

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

+ RSA 223/2013
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7th May, 2014

SH. SOHAN PAL Appellant
Through: Mr. Samrat Nigam, Advocate.

VERSUS

SH. UMASHANKAR & ANR. Respondents
Through: Mr. S.C. Singhal, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed by the defendant/tenant impugning the judgment of the courts below; of the trial court dated 6.12.2012 and the first appellate court dated 8.8.2013; by which the suit of the respondent/plaintiff/landlord was decreed for possession and mesne profits with respect to the property No. RZ-E 28A& 28B, Gandhi Market, Shankar Shopping Centre, West Sagar Pur, New Delhi. Damages were also granted by the decree at Rs.4,500/- per month from 1.2.2009 till the date of recovery of possession.

2. The only issue which is called upon for decision of this Court is as to whether the suit premises are covered by the Delhi Rent Control Act, 1958, and if it is so then civil courts have no jurisdiction to try the suit by virtue of Section 50 of the said Act. At the time of admission of the appeal on 26.9.2013, the following substantial question of law was framed:-

“Whether the area in which the suit property is situated is covered by Section 50 of the Delhi Rent Control Act or not?”

3. It may be noted that Delhi Rent Control Act is made applicable to an area by issuing of a notification under Section 1 of the Delhi Rent Control Act. There are two requirements which on being satisfied results in application of the Delhi Rent Control Act to an area. Firstly the area must be urbanized by passing of a notification under Section 507 of the Delhi Municipal Corporation Act, 1957 and after the urbanization notification, one other specific notification has to be issued by the Government under Section 1(2) of the DRC Act to extend the applicability of this Act to the urbanized area.

4. In the present case, the suit property is situated in Sagarpur which is situated in village Dabri. It is not disputed before me on behalf of the appellant, and which is otherwise established as per the records in the courts

below, that Sagarpur is situated in village Dabri. The issue therefore is whether village Dabri containing the area of Sagarpur has been urbanized and whether a notification has thereafter been passed under Section 1(2) of the DRC Act extending the application of this Act to the area of Sagarpur in village Dabri.

5. As per the appellant, the entire zone of Najafgarh was urbanized by a notification dated 23.5.1963 and the provisions of the DRC Act were thereafter extended to this area by virtue of the notification dated 27.3.1979.

The case of the respondent/landlord, on the other hand, is that the area of village Dabri was urbanized only by the notification dated 24.10.1994 and thereafter, no notification has been issued under Section 1(2) of the DRC Act extending the application of this Act to the area of village Dabri.

6. Both the courts below have held that the appellant relies on a notification which urbanises the revenue estate of Najafgarh, but, a revenue estate zone, is different from the village Najafgarh itself, and it is only the revenue estate Najafgarh i.e Najafgarh Zone which was urbanized by the notification dated 23.5.1963. A revenue estate zone includes more than one village. The courts below have held that the village Dabri was not urbanized by the notification dated 23.5.1963 and the village Dabri does not fall in the

revenue estate of Najafgarh specified in the notification dated 23.5.1963 i.e. village Dabri is not included in the revenue estate of Najafgarh. It is argued by the respondent/plaintiff, and to which arguments, the courts below have agreed, that if village Dabri containing the area of Sagarpur was urbanized by the notification dated 23.5.1963 then surely there was no need to urbanize village Dabri as per the subsequent notification dated 24.10.1994.

7. The substantial question of law needs to be answered in favour of the respondent/plaintiff and against the appellant because when we see the notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, the same shows that in the Najafgarh area/zone as many as 20 villages were urbanized and one such village was village Dabri. Therefore, Najafgarh is a large zone, and which contains the village Dabri which was urbanized by the notification dated 24.10.1994. Once that is so, the notification dated 23.5.1963 relied upon by the appellant can only be interpreted by me that this notification dated 23.5.1963 urbanized the zone/revenue estate of Najafgarh which contained many villages but not the village Dabri. Obviously MCD will not act in a foolish manner to urbanize an already urbanized area i.e MCD would not have urbanized the village Dabri by the notification dated 24.10.1994 if village Dabri was only in the

revenue estate of Najafgarh which was urbanized by the notification dated 23.5.1963.

8. In any case, the issue is completely settled in terms of the judgment of the Supreme Court in the case of *Mitter Sen Jain v. Shakuntala Devi (2000) 9 SCC 720* and which holds that the area of Sagarpur is an area to which Delhi Rent Control Act is not extended. Since the judgment of the Supreme Court is a small judgment of 5 paragraphs, the same is reproduced hereunder:-

“1. The appellant herein is a tenant of the premises situated at Sagarpur in Delhi, whereas the respondent is the landlord. The landlord let out the premises to the appellant on a monthly rent of Rs. 400/- per month. Subsequently, the landlord terminated the tenancy by giving notice under Section [106](#) of the Transfer of Property Act. The landlord thereafter brought a suit for ejectment of the tenant as well as for recovery of arrears of rent and mesne profit. Before the Trial Court the tenant filed a written statement wherein one of the pleas taken was that the premises which was let out to him was covered by Delhi Rent Control Act, 1958 and as such the suit is not maintainable. The Trial Court held that the premises was not covered by the Delhi Rent Control Act, 1958. Consequently, the suit was decreed. First Appeal was preferred to the learned District Judge, which was dismissed. Thereafter the appellant filed a Second Appeal before the High Court and the same was also dismissed. It is in this way the appellant is before us in appeal.

2. The only argument raised on behalf of the appellant is that since the premises of which the appellant is a tenant is covered by Delhi Rent Control Act and therefore, the suit filed by the landlord in Civil Court was not maintainable and decree passed therein is void ab initio. In order to appreciate the argument, it is worthwhile to extract the relevant provisions of Delhi Municipal Corporation Act as well as Delhi Rent Control Act, which are as follows

Section 507 of Delhi Municipal Corporation Act:

“507 (a) the Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;”

Sub-section (2) of Section 1 of the Delhi Rent Control Act:

“1. (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. Subsequently, by a notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur when the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying **Sagarpur area** within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.

4. No other point was pressed. The appeal fails and is dismissed accordingly. No costs.

5. However, the appellant shall not be evicted from the premises in dispute till 31st December, 2000 provided he files usual undertaking within four weeks. He shall deposit the arrears of rent within one month and continue to pay the rent/damages for the period he continues in possession of the premises, failing which the interim order shall stand vacated without further order of the Court.”
(emphasis added)

9. In view of the above, it is held that the civil courts have no jurisdiction because the area of village Dabri which contains the Sagarpur area, and where the suit premises are situated, are not covered by the Delhi Rent Control Act because no notification has been issued under Section 1(2) of this Act for applicability of this Act to the Sagarpur area.

10. In view of the above, the appeal is without merit and is accordingly dismissed. Parties are left to bear their own costs.

MAY 07, 2014
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VALMIKI J. MEHTA, J.