

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

Judgment Reserved on : October 31, 2012
Judgment Pronounced on: November 19, 2012

+ **RFA(OS) 9/2011**

CHHANGA MAL GUPTA Appellant
Represented by: Mr.R.L.Kohli, Advocate.

versus

UOI & ORS Respondents
Represented by: Mr.Jaswinder Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. Having heard learned counsel for the parties at length and having perused the evidence, as recorded in the order dated September 26, 2012, we had deferred further hearing of the matter for a period of four weeks and it was indicated in the cause list that the matter would not be taken up till October 19, 2012. The reason was to enable the respondents to consider whether they would be willing to surrender the tenanted premises within a reasonable time for the reason a Post Office i.e. a Public Utility Service was being run from the premises in question and a sudden disruption thereof would put to inconvenience the local population.

2. The matter was next taken up for hearing on October 31, 2012 and

since learned counsel for the respondents informed that the respondents were not willing to settle the dispute, arguments were heard in the appeal and the matter was reserved for judgment.

3. Part of property bearing Municipal No.F-14/11, Model Town-II, Delhi-110009 was owned by one Sh.Ram Lubhyn Mal Bhasin, ground floor whereof was let out by him to the Union of India, through the Post master General, for running a Post Office at a monthly rent of ₹350/- w.e.f. August 09, 1965, which rent was enhanced to ₹500/- per month w.e.f. November 01, 1978.

4. The remaining portion of the property bearing Municipal No.F-14/11, Model Town-II, Delhi-110009 is owned by one Mr.Vinod Kalra.

5. On the death of Sh.Ram Lubhya Mal Bhasin on June 16, 1989, the property in his name was transferred in the joint names of Chaman Lal Bhasin and Smt. Pushpa Kumar, who in turn vide sale deed dated May 17, 1993 sold the same to one Ms.Sushma Grover, who in turn, vide sale deed dated February 06, 1996, Ex.P-1 sold the same to the appellant; and the postal authorities attorned to the appellant as per the confirmatory letter Ex.P-2 addressed to the appellant by the competent authority of the Department of Posts i.e. Senior Superintendent of Post Offices, Northern Division.

6. On July 21, 1998, the appellant requested the postal authorities to permit him to repair the building, which request was accepted by the postal authorities as per their letter dated July 24, 1998; but upon the condition that repair work would be undertaken in a manner that working of the Post Office was not affected. The appellant requested the Post Office to be temporarily shifted to an adjacent building with an assurance that after repair and restoration, possession would be restored, a request which was communicated on August 31, 1998 and reiterated by the appellant on

September 15, 1998.

7. The dialogue continued till when the postal authorities, as per their letter dated February 03, 1999, Ex.DW-1/3, agreed to temporarily shift to the adjacent premises owned by Mr.Vinod Kalra but upon four conditions.

8. Condition No.1 was that Mr.Vinod Kalra would not claim any rent or licence fee from the postal authorities. Condition No.2 was that the appellant will accept the rent without any reservation as assessed by the Fair Rent Assessment Committee of the postal authorities on renovation. Condition No.3 was that shifting would be only for the purpose to facilitate appellant repair the building; and condition No.4 was that after the repair work was over the tenanted portion i.e. the ground floor would be handed back to the postal authorities.

9. The appellant accepted the terms as set out in Ex.DW-1/3 and the postal authorities vacated the tenanted premises by shifting to the adjacent premises owned by Mr.Vinod Kalra and after repair work was executed by the appellant the Post Office shifted back on October 21, 2000. The Fair Rent Assessment Committee of the postal authorities, as per its meeting held on March 8, 2001, minuted in Ex.DW-1/4 determined the fair rent at ₹4,500/- per month which decision was communicated to the appellant with a request that he should join in execution of a fresh lease deed and upon the appellant maintaining the stand that with reference to comparative rent in the area the fair standard rent would be ₹15,000/- per month, as per Ex.DW-1/5 the postal authorities recorded that they would not be willing to pay rent more than ₹4,500/- per month.

10. A stalemate ensued. Lease deed was not executed and on December 24, 2002, as per Ex.P-20 the appellant served a notice under Section 80 of the Code of Civil Procedure read with Section 106 of the Transfer of Property Act determining the tenancy and requiring the premises to be

handed over on March 01, 2003; tenancy being determined with effect from February 28, 2003. The appellant also demanded damages @ ₹70/- per sq.ft. with effect from October 10, 2000.

11. Since much turns on Ex.P-20, we note its contents in full. It reads as under:-

“To,

1. The Secretary,
Ministry of Telecommunication,
Government of India,
Department of Posts,
Dak & Tar Bhavan,
New Delhi.
2. The Chief Post Master General
Megdhoot Bhawan,
New Delhi.
3. The Senior Supdt. of Post Offices,
Department of Posts,
Delhi Northern Division,
Delhi – 110 054.

Sub:- Notice under Section 80 CPC and Section 106 of the Transfer of Property Act regarding ground floor premises F-14/11, Model Town-II, Delhi to be let for Post Office w.e.f. 21.10.2000.

Dear Sir,

1. I had purchased the property bearing No.F-14/11 having land underneath 81.522 sq.meters situated at Model Town, Delhi vide the registered sale deed dated 2.2.1996. At that time the building was in a most dilapidated dangerous condition and on the ground floor thereof was housed the Post Office under an old tenancy at a monthly tenancy of ₹500/- since prior to 1965.
2. That as the structure was dilapidated and posing danger, it was mutually agreed that the Post Office shall shift to a

premises to be provided by me and I shall be carrying out the construction of the building and after causing construction the ground floor of the same shall be let to you for Post Office at a reasonable market rate which may be prevailing and it was left to later decision regarding fixing of the monthly rental as per reasonable prevent rent in the area.

3. That under the circumstances I got accommodated the Post Office in another premises bearing No.F-14/11 Model Town-II, Delhi belonging to Shri Vinod Kalra and this accommodation was provided at my own expense and obligation undertaken.

4. That the building F-14/11 Model Town-II, Delhi which was purchased by me as aforesaid was constructed upon and as the accommodation sought from Shri Vinod Kalra, in his building at F-14/11 was only for a year or so, you were shifted back to the newly constructed ground floor on 21.10.2000 constructed by me at a huge cost on the specific assurance that I will be getting the monthly rent at a reasonable market prevailing rate which shall be determined.

5. That you have not paid the arrears of rent of the old premises tenancy whereof stood determined by surrender and demolition thereof; which was with you w.e.f. 1.2.1996 to 21.10.2000 at a monthly rent of ₹500/- amounting to approx. ₹28,300/- in spite of demands made.

6. That keeping in view the prevalent rate in the area I had informed to you that the premises admeasuring 150 sq.ft. carpet area on ground floor of the building F-14/14 Model Town II, Delhi had been taken on rent by ICICI Bank at a monthly rent of ₹25,000/- with refundable security of ₹1,50,000/- with also a clause of increase of rent by 20% after three years. M/s. MacDonald have taken the whole building F-14/15 Model Town-II, Delhi at a rental @ ₹55/- per sq.ft. and M/s.Reliance have taken on rent about 2830 sq.ft. in building B-8 Model Town II, Delhi at a monthly rent of ₹2,30,000/- p.m. approx. and these instances would clearly show that the reasonable rent of the premises with you having a carpet area 855.47 sq.ft. shall have to be determined at the realistic reasonable prevalent rate of similar premises in the area and by

the aforesaid formula it shall not be difficult for any competent authority to determine the rate payable to me in respect the premises held by you since 21.10.2000 and I again request you to consider the matter in regard determining the monthly rate payable keeping in view that I should get at least reasonable return in view of market rate keeping in view the expenditure done by me in constructing the premises. The reasonable rate therefore even on the lower side cannot be less than ₹70/- per sq.ft. of the carpet area.

7. That I have received your letter dated 5.12.2002 and 12.12.2002 offering w.e.f. 21.10.2000 in regard the new tenancy to be for the newly constructed premises @ ₹4500/- pm and I state that I do not consent to the tenancy at the said rate and in this regard I only submit that you may while remitting the arrears of ₹28,300/- as stated in para 5 hereinabove may remit w.e.f. 21.10.2000 @Rs.4500/- pm on tentative basis subject to your reconsidering the monthly rate of rent which may be reasonable and fair to you as also to the undersigned and if there by any difficulty the fair rent/rate per month can be got determined from competent forum/Court and I hope that you shall cooperate.

8. I, therefore, request you to remit the arrears of ₹28,300/- as also the user charges @ ₹4500/- pm w.e.f. 21.10.2000 on account and without prejudice on tentative basis; subject to determination of reasonable rate payable for such a premises within seven days from the date of this letter failing which please take notice that the agreement to let/alternatively the tenancy shall stand terminated and determined with the end of 28th of February 2003 and you are called upon to vacate and hand over the possession of the premises immediately thereafter on 1.3.2003 and also pay user charges and damages @ ₹70/- per sq.ft. w.e.f 21.10.2000; failing which suit for possession, user charges as also damages shall follow at your costs.

Copy kept.

Yours faithfully,

Sd/-

Dated : 24.12.2002

CHHANGA MAL GUPTA”

12. And we only need to highlight that in Ex.P-20, vide para 7, the appellant agreed to tentatively receive rent @ ₹4,500/- per month with effect from October 21, 2000 as offered by the Postal Authorities but requested that the matter be reconsidered so that a reasonable and a fair rent acceptable to both parties could be worked out. Further, in paragraph 8, while determining the tenancy, the appellant reiterated his willingness to receive rent @ ₹4,500/- per month with effect from October 21, 2000 but without prejudice and on tentative basis.

13. Appellant's suit for possession and damages was met by an opposition that the suit was barred under Section 50 of the Delhi Rent Control Act 1958 on the strength of the plea that the agreed rent was ₹500/- per month; and suffice would it be to state that as per Section 50 of the Delhi Rent Control Act 1958 no Civil Court can entertain a suit for eviction of a tenant in relation to any premises to which the Act applies and as per Clause (c) of Section 3 of the Act, the Act does not extend to any premises, whether residential or not, whose monthly rent exceeds ₹3,500/-.

14. Vide impugned judgment and decree dated November 23, 2010, holding that since the appellant did not accept the rent determined by the Fair Rent Assessment Committee i.e. ₹4,500/- per month and as a consequence no revised lease agreement was executed between the parties, in view of the law declared by the Supreme Court in the decision reported as AIR 1974 SC 818 Rawal & Co. v. K.G.Ramachandran & Ors. to the effect that variation of rent reserve by a registered lease deed has to be evidenced by another registered lease deed; it not being the position in the instant case would require a conclusion to be drawn that a jural relationship between the parties i.e. landlord and tenant continued with the liability of the tenant to pay rent @ ₹500/- per month.

15. Learned counsel for the respondents urged that in view of Article 299 of the Constitution of India, there cannot be an implied contract between the Government and another person as was held by the Supreme Court in the decision reported as AIR 1967 SC 203 K.P.Chowdhary v. State of Madhya Pradesh & Ors.

16. From a reading of the impugned decision it is evident that the appellant had argued that it was a case of implied surrender of the tenancy when the respondents shifted from the tenanted premises and that re-induction of the respondents on the premises was a case of a fresh lease.

17. Unfortunately for the appellant, he was ill advised to take said plea; and we say so for the reason the evidence which we have noted in paras 6 to 9 above and in particular Ex.DW-1/3 makes it clear that the respondents neither expressly nor impliedly surrendered the tenancy. The respondents temporarily vacated the tenanted premises to enable the appellant to reconstruct the same and there was an express understanding that the tenancy would continue but with the rent varied, being the fair market rent to be determined by the Fair Rent Assessment Committee of the respondents.

18. However, in view of the language of Ex.P-20, contents whereof have been reproduced by us herein above in paragraph 11 above and the relevant parts whereof we have reflected upon in paragraph 12 above, it is clear that the appellant, without prejudice to his rights accepted to receive rent @ ₹4,500/- per month and simultaneously determined the tenancy.

19. It may be true that no fresh lease deed was executed between the parties, but in view of Section 92 (Proviso 4) of the Indian Evidence Act 1872 existence of a distinct oral agreement to modify the term of a written contract can always be led.

20. As regards Article 299 of the Constitution of India and the decision of

the Supreme Court in K.P.Chowdhary's case (supra), suffice would it be to state that between Government and another person an implied contract is impermissible, but the said Article has no place where the contract is express.

21. Neither party fought the litigation in the context of the original tenancy being under a registered lease deed. No defence was taken by the respondents that it took the premises on rent under a registered lease deed. The respondents never predicated a defence under Article 299 of the Constitution of India. The pleadings of the parties would evidence that the case set up by the respondents was that since the appellant did not accept rent offered by it @ ₹4,500/- per month the tenancy continued @ ₹500/- per month and it is in the context of the pleadings of the parties that the suit filed by the appellant requires to be disposed of.

22. Evidence establishes that vide Ex.DW-1/3 the respondents offered rent @ ₹4,500/- per month and Ex.P-20 evidences that the appellant, without prejudice to his rights, agreed to receive the said rent and simultaneously determined the tenancy.

23. Thus, the view taken by the learned Single Judge that the suit was barred under Section 50 of the Delhi Rent Control Act 1958 is incorrect. We hold that the suit filed by the appellant was not barred and that the Civil Court had jurisdiction to entertain the plaint.

24. In view of Ex.P-20, receipt whereof has not been denied by the respondents we hold that the tenancy was determined making liable the respondents to vacate the tenanted premises by March 01, 2003 and further making respondents liable to pay damages for unauthorized use and occupation for a period thereafter.

25. Learned counsel for the appellant had stated during arguments in the appeal that from October 21, 2000, till February 28, 2003, the appellant

would be satisfied to receive rent @ ₹4,500/- per month for the reason the appellant has not challenged in the suit the findings of the Fair Rent Assessment Committee. We clarify that it has been pleaded that the fair rent determined by the Fair Rent Assessment Committee has ignored rentals of other properties in the area, but in the prayer clause we find no challenge thereto.

26. Since evidence does not clarify and in the plaint it is not disclosed as to what amount was received by the appellant till the suit was instituted on March 21, 2003 and since the learned Single Judge has not discussed the evidence pertaining to the fair market rent with reference to the rentals of other properties in the area and in respect whereof we find a few lease deeds having been proved at the trial, but the controversy being whether the location of the said properties being on the main road and instant property being in a narrow lane (as pleaded by the respondents) are the rentals comparable; and we are thus reviving the suit for an adjudication on said point. But we propose to pass a decree for possession in favour of the appellant and declare that the appellant would be entitled to a decree requiring respondents to pay rent to the appellant till February 28, 2003 @ ₹4,500/- per month, after adjusting such amounts if any which have been paid and as regards damages effective from March 01, 2003 till date of the present decree, requiring the learned Single Judge to decide Issue No.(v) afresh.

27. The appeal accordingly stands disposed of granting a decree of possession in favour of the appellant and against the respondents with respect to suit property delineated in the site plan Ex.P-19 requiring the respondents to put the appellant in possession of the suit property, but would suspend the decree for a period of six months to enable the respondents to shift the Post Office to a new premises. We also pass a decree in favour of

the appellant and against the respondents in sum of ₹4,500/- per month with effect from October 21, 2000 (the date on which the respondents repossessed the property) till February 28, 2003.

28. As regards damages, we restore the suit for decision afresh on Issue No.(v). The suit be listed before the Joint Registrar on January 04, 2013 for directions.

29. There shall be no order as to costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

NOVEMBER 19, 2012
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