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HIGH COURT OF DELHI AT NEW DELHI

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RC. REV. 192/2013 & CM APPL.1357/2013

Pronounced on: February 10, 2016

AFTAB AHMED @ SIKENDER Petitioner

Through: Mr. Pranesh, Advocate with Mr.
Amitabh Krishn, Advocate

versus

KANTI DEVI Respondent

Through: Mr. Girish Chandra, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. The present Revision Petition has been filed against the order dated 13.02.2013 passed by the ARC, (North-East), Karkardooma Courts, New Delhi by which eviction petition filed by Respondent/landlady under Section 14D against petitioner/tenant herein was allowed on merits.
2. Before dealing with the contentions of the counsel, it would be pertinent to give a brief background of the case.
3. The Respondent, Smt. Kanti Devi had filed an eviction petition under Section 14D of DRC Act, seeking possession of the suit

premises i.e. one hall on Ground Floor in the property bearing No. C-213, Gali No.6, Chauhan Bangar, Main Brahm Puri Road, Delhi-110053 from petitioner/tenant. It was stated in the petition that the suit premises were let out by the husband of the respondent 12 years ago and the same is being used by the petitioner/tenant as a godown for commercial activities. It was further averred that after the death of the husband of respondent/landlady Shri Rajinder Singh, the petitioner/tenant attorned to her. It was also stated that the premises are required *bona fide* for residential use of the respondent.

4. The petitioner was granted leave to defend on 22.01.2010 and he filed his written statement in which the *bona fide* need was denied and it was further stated that the scarcity of accommodation is self-created since the respondent/landlady had demolished 5 rooms out of the 10 rooms in the suit premises which existed prior to filing the petition. It was also stated that the respondent is in occupation of 4 rooms and 1 hall and that the area of suit premises is 350 sq. yards. Further, respondent was stated to be in possession of two

properties i.e. in Gali No.5, Main Road, Brahampuri and at Babarpur, Delhi and therefore has sufficient alternative accommodation available to her.

5. It was further averred that the daughter of the respondent was married and her sons were also running a hotel and a gym and she had sufficient accommodation for business purposes.
6. Both the parties led their evidence. The petitioner examined 3 witnesses to support his case and similarly the respondent/landlady also examined 3 witnesses including herself.
7. The Ld. ARC on the basis of pleadings and the evidence of the parties came to a conclusion that all the ingredients of Section 14D are made out and accordingly passed an order of eviction against the petitioner/tenant. It was observed in the order that the suit property was partitioned and therefore the plea of petitioner/tenant that entire property was available to respondent was of no avail. Further, there was no evidence to substantiate the availability of other accommodation to the respondent/landlady. It was also

observed that the suit premises were already being put to mixed use and could therefore be used for residential purpose as well.

8. I have heard the arguments of the learned counsel for the parties and have gone through the record.
9. It is reflected in the order dated 22.10.2013 that the possession of suit premises has already been taken by the respondent through bailiff in the execution proceedings.
10. The counsel for petitioner has now assailed this order of eviction by contending that Rent Controller had no jurisdiction to entertain the Eviction Petition since no notification regarding *Chauhan Bangar* area as per Section 1 (2) of DRC Act, 1958 was issued and therefore the Act itself is not applicable to the area where the suit property is situated. Reliance in this regard has been placed on *Mitter Sen Jain v. Shankuntala Devi*; (2000) 9 SCC 720.
11. The counsel for respondent has disputed this contention and has placed on record a copy of an RTI reply dated 16.06.2015 wherein the Director (Delhi Division) has stated that Delhi Rent Control Act, 1958 is in force in all the areas mentioned in the two

notifications issued in 1979 and 1986. Another RTI reply dated 23.07.2015 by SDM (Seelampur) states that there is no village by the name of *Chauhan Bangar* and the actual name is *Ghonda Chauhan Bangar*. He has further contended that Village *Ghonda Chauhan Bangar* falls in Shahdara revenue district which has been urbanized vide notification dated 23.05.1963. Reliance has been placed on *Sh. Ganpat Ram v. Smt. Gayatri Devi; 19 (1981) DLT 82*. It is further stated that the tenant had not taken plea in the written statement regarding non-applicability of DRC Act in Seelampur area and it was consequently held that said area being situated within the limits of erstwhile Delhi Shahdara Municipal Committee and Delhi Rent Control Act was held to be applicable by virtue of Item No.4 of the Schedule to the Act.

12. In this way, in the present case, there are two documents which need interpretation in order to ascertain whether suit property is governed by the provisions of DRC Act or not. The counsel for the respondent has placed reliance on *Jangbir v. Mahavir Prasad*

Gupta; AIR 1977 SC 27 to contend that interpretation of these documents primarily involves a question of fact and not a question of law regarding jurisdiction as posed before this court.

13. The perusal of these documents which have been brought before this Court only shows that issue of jurisdiction being a mixed question of facts and law can only be decided after evidence produced by the parties. The impugned order has been passed on merits and the issue which is sought to be raised before this court was never raised before Rent Controller or the Executing Court and therefore it cannot be tried summarily at such a late stage. Even before this court, the counsel for petitioner filed a separate application bearing C.M No. 1357/2015 on 19.01.2015 i.e. almost 2 years after filing the petition to raise the issue of jurisdiction when the decree against him stands already executed and the possession has been already taken by the Respondent.
14. Therefore, in my considered view this issue is highly belated and cannot be raised before this court now. The petitioner should have been vigilant enough to bring this issue up during the trial itself

since it involves the question of jurisdiction which is a mixed question of facts and law. Law comes to the aid of the persons who are vigilant about their rights not to those who sleep over them. An issue which could have been decided at preliminary stage in eviction petition itself cannot be re-agitated at a stage when rights of the parties have crystallized and possession of suit property has already been taken by Respondent/landlady.

15. Moreover, it is settled law that a fact must be pleaded and proved by the party who asserts such fact. Therefore, the petitioner being tenant should have set up the plea of *Chauhan Bangar* area not being under DRC Act in his pleadings during the trial and produced the evidence to support his contention. Further it has been shown that there is no revenue district by the name of *Chauhan Bangar*. The revenue district is Shahdara of which said village is a part. That being the position, the point which has been urged by the Appellant is only a ploy to perpetrate to the detriment of respondent. Moreover, there is a doctrine of *falsa demonstratio non nocet* by virtue of which it can't be contended that a small part

of area can be excluded from a large *abadi* area without any reason.

16. In view of the aforesaid discussion, I feel that the present revision petition is totally misconceived and the same is dismissed.
17. Pending applications also stand disposed of and stay order against eviction, if any, stands vacated.

V.K. SHALI, J.

FEBRUARY 10, 2016
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