the title of the landlord and does not recognize him as landlord or as a owner of the premises, the protection from eviction under Delhi Rent Control Act is not available to him. Where the tenant does not recognize anyone as landlord or owner and claims ownership in himself he cannot seek protection of Delhi Rent Control Act against the true landlord or owner. The Trial Court therefore rightly held that the petitioner was not entitled to protection under Section 50 Delhi Rent Control Act."

3. In my opinion, the ratio in the case of ***Makhan Singh's case (supra)*** is against the mandatory and clear cut language of Section 14 of the Delhi Rent Control Act, 1958 (In short 'DRC Act'), inasmuch as, by virtue of the non-obstante clause in Section 14 of the DRC Act, a tenant cannot be evicted except on one of the grounds as mentioned under Section 14(1) of the DRC Act. Denial of the title of a landlord is not one of the grounds which is mentioned as a ground for eviction in any of the sub-Sections of Section 14(1) of the DRC Act and by virtue of the non obstante clause in Section 14, the same will prevail over the provision of the Transfer of Property Act, 1882 which provides for grounds of filing of an eviction suit by a landlord against a tenant. Of course, the relationship of landlord and tenant between the parties can be brought to an end by mutual consent of the parties, however, if there is opposition by the

tenant to the termination of the relationship of landlord and tenant, then, the eviction can take place only if the requirements of one of the sub-Sections of Section 14(1) of the DRC Act are satisfied. Since Section 14 starts with *non obstante* clause, obviously, the said provision will over-ride the Transfer of Property Act, 1882.

4. A Constitution Bench of 7 Judges of the Supreme Court in the case of **V. Dhanapal Chettiar vs. Yesodai Ammal, 1979 (4) SCC 214** has held that even after the termination of the tenancy of a tenant under Section 106 of the Transfer of Property Act, 1882, a tenant can only be evicted if any of the grounds of eviction as are mentioned in the various State Rent Control Acts, exist. It is only when an order of eviction is passed, is the relationship of landlord and tenant snapped.

5. Before an eviction order is passed against the tenant in any of the provisions of the State Rent Control Acts, the relationship of landlord and tenant continues between the parties, and which is sometimes also referred to as a statutory tenancy. Paras 5 and 6 of the judgment in the case of **V. Dhanapal Chettiar (supra)** are relevant and the same read as under:-

“5. Under the Transfer of Property Act the subject of “Leases of Immovable Property” is dealt with in Chapter V. Section 105 defines the lease, the lessor, the lessee and the rent. Purely as a matter of contract, a lease comes into existence under the Transfer of Property Act. But in all social legislations meant for the protection of the needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the

allotment of a particular premises to him by the authority concerned. Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision. Section 108 deals with the rights and liabilities of lessors and lessees. Many State Rent Acts have brought about considerable changes in the rights and liabilities of a lessor and a lessee, largely in favour of the latter, although not wholly. The topic of Transfer of Property other than agricultural land is covered by Entry 6 of List III to the Seventh Schedule to the Constitution. The subject being in the concurrent list, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non-obstante clause have done away with regard to to any matter which is not provided for in the State Act either expressly or by necessary implication.

6. Section 111 deals with the question of determination of lease, and in various clauses (a) to (h) methods of determination of a lease of immovable property circumstances and at the end are added the words “and in any of these cases of lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease”. The notice spoken of in clause (g) is a different kind of notice and even without the State Rent Acts different views have been expressed as to whether such a notice in all cases is necessary or not. We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions. Only in those State Acts where a specific provision has been made for the giving of any notice requiring the tenant either to pay the arrears of rent within the specified period or to do any other thing, such as the Bombay Rent Act or the West Bengal Rent Act, no notice in accordance with clause (g) is necessary. A lease of immovable property determines under clause (h):

On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

It is this clause which brings into operation the requirement of Section 106 of the Transfer of Property Act. Without

adverting to the effect and the details of waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non-payment of rent, etc. as provided for in Sections 112 to 114-A of the Transfer of Property Act, suffice it to say that under the said Act no ground of eviction of a tenant has to be made out once a contractual tenancy is put to an end by service of a valid notice under Section 106 of the Transfer of Property Act. Until and unless the lease is determined, the lessee is entitled to continue in possession. Once it is determined it becomes open to the lessor to enforce his right of recovery of possession of the property against immovable property did not stand determined under any of the clauses (a) to (g) of Section 111, a notice to determine it under Section 106 was necessary. But when under the various State Rent Acts, either in the one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of Section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion it will suffice to say that the

various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in accordance with law."

6. Reference can also be usefully invited to the decision in the case of ***Vannattankandy Ibrayi Vs. Kunhabdulla Hajee (2001) 1 SCC 564*** wherein it was held that a tenant cannot take benefit of the provisions of the Transfer of Property Act, 1882 once similar provisions exist in the State Rent Control Acts. If therefore, a tenant cannot take benefit of the provision of the Transfer of Property Act and is bound by the applicable similar provisions in the Rent Control Act, a landlord simultaneously cannot also plead that once there exists provision in the Rent Control Act, yet, the provisions of the Transfer of Property Act would be applicable.

7. Accordingly, I find that it is necessary that the ratio of the decision of the case in ***Makhan Singh (supra)*** requires reconsideration as it ignores the decision given by a Constitution Bench of 7 Judges of the Supreme Court in the case of ***V. Dhanapal Chettiar (supra)***. Let the present case file alongwith the present order be placed before an appropriate Bench, after obtaining orders of the Hon'ble the Chief Justice for further proceedings on 28th September, 2011 for considering the validity of the ratio of the judgment in the case of ***Makhan Singh (supra)***.

AUGUST 19, 2011
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VALMIKI J. MEHTA, J.