

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

+ **CM(M) 343/2013 and CM No. 4948/2013**

% Reserved on: 25th May, 2015
Decided on: 29th June, 2015

VINOD KUMAR GOYAL (HUF) Petitioner
Through: Mr. Ankit Jain and Mr. Sarvesh Rai,
Advocate.
versus

GANGA SARAN & ORS. Respondents
Through: Mr. O.P. Aggarwal, Advocate for
Respondent No. 1.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Vinod Kumar Goyal filed an application under Section 19 (1) (a) of the Slum Areas (Improvement and Clearance) Act, 1956 (in short 'the Act') seeking permission of the authority to initiate eviction proceedings against the Respondents, that is, the three tenants Ganga Saran, Shiv Saran, Vijay Saran all sons of Khewat Ram in respect of the tenanted premises consisting of one room/shop measuring 20 ft. x 20 ft. with a triangular attached store and one store in the open verandah on the first floor and three stores in the staircase of the property bearing municipal No.VI/5635 to 5640, Nai Sarak, Delhi.

2. Vinod Kumar Goyal claimed that he and his deceased brother Surender Kumar in or about the year 1977 let out the tenanted premises to the Respondents and their deceased father Shri Khewat Ram. His brother Surender Kumar expired in the year 1980 and in the year 1990 there was a division of the joint properties between Vinod Kumar Goyal and legal heirs of the deceased brother Surender Kumar. In the said division the entire

property VI/5635 to 5640, Nai Sarak, Delhi came to the exclusive share of Vinod Kumar Goyal and has been mutated in his name in the municipal records. After the death of Khewat Ram, Ganga Saran, Shiv Saran, Vijay Saran were in the exclusive possession of the tenanted premises and they were all men of means and status and were in position to acquire an alternative accommodation in a non-slum area. Thus permission be granted to file an eviction petition.

3. The Respondents in their reply claimed that they were tenants in the premises and also some other premises which were in their possession however, Vinod Kumar Goyal was neither the owner nor the landlord of the tenanted premises. The Respondents took the plea that they were initially inducted as tenants by one Surender Kumar and on his death, Vinod Kumar Goyal represented himself to be entitled to receive rent of the tenanted premises but subsequently, one Virender Kumar Goyal also claimed the rent of the aforesaid premises on the ground that the entire property had been purchased by his late father Anand Prakash Goel in a government auction in the year 1960 and now he has inherited the property. Since there was no authority with Vinod Kumar Goyal to receive the rent, Respondents started paying rent to Virender Kumar Goyal who subsequently sold the property to Gian Chand Batra to whom the rent is now being paid by the Respondents. It is stated that the suit property has already been mutated in the name of Gian Chand Batra and Suit No.413/1998 titled as 'Vinod Kumar Goel vs. Sh. Ganga Saran etc.' has been filed which is pending.

4. The Competent Authority vide the order dated 8th October, 2007 held that it had no jurisdiction to decide the ownership of any property or return a finding on the relationship of landlord-tenant. However, preliminary inquiry

is required to be made to satisfy whether the applicant is prima facie the owner of the tenanted premises or prima facie relationship of landlord-tenant existed. When the relationship is admitted by the parties the Competent Authority straightway proceeds to decide whether the permission sought by the landlord should be granted or not however, if the relationship is denied by the tenant then the Competent Authority has theoretically got two courses open to itself, that is, either refer the landlord to the Civil Court for a finding that the relationship of landlord/tenant exists between the parties or to proceed to decide whether permission to landlord should be granted or not.

5. The Competent Authority noted that no document had been placed on record by the Petitioner to support his claim of division amongst him and the LRs of his deceased brother Surender Kumar and on the contrary the case of the Respondents was that initially the brother of the Petitioner had let out the property but later Virender Kumar Goyal claimed himself to be the owner as his father Anand Prakash Goyal purchased the property in government auction on 16th December, 1961 vide sale certificate dated 31st December, 1963 by the Managing Officer, Acquired Evacuee Property. Copy of the certificate was also placed on record. Further the copy of the Registered Sale Deed dated 28th May, 1999 in favour of Gian Chand Batra with the copy of the mutation letter dated 23rd August, 1999 in the name of Gian Chand Batra was also placed on record. This document prima facie nullifies the case of the Petitioner and hence the permission under Section 19 was declined.

6. Vinod Kumar Goyal filed an appeal against the order dated 8th October, 2007 before the Financial Commissioner under Section 20 of the Act. Vide the order dated 7th February, 2012 impugned in the present

petition, the appeal was dismissed. The learned Financial Commissioner reiterating the findings of the Competent Authority held that admittedly no rent was being paid to the Petitioner and no document had been filed by the Petitioner to show that he was the landlord and on the contrary the Respondents have filed documents to show ownership on the suit property of Gian Chand Batra, thus there was no illegality in the order of the Competent Authority.

7. Challenging the two orders, learned counsel for the Petitioner states that initially the Respondents were paying rent to the Petitioner but thereafter they started paying it to Respondent No.4. There is a finding in the civil suit that the entire property including the encroached portion came to the share of the Petitioner. The tenancy is in the suit shop and not on the encroached portion. The appeal against the said judgment is pending and in view of the finding of the Civil Court the two impugned orders are liable to be set aside.

8. Learned counsel for the Respondents on the other hand contends that the Respondents have been paying rent to Gian Chand Batra and earlier to Virender Kumar Goyal S/o Anand Prakash Goyal. They never paid rent to Vinod Kumar Goyal. The Competent Authority has no jurisdiction to go into the complex issues of title and has to form a prima facie opinion on the material placed on record. Since the Petitioner failed to place on record any material the impugned orders warrant no interference.

9. Suit No. 103/1993 was filed by Vijay Saran against Vinod Kumar Goyal seeking permanent injunction restraining Vinod Kumar Goyal from evicting him illegally and forcibly from the tenanted premises No.5638. In the said suit, there is a clear admission of Vijay Sarain that he and his co-tenants took the tenanted premises on rent from J.K. Goyal and that

thereafter the tenanted premises came to the share of Vinod Kumar Goyal by way of family settlement and they were paying rent to him. The said suit was dismissed holding that Vijay Saran was not entitled to injunction as prayed for vide order dated 10th February, 1998.

10. A suit was also filed by Vinod Kumar Goyal being Suit No.413/1998 against Ganga Saran, Shiv Saran, Vijay Saran and Virender Kumar Goyal which was decided on 28th February, 2005. The said suit was filed for declaration and possession of immovable property and for mesne profits, permanent and mandatory injunction. The parties led their evidence and vide the judgment dated 28th February, 2005 issue Nos. 1, 2 and 3 which are reproduced as under were decided in favour of Vinod Kumar Goyal:

- “1. Whether the suit property had been acquired from the funds of M/s R.S. Madho Ram & Sons?
2. Whether there was a partition between plaintiff and defendant no.4 and memorandum was drawn up on 1.5.1964?
3. Whether the memorandum dated 1.5.64 was never acted upon as alleged by defendant no.4?

11. The learned Trial Court in Suit No.413/1998 held that in view of the documentary evidence and admissions of Virender Kumar Goyal, Petitioner Vinod Kumar Goyal was the owner of the suit property which fell to his share by virtue of Memorandum of Division Ex.PW-1/2 in his favour.

12. Admittedly the findings of the suit were not placed by the Petitioner either before the Competent Authority or in the Appellate proceedings. However, the fact that Vijay Saran filed a suit against Vinod Kumar Goyal seeking permanent injunction qua the tenanted premises admitting paying of

rent to Vinod Kumar Goyal as the property devolved on him pursuant to family settlement was brought to the notice of the competent authority. Both the authorities have held that no document has been placed on record. Since the finding of a Civil Court on the issue of title is always final, and the finding of the Competent Authority under the Act and the Appellate Authority is only a prima facie view and they are bound by the findings of the learned Civil Court which has an important bearing on the impugned order. Since the judgments and pleadings in Suits No.103/1996 and 413/1998 were not placed before the competent authority and appellate authority though they were mentioned, the impugned orders are set aside and the matter is remanded back to the competent authority to decide the matter afresh taking into account the documents as noted above and any other document which the parties may file.

13. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JUNE 29, 2015
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