

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

+ RSA No. 109/2011, CM Nos.12207/2011 & 4409/2013

% 26th February, 2014

SHEEL KUMAR GOYAL Appellant

Through: Mr.Alok Kumar, Ms. Manisha
Agrawal Narain, Mr.Neeraj Gupta and Mr. Amit
Kumar, Advs.

versus

SURENDER KUMAR SHARMA Respondent

Through: Ms.Perna, Advocate

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

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

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 CPC has been filed by the appellant/plaintiff/landlord impugning the judgment of the first appellate court dated 16.08.2011 by which the first appellate court set aside the judgment of the trial court dated 12.10.2010. Trial court by the judgment dated 12.10.2010 had dismissed the suit for possession and recovery of rent filed by the appellant/plaintiff against the respondent/defendant on the ground that there was a landlord and tenant

relationship which was governed under the Delhi Rent Control Act, 1958 and therefore the civil courts under Section 50 of the Act had no jurisdiction to direct eviction of a tenant, and which can only take place by initiating legal proceedings before the Rent Controller/Additional Rent Controller under the Delhi Rent Control Act, 1958 on the grounds if exist under Section 14(1) of the Act.

2. The only issue to be decided by this Court is whether the first appellate court has rightly held that the suit property which is situated in Village Uldhanpur, is in an area to which Delhi Rent Control Act, 1958 applies/stands extended. Section 1 sub-section (2) of the Delhi Rent Control Act specifies the areas to which the Act extends. Firstly, the Act extends to those areas which fall within the limits of the Municipal Corporation of Delhi etc as were specified in the First Schedule at the time of passing of the Act in 1958, and thereafter the Act can be extended to those urban areas of the Municipal Corporation of Delhi when a notification is issued under the said Section 1(2) extending the application of the Delhi Rent Control Act, 1958 to that area. Section 1 (2) of the Delhi Rent Control Act, 1958 reads as under:

“(2) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban

areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government; may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.”

3. The first appellate court has held by reference to the notification dated 08.12.1954 published in the Gazette on 16.12.1954 issued under Section 5(1) of the Punjab Municipal Act, 1911 (as was in force in the State of Delhi at the relevant time) to hold that the Municipal Committee of Delhi-Shahdara included within its extent the entire area of Village Uldhanpur, and which was referred to not as Uldhanpur, but as “Auldanpur” in the notification. Therefore, what the first appellate court holds is that Village of Uldhanpur falls within the limits of the Municipal Corporation of Delhi (Municipal Committee area of Shahdara in Delhi) as specified in the First Schedule at the time of passing of the Rent Control Act, 1958 and from the date of enforcement of the Act, the same became applicable to Village Uldhanpur. The relevant paras of the judgment of the first appellate court are paras 15 to 18 which read as under:

“Schedule 1 to Delhi Rent Control Act 1958 provides as under:-

“[See Section 1(2)]

The urban areas within the limits of the Municipal Corporation of Delhi to which the Act extends

The areas which, immediately before the 7th April, 1958, were included in-

1. the Municipality of New Delhi excluding the area specified in the First Schedule to the Delhi Municipal Corporation Act, 1957 (66 of 1957);
2. the Municipal Committee, Delhi;
3. the Notified Area Committee, Civil Station, Delhi.
- 4. the Municipal Committee, Delhi-Shahdara;**
5. the Notified Area Committee, Red Fort;
6. the Municipal Committee, West Delhi;
7. the South Delhi Municipal Committee;
8. the Notified Area Committee, Mehrauli.”

(Emphasis supplied)

16. Although neither party produced the same, this Court has come across a notification dated 08.12.1954 bearing no.F.4(19)/50-LSG issued by the Govt. of Delhi in exercise of powers conferred under Section 5(3) of the Punjab Municipal Act, 1911 as in force in the State of Delhi. The said notification was published in the Govt. Gazette, Delhi State on Thursday December, 16, 1954, which reads as under:-

“No. F.4(19)/50-L.S.G.- In exercise of the powers conferred by sub-section (3) of Section 5 of the Punjab Municipal Act, 1911, as in force in the State of Delhi, the Chief Commissioner, Delhi, is pleased to include within the limits of Municipal Committee, Delhi-Shahdara, the area defined in the schedule below situated coterminously with the Northern limits of the existing boundaries of the said Municipality as defined in Chief Commissioner’s Notifications No.F.4(57)/43(i)-LSG, dated the 6th July, 1943, No.F.4 (22)/43-LSG, dated the 20th April, 1951, No.F.4-(19)/50-LSG, dated 9th June, 1952 and No.F.4(25)/51-LSG, dated the 1st April, 1954:-

SCHEDULE

South-A line drawn Eastwards from the intersection point of Western boundary of village Auldanpur and the existing Northern limit, 220 yards from the G.T. Road parallel to G.T. Road upto the Western boundary of village Chandrawli alias Shahdara thence Northwards along the Western boundary of Shahdara upto the junction (Seh hadda) of the village boundary of village Auldan Sikdarpur, and Shahdara and thence due Eastwards upto the Eastern boundary of Chandrawli alias Shahdara.

East-A line drawn Northwards from the intersection point of Chandrawli alias Shahdara and the existing Northern limits to

Shahdara Municipality upto the Seh Hadda of village Sabholi and Chandrawli alias Shahdara.

North-A line drawn Westwards from Seh Hadda of village Sabholi and Chandrawli upto Seh Hadda of village Chandrawli Sabholi and Gokalpur thence Northwards upto Seh Hadda of village Gokulpur and Babarpur.

West-A line drawn Southwards from Seh Hadda of village Babarpur upto Seh Hadda of village Jafrabad, Babarpur and Auldanpur thence Westwards upto the intersecting point on western limits of village Auldanpur and the existing Northern limits of Shahdara Municipality 220 yards from the G.T. Road.

NOTE-The above area includes:

1. The remaining land of village Chandrawli alias Shahdara,
2. Sikdarpur village, and
3. **The remaining land of village Auldanpur.**

(Emphasis supplied)

17. Perusal of the notification dated 08.12.1954 bearing no.F.4(19)/50-LSG reveals that the Village Uldhan Pur although spelt as Auldanpur was included within the limits of Municipal Committee Delhi, Shahdara on that date. Effect of such inclusion of Village Uldhan Pur in limits of Municipal Committee Delhi, Shahdara would be that the provisions of Delhi Rent Control Act 1958 stood extended to Village Uldhan Pur on the date of the notification of the Delhi Rent Control Act 1958. This is for the reason that Section 1(2) of the Delhi Rent Control Act 1958 provided that the Act extended, among others, to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule to the Act. The First Schedule to the Delhi Rent Control Act 1958 contained a list of the areas which, immediately before the 7th April, 1958, were included in, among others, the Municipal Committee, Delhi-Shahdara, at serial no.4. By virtue of notification dated 08.12.1954 bearing no.F.4(19)/50-LSG issued by the Govt. of Delhi in exercise of powers conferred under Section 5(3) of the Punjab Municipal Act, 1911 as in force in the State of Delhi, the remaining land of village Uldhanpur was included within the limits of Municipal Committee, Delhi-Shahdara. Hence as on the date of notification of the Delhi Rent Control Act 1958, the provisions of the same extended to village Uldhanpur.

18. Since the provisions of the Delhi Rent Control Act 1958 stood extended Village Uldhan Pur, the suit of the plaintiff/respondent was barred under the provisions of the Section 50 of the said Act. In view, thereof, question whether lease of the premises was validly terminated by the respondent/plaintiff need not to be gone into.”

4. In my opinion, the findings and conclusions of the First Appellate Court are unimpeachable because Village Uldhanpur is included in the Municipal Committee of Shahdara, and Municipal Committee of Shahdara is found in the Schedule of the Delhi Rent Control Act, 1958 for application of that Act to the Municipal Committee of Shahdara which includes Village Uldhanpur. I would also in this regard agree with the arguments urged on behalf of the respondent before me by referring to the 'Introduction' of the Delhi Municipal Corporation Act, 1957 and the definition of rural areas and urban areas as found in Section 2(52) and (61) of the Delhi Municipal Corporation Act, 1957 which says that to the rural areas governance before passing of the Delhi Municipal Corporation Act, 1957 was under the Punjab District Boards Act, 1953 and urban areas were those areas of Delhi which were not rural areas. Once as per the notification dated 08.12.1954 the area comprised in Village Uldhanpur is included in the Municipal Committee of Delhi -Shahdara, the same was urban area and for that reason it was included in the Schedule of Delhi Rent Control Act, 1958 for applicability of the Delhi Rent Control Act, 1958 to the areas comprising in Village Uldhanpur situated in the Municipal Committee Shahdara, Delhi.

5. Though substantial question of law has been framed in the case, I note that the appeal has not yet been admitted, and therefore, the substantial question of law does not have to be answered. In any case, I answer the substantial question of law which was framed on 17.01.2013 by holding that the Village Uldhanpur is included in the area of Municipal Committee Shahdara and Delhi Rent Control Act, 1958 applies to the area where the suit property is located in Village Uldhanpur. This question is so answered in view of the aforesaid discussion.

6. In view of the above, the appeal is dismissed, leaving parties to bear their own costs.

FEBRUARY 26, 2014

ns

VALMIKI J. MEHTA, J.