

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

% *Judgment pronounced on: January 22, 2014*

+ **CM(M) No.1334/2012 & CM No.20442/2012**

SHEEL KHANNA & ORS Petitioners

Through Mr.Rajat Aneja, Adv. with
Ms.Rashmi Verma & Mr.Ishaan
Chhaya, Advs.

versus

SURINDER KAUR BANGA & ANR Respondents

Through Mr.R.P.Sharma, Adv. with
Mr.Vaibhav Mehra, Adv. along with
R-1 in person.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Article 227 of the Constitution of India against the impugned order dated 20th October, 2012 passed by the District Judge-cum-A.S.J.-Incharge (West)/ARCT, Delhi, whereby the appeal under Sections 14(1)(d) & (h) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) and upheld the order passed by the learned trial court directing the eviction of the petitioners from premises bearing No.AD-40, Tagore Garden, New Delhi (hereinafter referred to as “tenanted premises”).

2. Brief facts of the case are that the respondents are the owner and landlord of the tenanted premises. As per averments made in the eviction petition that one Sita Ram, son of Sh.Shankar Dass was inducted as tenant

by the respondents in the aforesaid premises in the year 1975 at monthly rent of Rs.530/- excluding electricity and water charges. The said rent was always paid by Mr.Sita Ram and rent receipts were issued by the respondents in the name of Mr.Sita Ram from time to time for monthly rent paid by him which was also acknowledged by him.

3. From 1st January, 1992 Mr.Sita Ram had not paid the rent with respect to the tenanted premises till the date of filing of the eviction petition by the respondents against him under Section 14(1) (a), (d) & (h) of the Act. His two brothers, namely, Shyam Lal and Vishwa Nath filed an application under Order 1 Rule 10 CPC for their impleadment as respondents in the eviction petition claiming themselves to be the tenants of the respondents. It is a matter of fact that the respondents always denied the relationship of landlord and tenant also claimed by Shyam Lal and Vishwa Nath being joint tenancy. It was stated by the respondent No.1 that they neither ever lived in the tenanted premises nor ever made any objection or claim. However, the learned trial court considering the overall facts and circumstances of the case and in order to expedite the eviction proceedings passed an order of impleadment of Shyam Lal and Vishwa Nath as respondents No.2 and 3 respectively, without prejudice to rights and contentions of the parties despite of the fact that the case of the landlord from the day one contested they were not the tenants in the tenanted premises.

4. In 1994, the respondents served a legal demand notice for arrears of rent with effect from 1st January, 1992 but Sita Ram/tenant had neither paid nor tendered any rent to the respondent. Thus, the eviction order be passed against the tenant under Section 14(1)(a) of the Act. With regard to eviction sought under Section 14(1)(d) is concerned, the case of the respondents was

that as tenant had not been living in the tenanted premises for the last more than six months as he had been living in the property No.T-2449, Subhash Nagar, Faiz Road, Karol Bagh, New Delhi. The tenanted premises was lying locked and was not being used by the tenant for residential purposes for himself and his family members. The respondents were entitled for eviction against the tenant i.e. Sita Ram under the provisions of Section 14(1)(d) of the Act.

5. In the eviction petition it was further the case of the respondent that from the very inception itself of the tenancy, the tenant acquired another vacant and suitable accommodation other than the tenanted premises for his residential purpose and he had been living in the said premises and thus, was also liable to be evicted under the provision of Section 14(1)(h) of the Act.

6. After receipt of the notice, Sita Ram and his brothers i.e. Shyam Lal and Vishwa Nath filed separate written statements taking preliminary objection about the maintainability of the eviction petition.

7. On merit, it was alleged by Sita Ram/tenant that his two brothers Shyam Lal and Vishwa Nath were the joint tenants in the tenanted premises and the same was taken on rent by them with effect from 18th March, 1975. It was also stated that Shyam Lal, who claimed himself as a joint tenant that he is living in the tenanted premises along with his family members continuously with effect from 18th March, 1975 till the date of filing of the eviction petition. Similarly Vishwa Nath along with his family members had been residing in the tenanted premises since 18th March, 1975 till 1983. It was admitted by both brothers i.e. Shyam Lal and Vishwa Nath that Sita Ram never lived in the tenanted premises. It was stated that Sita Ram and they are joint tenants in the tenanted premises which is occupied by Shyam

Lal and his family members on the date of filing of the eviction petition. It appears that all the three brothers have almost taken similar stand and had admitted that Sita Ram never lived in the tenanted premises even for a day and actually two brothers and their families lived in the tenanted premises with the knowledge of the respondents. After lapse of 20 years the respondents are estopped from taking this ground of eviction as they have even otherwise accepted them as their tenant by their conduct.

8. In order to strengthen their case, it was also stated by them that Sita Ram was doing business jointly with the brothers vide partnership dated 1st July, 1970 in the name & style of M/s. Shyam Friends Motor Works, at shop No.206, Janta Market, M.M. Road, New Delhi, and tenanted premises was taken jointly by them for the residence of family members. It was also stated by them that there was a rent note dated 18th March, 1975 executed between the three brothers in favour of respondent which was kept by the respondent and on the basis of the rent note, they were tendering rent to the respondent. However, with effect from 1st January, 1992 the respondent refused to accept the rent when tendered by them. Actually the rent for the tenanted premises was paid by Sita Ram. Therefore the respondent had been issuing the rent receipt in the name of Sita Ram who used to sign the counterfoils which are kept by the respondent.

9. The parties led their evidence before the learned Additional Rent Controller. The respondent examined four witnesses i.e. PW-1 Satya Pal Kumar, UDC, Electricity Office, PW-2 Sh.Shyam Singh, LDC, Food and Supply, PW-3 Smt.Veer Kumar Banga and PW-4 Ms.Harjeet Kaur.

10. The petitioners led their evidence in support of their case by examining five witnesses namely RW-1 Raman Dev Malhotra, RW-2 Inder

Lal Bhatia, RW-3 Sita Ram, RW-4 Shyam Lal and RW-5 Smt.Gulshan Khanna.

11. After completion of the evidence by the parties, the learned trial court heard the final arguments and by judgment dated 10th December, 2010, the eviction petition was allowed in respect of tenanted premises and order was passed against the petitioners relying upon the testimonies of PW-1, PW-2 and PW-4 (PW-3 Ms.Veer Kaur Banga expired before her cross-examination). The learned trial court gave the findings with regard to the tenancy of the tenanted premises by holding that it was only Sita Ram who was the sole tenant of the tenanted premises. His brothers i.e. Shyam Lal and Vishwa Nath are not the tenant.

12. As far as documents produced by them are concerned, the same cannot be read in evidence as the same are not properly proved. The learned trial court had come to the conclusion that the respondent/landlord has placed on record the original counterfoils of the rent receipts which were marked as Ex.PW4/3 to PW4/160 and on all the rent receipts the name of the tenant is shown as Sita Ram. It was also held that the petitioners failed to prove the rent note as alleged by them and it was admitted by Sita Ram as well as his two brothers that Sita Ram never resided in the tenanted premises.

13. With regard to the finding under Section 14(1)(d) and (h) of the Act, the Additional Rent Controller discussed the evidence of the parties as well as the rival submissions raised by them and referred large number of judgments on this aspect and ultimately came to the conclusion that the respondents were able to prove that Sita Ram or any of his family members have not been residing in the tenanted premises for the period of six months

immediately before the date of filing of the eviction petition. Therefore, the case of Section 14(1)(d) of the Act was proved by the respondent.

14. As the respondents also proved the case under Section 14(1)(h) of the Act as it was proved that Sita Ram and his family members have acquired possession of premises bearing No.T-2449, Subhash Nagar, Karol Bagh, New Delhi. Therefore, the eviction order was passed under the provisions of 14(1)(d) & (h) in respect of the tenanted premises.

15. Against the said judgment, the petitioners filed an appeal under Section 38 of the Act before the learned Additional Rent Control Tribunal and hearing both the parties, the said appeal was also dismissed by judgment dated 20th October, 2012.

16. Order of the Additional Rent Controller was affirmed in the view of the evidence produced by the respondent and it was again held that Sita Ram was the only tenant in the tenanted premises. It was also recorded by the Tribunal that the petitioners have admitted that Sita Ram was not living in the premises and had acquired alternative accommodation in Subhash Nagar, Faiz Road, Karol Bagh, New Delhi.

The present writ petition under Article 227 has been filed by the petitioners challenging the findings of two courts below with regard to eviction orders passed under Section 14(1)(d) and (h) of the Act. The submission of Mr.Rajat Aneja is that the petitioners have been able to produce a large number of documents in order to show that the families of Shyam Lal and Vishwa Nath had been staying continuously and uninterruptedly in the tenanted premises since the inception of tenancy i.e. March, 1975. However, both the Courts below did not consider this aspect of the case pleaded by the petitioners. The documents were also produced

by them in support of their case which were also duly proved in the testimony of Shyam Lal, RW4, to show that from the inception both the brothers were residing in the tenanted premises within the knowledge of the respondent.

17. It was also stated by Mr.Aneja that these documents clearly proved that Shyam Lal and Vishwa Nath were the joint tenants with Sita Ram. Hence, the learned trial court ought to have taken the inference of these documents and ought to have dismissed the eviction petition filed by the respondent.

18. Mr.R.P. Sharma, learned counsel appearing on behalf of the respondents, stated that the petitioners cannot rely upon the documents which were not placed at the earlier stage and were not proved before the Court. The documents ought to have been produced at the appropriate time. Secondly, he states that admittedly Sita Ram was the tenant in the tenanted premises. His two brothers were failed to prove any evidence about the rent note which could prove that all the three brothers were the tenants.

19. He further states that Sita Ram and two brothers had admitted before Court not once but many times that Sita Ram never resided in the tenanted premises who occupied another property where he was residing with his family. The rent was also not paid by Sita Ram from 1st January, 1992 and he lost interest in the tenanted premises. He further states that in 1993 a notice was given to Sita Ram for vacation of the tenanted premises and even if his brothers were residing at that time within the knowledge of the respondents, the same is immaterial because the respondents admittedly after serving the notice had filed the eviction petition.

20. Mr.Sharma argued that the present petition is an abuse of process of law and is not maintainable as Sita Ram was the tenant, he did not reside even single day in the tenanted premises as admitted by him and even if the petitioners have resided in the premises for sometime, they cannot claim themselves as tenant. There is no iota of evidence produced and proved by them in this regard, except their some evidence of occupancy in the tenanted premises. The courts below have already examined all the evidence and gave their findings that the respondents have been able to prove their case under Section 14(1)(d) and (h) of the Act. The question of interference under the jurisdiction of Article 227 does not arise when the fact finding court has examined the evidence of the parties very carefully. He has also relied upon the following decisions in support of his submissions:

1. ***Harjinder Singh Bedi vs. R.P. Malhotra***, 171 (2010) DLT 361.

“12. The Amendment to the Rent Act of the year 1988 deleted the provision of second appeal on a question of law to this Court and while making the Rent Controller a final Court of facts, provided for one appeal only to the Tribunal, that too on a question of law. Of course, this Court under Article 227 of the Constitution of India would be empowered to interfere but within the parameters thereof only and any exercise of said jurisdiction cannot undo what was sought to be achieved by deleting the provision of second appeal in rent matters to this Court. The Rent Act has vested the discretion, whether to strike off the defence or not in the event of default by the tenant in complying with the order under Section 15(1) of the Act, in the Rent Controller. Such exercise of discretion by the Court/authority in which it is vested would not be interfered with in exercise of jurisdiction under Article 227 unless the exercise of such discretion by the Addl. Rent Controller is found to be perverse and/or contrary to material on record and not merely because this Court may have exercised the discretion otherwise.”

2. ***Jamnabai Ramchandra Vadekar vs. Modern Auto & Machinery Agency***, (2000) 10 SCC 573.

“3. In the promissory note, dated 28.8.1969 there is clear stipulation that in case the loan was not repaid within the period of three months then “if mutually agreed by and between the parties, the same may be treated as an advance towards the rent payable in respect of the premises” in question. Admittedly, no such mutual agreement was at all arrived at between the parties. There is not an iota of evidence to show that the parties had even agreed to treat the amount of Rs.5000 as an advance adjustable towards the rent payable in respect of the demised premises. In this fact situation, the High Court clearly exceeded its jurisdiction while exercising powers under Article 227 of the Constitution, which are required to be sparingly exercised, to disturb concurrent findings of fact arrived at by the trial court and the first appellate court on correct and proper appreciation of evidence. The High Court, if we may say so with respect, need not have labored hard to reappreciate the evidence. In the facts as mentioned above, we find that the order and judgment of the trial court as confirmed by the first appellate court was sound and did not call for any interference at the hands of the High Court. Consequently, this appeal succeeds and is allowed. The judgment of the High Court is set aside and that of the first appellate court confirming that of the trial court restored.”

21. Admittedly the powers of the High Court under Article 227 of the Constitution of India are very limited and the trial court is fact finding court who has decided the matter after the evidence of the parties.

22. It is well settled principle of law that the High Court while exercising its power under Article 227 of the Constitution of India, cannot proceed to act as a Court of appeal by interfering in mere errors of finding fact which requires re-appreciation and re-weighting of evidence unless it results in manifest miscarriage of justice as a Court of appeal.

23. The said power under Article 227 of the Constitution of India has to be exercised sparingly and circumspectly to ensure that decision making done by lower Court and tribunal below is within their bounds and limits.

24. The said power under Article 227 of the Constitution of India being supervisory in nature cannot be equated with the powers of appellate Court and the jurisdiction under Article 227 could not be exercised as a cloak of an appeal in disguise.

25. Scope of interference in a petition under Article 227 of Constitution of India is discussed in the following judgments :

i. In *Waryam Singh and Another v. Amarnath and Anr.*, AIR 1954 SC 215, the court observed; “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in-“**Dalmia Jain Airways Ltd. V. Sukumar Mukherjee**”, AIR 1951 CAL 193, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

ii. In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009 (1) **SCALE 71**, Supreme Court held; “The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

iii. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar*, **JT 2009 (11) SC 258** Supreme Court held; “10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court.

The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”

iv. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, JT 1995(7) SC 400, Apex Court observed; “The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

v. In the case of *Bathutmal Raichand Oswal vs. Laxmi Bai R. Tarta* reported in (1975) 1 SCC 858, the Supreme Court speaking through Bhagwati J. as his Lordship then was observed thus:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts” (**emphasis supplied**)

The Supreme Court in the case of *Bathutmal* (supra) approved the dictum of Morris L., J. in *Res v. Northumberland Compensation Appellate Tribunal*, 1952 All England Reports 122.

- vi. In the case of *State of Maharashtra vs. Milind & Ors.*, 2001 (1) SCC 4, the Supreme Court observed:

“The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.” (Emphasis supplied)

- vii. Again in the case of *State vs. Navjot Sandhu*, (2003) 6 SCC 641, the Supreme Court observed:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be

exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.”

(Emphasis supplied)

viii. The decisions of *Bathutmal* (supra), *State vs. Navjot* (supra) and *State vs. Maharashtra* (supra) have been approved by Hon’ble Justice C.K. Thakkar as his Lordship then was in the case of *Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (D) By LRs. & Ors.*, 2008 (9) SCC 1.

26. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the Court ceased of the proceedings under Article 227 cannot act as a Court of appeal and should interfere with the decision of the inferior tribunal or Court only to keep the authorities and Courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors.

27. In view of the above said facts and circumstances of the case, I am of the considered view that the findings of the two Courts below do not suffer from any infirmity for the reason that Sita Ram was the actual tenant of the tenanted premises in view of the evidence produced by the learned trial court. Brothers of Sita Ram i.e. Shyam Lal and Vishwa Nath cannot derive the benefit of their residence in the tenanted premises as admittedly Sita Ram never resided in the tenanted premises from inception. All the fresh

issues/points raised by the petitioners in the present petition as well as in the written submissions cannot be re-examined in this jurisdiction.

28. The power under Article 227 is thus discretionary in nature and can be exercised in the cases where the lower Court ignores material piece of evidence or considers some evidence which it ought not to have considered resulting into injustice and not in cases where there are two views possible and the view adopted by lower Court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

29. For the aforesaid reasons, the present petition is dismissed. The petitioners shall hand over the peaceful and vacant possession of the tenanted premises to the respondents within three months from today. During the said period, the petitioners shall not sublet or create third party interest in the tenanted premises.

30. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 22, 2014