

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

+ RSA No. 129/2013 & CM Nos. 10223-24/2013

% **23rd January, 2014**

RAJPAL SINGH Appellant
Through: Mr. Deepak Dewan, Advocate.

VERSUS

DEEN DAYAL KAPIL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this regular second appeal filed under Section 100 CPC is to the impugned judgment of the appellate court dated 10.5.2013 which has dismissed the appeal, filed by the appellant/defendant/tenant. The first appeal was against the judgment of the trial court dated 4.2.2013 by which the suit for possession and mesne profits

of the respondent-plaintiff was decreed to the extent of possession by allowing the application under Order 12 Rule 6 CPC.

2. In Delhi, in order to maintain a suit in civil court for possession, the following three requirements have to exist: (i) there was a relationship of landlord and tenant between the parties; (ii) the premises are not governed by the Delhi Rent Control Act, 1958 and (iii) contractual monthly tenancy is terminated by sending a notice under Section 106 of the Transfer of Property Act, 1882.

3. In the present case, the relationship of landlord and tenant is admitted. Though service of the legal notice is disputed, the issue is no longer res integra that the service of summons in the suit can always be treated as a notice terminating tenancy under Section 106 vide the judgment of this Court in the case of *M/s. Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT 712*. This aspect has been rightly considered by the appellate court in paras 5,8 and 9 of the impugned judgment and which read as under:-

5. Thereafter, the plaintiff filed an application U/o 12 Rule 6 CPC. The Ld. Trial Court after considering the material on record found unequivocal and unambiguous admission on behalf of defendant with regard to landlord-tenant relationship between the parties. As regard the service of notice U/s 106 of Transfer of Property Act is concerned, the Ld. Trial Court relied upon the law laid down by the Hon'ble High Court of Delhi in case reported as, "*183 (2011) DLT 712*", title as,

“Jeevan Diesels & Electrical Ltd. V/s M/s Jasbir Singh Chadha (HUF) & Anr.”, wherein it has been held that even the service of summons of the suit can be treated as a notice U/s 106 of Transfer of Property Act, 1882.

8. The Ld. Trial Court found that the landlord-tenant relationship was admitted between the parties and that for want of any rent agreement, specifying the period for which the premises was given on rent to the defendant, the tenancy would be month to month tenancy and the same could be terminated by the plaintiff by giving a Notice U/s 106 of Transfer of Property Act. The Ld. Trial Court without referring to the Notice U/s 106 of Transfer of Property Act, dated 23.08.2012 and the postal receipts with regard to service thereof by the plaintiff upon the defendant has chosen to rely upon the law laid down by the superior courts in this regard. The Ld. Trial Court did not draw presumption, as contemplated U/s 27 of the General Clauses Act. According to me, the reliance upon the law laid down in ***“JeevanDiesels & Electrical Ltd.’s”*** case (supra) by the Ld. Trial Court is well founded. In this regard, the Hon’ble Supreme Court has also settled the law in case reported as ***“AIR 2008 SC 673”***, title as, ***“M/s Nopani Investment (P) Ltd. V/s Santokh Singh (HUF)”***, wherein it has been held that mere service of summons of a suit for ejectment is treated as a valid service for termination and after six months of the receipt of summons by the defendant in the said case, he should have vacated the same.

9. Further the Hon’ble Supreme Court in case reported as, ***“JT 2012 (9) SC 214***, titled as, ***“Payal Vision Ltd. V/s Radhika Choudhary”***, has been pleased to lay down as under:

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6. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, **all that is required to be established by the Plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by** the landlord Under Section [106](#) of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms

of Order XII Rule [6](#) of the Code of Civil Procedure, which reads as under:

"6. Judgment on admissions-(1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) *Whether a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

7. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. **Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the Plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the Code of Civil Procedure and prays for passing of the decree on the basis of admission.** Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd. (supra)* relied upon by the High Court where this Court has observed:

*"Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi (supra)* may be unexceptionable they cannot be applied*

in the instant case in view of totally different fact situation.”.

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(underlining is mine)

4. The only issue therefore which requires adjudication, and which is the only issue which is argued before me, is as to whether Delhi Rent Control Act has been extended to the area of village Dabri where the suit property is located. I may note that it is not enough that the area has to be urbanized under Section 507 of the Delhi Municipal Corporation Act, 1957 and it is necessary that after urbanization, a specific notification is issued under Section 1 sub-section 2 of the Delhi Rent Control Act extending the operation of this act to the area in question. This has so been held by the Supreme Court in the case of *Mitter Sen Jain Vs. Shakuntala Devi (2000) 9 SCC 720*.

5. So far as the present case is concerned, there is no notification by which the Delhi Rent Control Act has been extended to the area of Dabri, and this aspect has been rightly dealt with by the appellate court in paras 12 to 19 and which read as under:-

“12. In my considered opinion, this factual ground taken is incorrect and the same has been taken by suppressing the relevant notification of the government, applicable to the land forming part of village Dabri. Since, this point has been taken, it is required to be adjudicated. It is admitted stand of the defendant in the written statement that the suit property is part of village Dabri and not village

Najafgarh. Prior to the year 1997, the entire Delhi had three Revenue Divisions namely Mehrauli, Narela and Shahdara, each headed by a Deputy Commissioner. In January 1997, nine Districts were created, which were Central Delhi, North Delhi, South Delhi, East Delhi, North-East Delhi, South-West Delhi, New Delhi, North-West Delhi and West Delhi and village Najafgarh became part of South-West Delhi. Presently, there are 11 Districts/Divisions existing in Delhi. The *suit property* falls in South-West revenue district and village Dabri is part of Najafgarh Sub-Division. South-West District has three Sub-Divisions, i.e Delhi Cantonment, Vasant Vihar and Najafgarh. Village Dabri forms part of Najafgarh Sub-Division. By way of Notification dated 23.05.1983, village Najafgarh was declared urbanized and by way of Notification dated 27.03.1979, the provisions of DRC Act were made applicable to village Najafgarh and not to entire revenue Sub-Division of Najafgarh, as at that time Najafgarh was not even a Sub-Division.

13. By way of Notification bearing No.F.33/Engg.TP(DP)/11424/94 Delhi, dated 24.10.1994, following 20 villages were declared urbanized.

- (i) *Palam,*
- (ii) *Mirazapur,*
- (iii) **Dabri,**
- (iv) *Nasirpur,*
- (v) *Sagarpur,*
- (vi) *Bagdola,*
- (vii) *Sahupura,*
- (viii) *Matiala,*
- (ix) *Bindapur,*
- (x) *Kakrola*
- (xi) *Laharhar,*
- (xii) *Toganpur,*
- (xiii) *Amberhal,*
- (xiv) *Sahabad Mohammadpur,*
- (xv) *Bhartal,*

- (xvi) *Nawada,*
- (xvii) *Pochanpur,*
- (xviii) *Bemnoh,*
- (xix) *Dhulsiras,*
- (xx) *Bijwasan.*

However, no notification U/s 1(2) of DRC Act, 1958 in respect thereof has been issued by the Government till date.

14. If the argument of learned counsel for the defendant that the suit property falls in Najafgarh Sub-Division and by way of Notification dated 27.03.1979, the provisions of DRC Act stood applicable to it is accepted, then that would go counter to the Notification dated 24.10.1994 in respect of village Dabri. If village Dabri already stood urbanized, being part of Najafgarh Sub-Division in the year 1963, then there was no need for the Government to have declared it urbanized again in the year 1994. The only possible interpretation of both the notification is that in the year 1963 village Najafgarh was urbanized, whereas village Dabri was urbanized in the year 1994.
15. The learned counsel for the defendant has stated that as per the Schedule 14, Entry 12 contained in the Delhi Municipal Act the area of Sagarpur, West Sagarpur and Dabri falls within the Revenue Estate of Najafgarh. According to me, the learned counsel is misinterpreting the word “**Revenue Estate**” . In the year 1963 Najafgarh itself was a village. A perusal of Delhi Rent Control Act would show that Delhi Rent Control Act is applicable to urbanized area and not the rural area and as such prior to applicability of Delhi Rent Control Act, the area must be urbanized. Certainly in 1958 when Delhi Rent Control Act was legislated and made applicable to Delhi, it was applicable to entire urban area of Delhi as given in Schedule 1 and admittedly Najafgarh was not part to it. As per own showing of the defendant, Najafgarh was urbanized in the year 1963 and there is no evidence to show that in the year 1963 Sagar Pur, West Sagarpur and Dabri were part of Najafgarh. Revenue Estate means

agriculture land of that village which generates revenue and admittedly Dabri and Sagarpur are separate villages which were urbanized vide Notification No. F.33/Engg./TP(DP) 11424/94 Delhi, dated 24.10.1994 under Clause A of Section 507 of Delhi Municipal Corporation Act.

16. If what has been stated by the defendant is taken as a gospel truth and it is assumed that the said villages were part of Revenue Estate of Najafgarh in the year 1963, where was the question of urbanization of these villages again in the year 1994.
17. Moreover, the question as raised by the learned counsel for defendant is that Dabri, Sagarpur and West Sagarpur are the part of Najafgarh Revenue Estate as per Municipal Corporation of Delhi. Various zones created by the Municipal Corporation of Delhi for its administration never mean that it becomes a revenue estate, as the arrears of zones keep on changing.
18. Therefore, the Ld. Trial Court rightly relied upon the Notification bearing No.F.33/Engg.TP(DP)/11424/94 Delhi, dated 25.10.1994 and held that the provision of Delhi Rent Control Act are not applicable. This legal issue is no more resintegra. The issue the applicability of DRC Act in respect of village Palam which was also urbanized vide the aforesaid Notification came up the consideration before the Hon'ble High Court in CM (M) Appeal No.789/91, titled as, "***Hira Lal V/s Virender Pal Sharma***". The Hon'ble High Court vide judgment dated 20.04.2000 decided the issue as under:

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The case of the petitioner is that the area in which his premises are situated, namely Palam is a part of rural Najafgarh and that this came to be urbanized only sometime in 1994. Reliance is placed on a Notification No.F.33/Engg/TP (DP)/11424/94 Delhi, dated 24.10.1994. It is submitted that by virtue of the proviso to

sub-section (2) of section 1 of the Delhi Rent control Act, 1958, the provisions of the Act are required to be extended to that area to bring it within the operation of the Act. This has not been done.

The learned Rent control Tribunal has proceeded on the basis that the area was urbanized by a notification dated 23.05.1963 and that the provisions of the Delhi Rent Control Act, 1958 were extended to this area by a notification dated 27.03.1979.

However, as seen from the notification dated 24.10.1994, the area comprising of village Palam within the revenue estate of rural Najafgarh came to be urbanized only recently. No notification has been issued under the provisions of the Delhi Rent Control Act, 1958.

The notification dated 23.05.1963 and 27.03.1979 have no application to the area covered by the Notification dated 24.10.1994.

Under the circumstances, the impugned order dated 29.09.1999 passed by the learned Rent Control Tribunal is set aside and the petition is allowed. There will be no order as to costs.

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(underling which is mine is emphasized)

19. The issue again came up before the Division Bench of Hon'ble High Court of Delhi in respect of village **Palam**. This time in a Public Interest Litigation, filed by Palam Area Tenants Association, being ***CW No. 4284/2000, titled as "Palam Area Tenants Association V/s UOI & Anr."***, seeking a writ of Mandamus against the Union of India and Delhi Government to issue a notification U/s 1(2) of Delhi Rent Control Act, extending the applicability of the provisions of Delhi Rent Control Act with regard to the villages urbanized vide notification of the year 1994 (same notification which is there in this case). The Division Bench of the Hon'ble High Court vide judgment dated 29.07.2003 dismissed the writ petition, interalia holding as under:

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*This matter is placed before this court as it is stated that it is a Public Interest Litigation. **The main prayer is for issuance of notification extending Delhi Rent Control Act, 1958 to the revenue estate of entire Palam village retrospectively with effect from 03.11.1994, i.e from the date on which the area was declared urbanized.** Such amendment cannot be allowed by this Court. The law is very clear on the subject. The Apex Court in “**Union of India V/s Shree Gajanan Maharaj Sansthan JT 2002 (Suppl. 1) SC 94**”, has stated as under:*

“This Court observed that no mandamus could be issued to the Executive directing it to commence the operation of the enactment; that such a direction should not be construed as any approval by the Court, of the failure on the part of the Central Government for a long period to bring the provisions of the enactment into force.”

In this view of the matter, this petition is required to be dismissed.

Ordered accordingly.

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(underlining is mine)

6. On behalf of the appellant, for the village of Dabri no notification has been placed on record showing extending of the operation of the Delhi Rent Control Act.

7. At this stage, counsel for the appellant states that the suit property is situated in Sagarpur and not in Dabri, and if that is the position, then the issue is squarely covered by the judgment of the Supreme Court in the case of **Mitter Sen Jain (supra)** and which was dealing with the Sagarpur area itself.

8. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 23, 2014
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VALMIKI J. MEHTA, J.