

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

+ **RC.REV. 242/2012**

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Reserved on: 30th January, 2015
Decided on: February 12, 2015

SHAMINDER KUMAR & ORS Petitioner
Through Mr. Rajiv Kumar Sharma, Adv.

versus

NAND KISHOR & ORS Respondent
Through Ms. Shalini Kapoor with Ms. Kriti
Arora, Advs. for R-1.
Mr. Zafar Sadique with Mr. Tarun
Kumar Bharti, Advs. for R-3 to 6.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 7th February 2012 dismissing the eviction petition of the petitioners under Section 14(1)(e) of the Delhi Rent Control Act the petitioners prefers the present petition.

2. The petitioners Shaminder Kumar, Raminder Kumar, Virender Kumar, Narender Kumar, Sangita along with their mother Smt. Prem Kumari since deceased filed an eviction petition on 27th August, 1996 stating therein that Shri Karam Chand grandfather of the present petitioners was owner of premises bearing No. 8389-8390 Arya Nagar, Pahar Ganj, New Delhi. Premises No. 8390 Arya Nagar, Paharganj, New Delhi was let out at

a monthly rent of ₹ 5.75 paise excluding electricity and water charges by late Shri Karam Chand to late Shri Jugal Kishore. On the death of Shri Jugal Kishore he left Nand Kishore and Smt. Gyasu as legal heirs who were impleaded as respondent No.1 and 2 respectively in the eviction petition. During the life time of late Devender Kumar, he and his brother Jagdish Chand mutually partitioned the property and late Devinder Kumar became owner of half the portion which was property bearing municipal No.8390-8391, Arya Nagar, Pahar Ganj. It is further stated in the petition that Jagdish Chand instead of Jugal Kishore died leaving behind Nand Kishore and Gyasu as the legal heirs and Gyasu though got a limited tenancy but Nand Kishore has got no tenancy rights, however they are being impleaded being legal heirs of late Jagdish Chand. In the eviction petition it was stated that the petitioners have got no other suitable residential accommodation available to them except the premises in dispute and due to paucity of accommodation, petitioner No.6 is living in staff quarters of Dr. Shroff Eye Hospital, Daryaganj where wife of petitioner No.2 has been provided staff quarters. It was stated that the petitioners were living in one room accommodation on the ground floor without any facility of bathroom, kitchen and only one tin-shed has been recently constructed on the first floor to accommodate Raminder Kumar and his wife and three children.

3. Since the respondents objected to the relationship of landlord-tenant and stated that the petitioners were neither owners nor landlord of the property in dispute, leave to defend was granted.

4. In the written statement respondents Nand Kishore and Gyasu reiterated that the petitioners were neither the owners nor landlord of the

property in dispute and there was no relationship of landlord and tenant between the parties and that the petitioners were never in occupation or possession of the property in dispute. The respondents also filed a site plan disputing the correctness of the site plan filed by the petitioners.

5. Parties led their evidence and on perusal of the evidence the learned ARC came to the conclusion that the relationship of landlord tenant was not established and hence the eviction petition was declined.

6. The only issue urged before this Court by the parties is the relationship of landlord and tenant and no other issue has been urged. Admittedly, the petitioners have no rent agreement, rent receipt and document showing the ownership of municipal property bearing No. 8390 wherein it is claimed that the respondents are tenants.

7. Shaminder Kumar petitioner No.1 herein appeared in the witness box as PW-1 and tendered his evidence by way of affidavit wherein he stated that his grandfather Shri Karam Chand was the owner/lessor of the property bearing khasra No. 807-808 situated in Achoot Basti which was later known as Arya Nagar, Pahar Ganj, New Delhi. After the death of late Shri Karam Chand the property in question i.e. 8389-91 Arya Nagar, Pahar Ganj was partitioned between his two sons i.e. Devender Kumar and Jagdish Chand, both of whom got their shares and took possession of premises. Property bearing No. 8390-91 Arya Nagar, Pahar Ganj came to the share of Devender Kumar which was even mutated in his name in the revenue records. Certified copy of the jamabandi was exhibited as Ex.PW-1/A. Shri Devender Kumar died on 23rd February, 1985 leaving behind his legal heirs being the petitioners in the eviction petition who by operation of law became

owner of property bearing No. 8389-91 Arya Nagar, Pahar Ganj, New Delhi. The tenanted premises in occupation of the respondents are one room, one varandah, kitchen, latrine and courtyard on the ground floor of property No. 8390. In cross-examination PW-1 admitted that he was not in possession of any portion of property bearing No. 8390 and neither his brother nor sisters were in possession of the said property. He has also admitted that he has no knowledge if Karam Chand was in occupation and possession of jhuggies now bearing municipal Nos. 8389 and 8391 Arya Nagar, Pahar Ganj. He also stated that he did not know that Shri Jugal Kishore was in possession of property No. 8390 and his family was living over there and he constructed the entire property No. 8390 Arya Nagar, Pahar Ganj from his own funds but he knew that Jugal Kishore was residing in the property No. 8390 along with his family till his death. He further admitted the only document he was relying upon in regard to ownership of property bearing No. 8390 Arya Nagar, Pahar Ganj was Ex.PW-1/A which did not mention the said suit property.

8. On behalf of respondents Nand Kishore RW-1 entered the witness box and stated that the petitioners have filed a false and frivolous petition. They were not the owners of the property bearing 8390 Arya Nagar, Pahar Ganj and no landlord-tenant relationship existed between them. He filed his own site plan being Ex.RW-1/1 and stated that the entire property was constructed by them. He admitted that 50-60 years back the area was known as Basti Achoot, State Kadam Sharif, Delhi and was donated to Dalit Sudhar Samiti and different persons with their respective families were living in different portions in jhuggies/ huts which were later constructed by them for

making pucca structures. He stated that Karam Chand was in occupation and possession of two portions which bear municipal Nos. 8389 and 8391 Arya Nagar, Pahar Ganj and that his father Jugal Kishore was in possession of the portion now bearing municipal No. 8390 wherein they built the super structure and which was in occupation and possession of their respective families. Though he filed no documentary proof of ownership over the premises in question and that even on that date the premises in question was not recorded in his name but he exhibited the house-tax receipt in respect of property No. 8390 Arya Nagar, Pahar Ganj dated 9th February, 1987 which house-tax was deposited by him.

9. From the evidence of the two witnesses it would be seen that though petitioners claim property No. 8390 to be belonging to their ancestor Karam Chand, the respondent Nand Kishore states the same to be their own. Nand Kishore has produced a house-tax receipt whereas petitioners have produced a jamabandi Ex.PW-1/A. A perusal of the jamabandi would show that Khasra Nos. 807 and 808 were in the name of Karam Chand, S/o Nanu Singh in Basti Achoot and the owner of the property was the Government. No evidence was led by the petitioner to prove that khasra Nos. 807 and 808 related to properties bearing municipal Nos. 8390 Arya Nagar as well. In the absence of rent receipt, rent agreement and any document showing prima facie ownership of property the learned Trial Court committed no error in coming to the conclusion that the petitioners failed to discharge the burden that the respondents were tenant in the suit premises under them and there was a relationship of landlord-tenant between the parties.

10. Indubitably, while passing an eviction order on the ground of bona-fide requirement under Section 14(1)(e) DRC Act though the landlord has to show that he is the owner of the premises, however he need not prove absolute ownership but prima facie the eviction petitioner has to show that he has a better title to the property than the respondent which onus is on the eviction petitioner to show and failing in the same he cannot claim eviction from the respondent.

11. In Shanti Sharma Vs. Smt. Ved Prabha (1987) 4 SCC 193 it was held-

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing

necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term “owner” as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in T.C. Rekhi v. Smt Usha Gujral [1971 RCJ 322, 326 (Del HC)] as under:

“The word ‘owner’ as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word ‘owner’ in this clause seems to me to have been inspired by the definition of the word ‘landlord’ as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word “owner” is used in clause (e), it seems to me to include all persons in the position of Smt Usha Gujral who have taken a long lease of sites from the government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of clause (e) and would render all such landlords remediless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the legislature and I repel the appellant's contention. I consider it proper before passing on to the next challenge to point out that the word ‘owner’ as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe someone as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the

property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject matter and object and the occasion on which the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from the context (see Halsbury's Laws of England, Third Edn., Vol. 36 para 893 p. 394). The meaning of the word "owner" in clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision. ""

12. In Rajender Kumar Sharma Vs. Leela Wati, 155 (2008)DLT 383 it was held-

12. It is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. In this case, the landlady had placed on record the documents by which she became owner. The atornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition under Section 27 of Delhi Rent Control Act acknowledging the landlordship of landlday. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it.

13. Consequently, there being no error in the impugned judgment as the petitioner has not been able to discharge the onus placed on him to show that he was the owner of the premises and had a better title than the respondent, the learned ARC committed no illegality in dismissing the eviction petition.

10. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 12, 2015
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