

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

+ CM(M) 933/2012 & C.M.No.14374/2012

% **JULY 14, 2014**

SH. KEWAL KISHAN AHUJA Petitioner

Through: Ms.Anita Sahani, Advocate.

VERSUS

JAGDEEP SINGH & ANR Respondents

Through: Mr.Neeraj Shamra with Mr.Munish
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of Constitution of India is preferred by the petitioner/tenant against the concurrent judgments of the Courts below; of the Additional Rent Controller dated 09.1.2012 and the Rent Control Tribunal dated 01.8.2012. By the impugned judgments, the Courts below have directed eviction holding that the petitioner herein, respondent (tenant) in the court below has failed to comply with the original order of eviction passed under Section 14(1)(k) of the Delhi Rent Control Act, 1958, and, the petitioner herein cannot take up the issues on merits of

permissibility of misuser in the present consequent proceedings under Section 14(11) of the Act, inasmuch as, such issues on merits could have been raised before the Additional Rent Controller in the main proceedings under Section 14(1)(k) and which proceedings were finally decided by passing the orders dated 06.2.1996 and 26.2.1996. Effectively what is held by the concurrent judgments is that any entitlement to misuse or whether misuse is permissible or should be stopped because it is not permissible, are issues which have to be addressed and argued on merits before the order under Section 14(1)(k) is passed and not in the consequent proceedings under Section 14(11) of the Act.

2. Section 14(1)(k) and Section 14(11) of the Delhi Rent Control Act, 1958 read as under:-

“ Section 14(1)(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;

Section 14(11) No order for recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in

this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.”

3. A conjoint reading of the aforesaid sections shows that a tenant cannot misuse the tenanted premises against the user permissible under the lease deed by which the landlord becomes the perpetual lessee of the premises from the Government/L&DO. The leased property has to be used by the lessee/landlord, or by the tenant who is inducted by the landlord, only in terms of the permissible user provided under the lease deed of the landlord with the superior lessor/L&DO. User as provided under the lease deed is also permissible to be changed, provided there are subsequent circulars of the L&DO permitting change of user as specified in the lease deed. If there is misuse of the premises by using the premises for a purpose which is not provided for in the lease deed of the landlord with the superior lessor, then such misuse whether by the landlord or by the tenant inducted by the landlord is not permissible, even if, the landlord has with his consent permitted the misuser of the tenanted premises. It has been held by the Supreme Court in the case of *Faqir Chand Vs. Ram Rattan Bhanot* AIR **1973 SC 921** that there is no estoppel against the landlord from instituting a

petition under Section 14(1)(k), and this is because otherwise there will be user of premises in Delhi outside the permissible user as provided in the lease deed of the superior lessor/L&DO. On misuse being required by the superior lessor to be stopped, the landlord is entitled to file a petition for eviction under Section 14(1)(k). In such a petition, two aspects come in issue; one aspect is with respect to existence and permissibility of misuse, and the second aspect is with respect to the misuser charges for the misuse. With respect to the misuse, the superior lessor/L&DO can permit misuser subject to payment of charges or it may refuse to condone the misuser at all and may want to re-enter the premises or the superior lessor/L&DO may condone the misuser upto a particular date and simultaneously direct estopage of future misuse as also payment of misuse charges for the misuse done.

4. Once in the main proceedings under Section 14(1)(k) it is held that there is misuse, automatically an eviction does not follow, and consequent proceedings are taken up under Section 14(11) in order to determine the aspect as to entitlement of the tenant to continue to misuse subject to payment of misuse charges or stoppage of the misuser subject to payment of

misuse charges upto a particular date, i.e temporary condonation of the misuser on payment of misuser charges to the superior lessor/L&DO.

5. In the present case, the final orders under Section 14(1)(k) passed by the Additional Rent Controller were on 06.2.1996 and 26.2.1996. The order dated 26.2.1996 reads as under:-

“ Vide my order dated 6.2.1996 I came to the conclusion that the user of the premises in question by the Respondent for commercial purposes was in contravention of the terms and conditions of the lease granted by the L&DO in favour of the Landlord.

2. Notice was given to the L&DO requiring them to show their willingness to condone the breach of the terms and conditions of the Lease Deed. Today representative of the L&DO has come with the reply in which they have taken the stand that question of regularization of the breaches and condoning the same permanently does not arise. However, these breaches can be temporarily regularized when the breaches cannot be regularized on permanent basis the user of the premises in future for commercial purposes would be in contravention of the provisions of section 14(1)(k) of the DRC Act.

3. Option has been given to the Respondent to stop the misuser of the premises. However, in his statement the Respondent has stated that the premises in question were let out to him for commercial purposes and are being used as such and as such the question of stopping the misuser does not arise. It is also stated that the previous landlady increased the rent after filing petitions on the same ground and paid misuser charges to the L&DO and he does

not want to convert the user of the premises from commercial to residential.

4. In these circumstances, when the L&DO has not been ready to condone the breaches/regularization of the same and the Respondent is not ready to stop the said misuser, the Court is left with no option but to pass order of eviction against the Respondent.

5. Accordingly, I pass an order of eviction in favour of the Petitioner and against the Respondent in respect of one room forming part of property No.C-9, Malviya Nagar, New Delhi and more specifically shown in red colour in the site Plan Ex.AW-2/6.”
(underlining added)

6. Admittedly, this order/judgment dated 26.2.1996 was not appealed from by the present petitioner/tenant. Therefore, this order became final, whereby misuser was found as a matter of fact and the eviction was ordered of the petitioner on account of misuser. It is noted that the case of the present petitioner is that he is not ready to stop the misuser inspite of the fact that the L&DO is not agreeable to condone the continued misuser of the property. The present petitioner/tenant claimed a right to continue the misuse because the premises were said to be let out to the present petitioner for commercial purposes, as noted in para 3 of the order dated 26.2.1996.

7. Therefore, the position which emerges is that the main proceedings under Section 14(1)(k) which achieved finality on 26.2.1996 observing that

there is misuse and the petitioner/tenant is refusing to stop the misuse and hence the direction with respect to eviction. Of course, the eviction would not be immediate in view of the statutory language of Section 14(11) inasmuch as the L&DO/superior lessor may condone the past, present and future misuser. It is therefore that proceedings have to be and were initiated by the Additional Rent Controller under Section 14(11) to know the stand of the L&DO/superior lessor with respect to misuse.

8. The subject/present proceedings under Section 14(11) took place, and in this regard there is a chequered history, because, around four times, the matter travelled between the Additional Rent Controller and the Rent Control Tribunal. The dispute in this regard was as to the entitlement of the petitioner to continue to misuse and as to what should be the misuser charges which the petitioner/tenant had to pay inasmuch as the misuser charges for the period of the misuse. Misuser charges initially claimed to be payable from the petitioner/tenant by the L&DO was not with respect to only the tenanted shop which the petitioner/tenant had, but were found to be with respect to the entire premises. It is by the order dated 09.1.2012 that the Additional Rent Controller finally determined the misuser charges payable by the petitioner/tenant and which were crystallized as Rs.1,68,617/-. It was

observed that, in case, the present petitioner fails to pay the misuser charges, he would be liable to be evicted from the suit premises. Since, in my opinion, there is some defect in the operative portion of the order dated 09.1.2012, and as contrasted with the factual aspects mentioned in the earlier part of that order, I would like to reproduce the said order in entirety as under:-

“1. This eviction petition under Section 14 (1) (k) of Delhi Control Act filed by petitioner Jagdeep Singh against Kewal Kishan Ahuja was decided vide order dt. 06.02.96 as well as 26.02.96 passed by then Ld. ARC holding that use of tenanted premises by the respondent for commercial purposes is contrary to the terms and conditions of covenant of the lease deed. Respondent challenged the order dt. 26.02.96 by filing an appeal and the Ld. Addl. Rent Control Tribunal set aside the order dt. 26.02.96 and remanded back the matter with the direction to summon the Deputy Land & Development Officer with requisite record. Thereafter, both parties were given liberty to lead their evidence. Ld. predecessor after considering the evidence adduced by both parties as well as the damages/misuser charges calculated/assessed by the Land & Development Office passed the order dt. 04.04.07 whereby the respondent was directed to deposit a sum of Rs. 1,85,666/- and to stop misuser of the tenanted premises within 30 days of passing of the order. The order dt. 04.04.07 was also challenged by way of an appeal and same was set aside by the Ld. Addl. Rent Control Tribunal vide order dt. 12.07.07 and direction was given to this Court to pass detailed order u/s 14(11) of DRC Act after considering the objections which

may be raised by the appellant and the arguments of respondent. This Court was also directed to take into consideration the judgment delivered in Mushi Ram and Anr. Vs. Union of India & Ors. reported at (2000) 7 Supreme Court Cases 22. Thereafter, this Court passed the order dt. 29.03.10 whereby the respondent was directed to pay misuser charges recoverable upto 01.04.07 to the tune of Rs. 7,05,110/- to Land & Development Office and to stop misuser of tenanted premises within a period of 30 days from the date of passing of the order. It was further held that if the tenant fails to pay the misuser charges or fails to stop the misuser of the tenanted premises within a period of 30 days from the date of the order, an eviction order with respect to the tenanted premises shall be deemed to have been passed. Respondent assailed the order dt. 29.03.09 passed by this Court by filing an appeal before the Ld. Addl. Rent Control Tribunal. The order dt. 29.03.09 passed by this Court was set aside by the Ld. Addl. Rent Control Tribunal observing that damages to the tune of Rs. 7,05,110/- calculated as recoverable upto 14.01.10 represent the misuser charges not only to the portion in the occupation of respondent but also the other three tenanted premises and as indeed on account of unauthorized construction. It was also held that the said liability will have to be properly apportioned.

2. I have heard Ld. Counsel for petitioner as well as Ld. Counsel for respondent. After the case remained back by the Ld. Addl. Rent Control Tribunal, fresh notice was issued to Land & Development Office, directing it to apprise the Court about the misuser charges that are leviable on the tenanted portion i.e., the portion under the occupation of respondent Kewal Kishan Ahuja in property no. C-9, Malviya Nagar, New Delhi, for 07.10.11. Thereafter, Mr. Pradeep Kumar

Singh, Dy. Land & Development Officer, Land and Development Office, Ministry of Urban Development, Nirman Bhawan, New Delhi, filed his affidavit. This said witness was also cross examined by the respondent as well as the petitioner. Mr. Pradeep Kumar Singh in his affidavit deposed that lessor will be pleased to regularize the breaches temporarily upto 14.01.10 in the premises provided that lessee make the payment of Rs.1,68,617/- in full and in advance. There was no cross examination of this witness by the respondent on the dues to be paid by the lessee on account of misuser of the tenanted premises. Ld. Counsel for respondent relied upon *AIR 1973 Supreme Court 921 – Faqir Chand vs. Ram Rattan Bhanot* and another judgment reported at (2002) 6 Supreme Court Cases 60 – *Rashida Begum vs. General Sales Ltd.* These judgments will not help the respondent as the case is at the stage of inquiry u/s. 14(11) of DRC Act. The scope of inquiry as envisaged u/s. 14 (11) of DRC Act is very limited. Section 14 (11) of DRC Act gets triggered once an order u/s. 14 (1) (k) of DRC Act is passed against the tenant. As observed above, as per the directions contained in the order dt. 14.07.11, damages on account of misuse charges leviable on the tenanted portion under the occupation of tenant has to be determined. Accordingly, respondent is directed to pay a sum of Rs.1,68,617/- to the Land & Development Office and to stop misuse of tenant premises i.e., one room forming part of the property bearing no.C-9, Malviya Nagar, New Delhi, more specifically shown in red colour in the site plan Ex.AW2/6 filed with the petition, within 30 days from the date of passing of this order. If the respondent/tenant fails to pay the aforesaid misuse charges to the Land & Development Office or fails to stop misuse of the aforesaid premises, an eviction order with respect to the tenanted premises, i.e., one room forming part of the property

bearing no. C-9, Malviya Nagar, New Delhi, more specifically shown in red colour in the site plan Ex.AW2/6, shall be deemed to have been passed.

File be consigned to Record Room”.

9. By the operative part, which is roughly about 17 odd lines at the end of the order, the Additional Rent Controller directed payment of misuser charges of Rs.1,68,617/- and also directed eviction if the charges are not paid. The direction of eviction of the petitioner/tenant failing to pay the misuser charges are in addition to the direction to stop the misuser. The operative part of the order of eviction dated 09.1.2012 ie if misuse is not stopped is really an infructuous/futile/unnecessary part of the order as it is already noted in para 1 of the order that there were already judgments/orders dated 06.2.1996 and 26.2.1996 holding that there is, in fact, misuser of the premises and also that there were directions for eviction of the petitioner/tenant on account of misuse. Therefore, there was no requirement, in my opinion, to order eviction if misuse is not stopped by the order dated 09.1.2012, because that aspect has already been decided and was *res judicata* by the orders of the Additional Rent Controller in the main petition under Section 14(1)(k) in view of the orders/judgments dated 06.2.1996 and 26.2.1996.

10. Learned counsel for the petitioner very vehemently argued that the embroidery business which was being done by the petitioner was a permissible user, and not a misuse, as per a circular of L&DO of the year 1983 and hence misuse was permissible. I note that the First Appellate Court has rightly rejected this argument by stating that this issue cannot be the issue in the proceedings under Section 14(11) and this issue stood concluded against the petitioner that the petitioner could not misuse the premises for any business in view of the orders/judgments dated 06.2.1996 and 26.2.1996 passed by the Additional Rent Controller. The relevant observations in the impugned judgment in this regard are contained in paras 17 & 18 of the impugned judgment and which read as under:-

“ 17. It is noted from the written submissions filed before the RC, and also from the contentions raised in the memo of appeal, that the appellant-tenant rests his case on Government of India order of 1983, which according to him is in the nature of waiver of the covenant in the perpetual lease restricting the use of the demised premises for residential purposes. Though the copy of a order of Government of India was not filed by the appellant-tenant, the copy thereof has been submitted by the counsel for the respondent at the time of hearing of this appeal. The order in question purports to have been issued as office order no.7/83 dated 22.03.1983 by the Public Relation Officer in L&DO of the Ministry of Works and Housing, of Government of India on the subject of condonation of breaches. The office order is simply a

consolidated list of breaches which can be condoned. But then, as clarified by CW-1 under the cross-examination before the RC, the possibility of condonation is not available to a tenant under a lessee. Even otherwise, it has to be remembered that action under Section 14(1)(k) or 14(11) DRC Act cannot come to an end only because the Government may have considered permitting change of use of the land under the Master Plan, as was the view taken in the case of **Sant Lal & anr. Vs. Ram Laxman Gupta [169(2010) DLT 448]**. What has to be considered in these proceedings is not the violation of the master plan but breach of terms of the lease.

18. The fact that the user of the demised premises by the appellant-tenant here amounts to violation of the perpetual lease deed has been found against the appellant-tenant in the judgment dated 26.02.2009, which as mentioned earlier, has already attained finality. Therefore, the order of Government of India of 1983 cannot be of any assistance to the appellant-tenant to escape the liability arising out of the demand of the superior lessor for payment of misuse charges as mentioned above.” (underlining added)

11. The last few lines of para 18 clearly states that violation of the perpetual lease deed has been found against the tenant as per the earlier judgment dated 26.2.1996, and therefore, the defence of entitlement to misuse on the ground of the order of Govt. of India of 1983 as relied upon by the petitioner/tenant was rejected.

12. (i) I may note that though the courts below do not state so,

however, the arguments and stand of the present petitioner/tenant is, in fact,

covered against the petitioner as per the the doctrine of ‘constructive *res judicata*’ and *res judicata* read with the ratio of the judgment of the Supreme Court in the case of ***Hope Plantainum Ltd. Vs. Taluk Land Board, Peermade & Anr. (1999) 5 SCC 590*** which holds that the doctrine of *res judicata* applies to the subsequent stages of the same legal proceedings. Whether or not there is misuse and whether or not misuse is a permissible misuse, were issues in the main proceedings under Section 14(1)(k) of Delhi Rent Control Act, and on the judgment being passed in the main proceedings under Section 14(1)(k), there is finality achieved with respect to permissibility or otherwise of the misuse against the petitioner that misuse is not permissible. Once finality is achieved on this aspect, proceedings under Section 14(11) are on the basis that misuse is not permissible. Aspect as to the entitlement to misuse, therefore, cannot be re-agitated and the subject matter of the proceedings under Section 14(1)(k) of the Act after proceedings under Section 14(11) have achieved finality.

(ii) The position which therefore arises is as to whether the present petitioner has complied with the orders passed way back in February 1996 to stop the misuser, and if not eviction orders will have to follow irrespective of the aspect of payment/deposit of the misuser charges (whether with or

without delay). Learned counsel for the petitioner had no option but to concede before me that there is no stand taken up after 1996 till date in any of the pleadings or in any of the proceedings before either the Additional Rent Controller or the Rent Control Tribunal, that, the petitioner has stopped the misuse of the tenanted premises after passing of the orders dated 06.2.1996 and 26.2.1996. Though, learned counsel for the petitioner argues before this Court that since the petitioner has deposited the misuser charges as determined by the order dated 09.1.2012 in August 2012 itself, eviction orders could not be passed, however in my opinion, payment of misuser charges is not the only issue with respect to passing of the eviction orders against a tenant in a case under Section 14(1)(k), because, besides not paying the misuser charges there is also the issue of failing to stop the misuse and with respect to which, eviction orders have admittedly been passed in the present case under Section 14(1)(k) of the Act on 06.2.1996 and 26.2.1996.

(iii) Since, there is till date no stopping of the misuser which continues, the present is a blatant case where inspite of the directions of the superior lessor/L&DO to not to misuse the premises, and which aspect has become final in view of the finality of the judgments/orders dated 06.02.1996 and

26.2.1996 of the Additional Rent Controller, merely because today the petitioner/tenant states that he will stop the misuse now cannot mean that there is no violation of the orders/judgments under Section 14(1)(k) dated 06.2.1996 and 26.2.1996.

13. In view of the above, there is no merit in the petition, and the same is accordingly dismissed along with the interim application, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

JULY 14, 2014
KA