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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 25.4.2016

Judgment delivered on : 28.4.2016

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CM(M) 727/2014 & C.M. No.12466/2014

TANJEET SINGH GHAI & ORS.

..... Petitioners

Through

Mr.S.M.Chugh and Ms.Kamna Vohra,
Advocates.

versus

LEELA AHUJA

..... Respondent

Through

Mr.Vandana Sharma and Mr.Abhay
Kushwaha, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Order impugned before this Court is the order dated 01.7.2014 passed by the Additional Rent Control Tribunal (ARCT) which was an appeal

against the order passed by the Additional Rent Controller (ARC) dated 20.02.2013. The ARCT had set aside the order passed by the ARC. The possession of the suit premises which had been directed to be handed over to the tenant was set aside.

2 The petitioner/tenant is aggrieved by this finding.

3 The main contention raised by the learned counsel for the petitioner is that the ARCT could only adjudicate upon a question of law as is clear from the amendment made to the Rent Control Act. Under Section 38 of the said Act what has to be now examined by the RCT is only the question of law and not a finding of fact, however, wrong it may be, it can not call for an interference. The judgment is liable to be set aside on this count alone. For this proposition learned counsel for the petitioner has placed reliance upon judgments reported as 1968 (iv) DLT 200 Prakash Chander Gupta Vs. Tara Chand Malik, 1981 (1) RCJ 7662 R.K.Luthra Vs. Lala Balkishan Dass Ram Kishore Gupta; 1980(2) RCJ 139 Smt.Kaila Devi Vs. Banarsi Das.

4 Record shows that an eviction petition had been filed by the landlady who was a widow namely Leela Ahuja against legal representatives of her original tenant Sarup Singh Ghai. At that point of time she was about 80

years of age. This eviction petition was decreed on 11.9.2009 in favour of the widow.

5 The suit property comprises of a garage room measuring 16 x 10 sq. feet forming part of property No.E-13/27, East Patel Nagar (depicted as red colour in the site plan Ex.AW-1/5).

6 On 18.02.2011, the landlady had made an application before the ARC seeking permission of the Court to sell this property. Her contention was that the condition of the suit property was dilapidated and the adjoining house was no longer possibly to become habitable; a lot of renovation was required for which the requisite funds were not available with the landlady; also required medical attention for which a considerable expenditure was needed; she accordingly sought permission of the Court to sell the property in order that she could move in with her children.

7 This application which was filed on 18.02.2011 and was subsequently withdrawn on 06.4.2011.

8 Prior to these events, it would be relevant to note that on 27.9.2010 the tenant had filed an application under Section 19 of the DRCA for restoration of possession of the suit property. Contention being that the landlord had not

moved into the suit property and as such her need for the premises did not stand established and accordingly the tenant had sought repossession of the suit property. The prayer made in this application was allowed and vide order dated 15.01.2013 the ARC had passed an order that the tenant/his legal representatives are entitled to re-entry in the tenanted premises. The contention of the tenant that the landlady had not occupied the premises even after getting the possession during the course of execution; her prayer made in the application seeking permission to sell the suit property on the ground that she wanted to shift with her children established that the need as depicted in the petition filed under Section 14-D of the DRCA was not made out.

9 It was against this order dated 15.01.2013 that the landlord had gone in appeal before the ARCT. The ARCT had noted the facts. It had also noted the proposition of law cited before it including the arguments raised before it that it was only on a question of law that interference could be made by the RCT and a question of fact could not be gone into.

10 The RCT having examined this proposition, had set aside the order passed by the ARC and had directed that the order of re-entry qua the suit

property i.e. the garage qua the tenant/his legal representative be set aside. The tenant is now before this Court.

11 Before advertng to the facts of the case, it would be relevant to note that the powers of superintendence under Article 227 of the Constitution of India are wide; they are supervisory powers and admittedly not appellate powers. Findings of fact cannot be interfered with unless there is no evidence to support the said finding or the finding is perverse. However, if material evidence is ignored or the Court below had drawn wrong inferences from proved facts by applying the law erroneously this Court may interfere.

12 The powers of the Appellate Court i.e. of the RCT under Section 38 of the DRCA although limited to a substantial question of law but where that finding is based on no evidence or while arriving at the said finding relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have been misapplied or where the evidence has been misread, a question of law does arise within the meaning of Section 38 of the DRCA. This has been noted by the Apex Court in (1980) 4 SCC 255 Madan Lal Vs. Mst Gopi and Ors., (2009) 3 SCC 287 Narender Gopal Vidyarthi Vs. Rajat Vidyarthi as also in

(2007) 4 SCC 118 Commissioner of Customs (Preventive) Vs. Vijay Dasharath Patel.

13 Record discloses that the eviction petition had been decreed in favour of the landlady on 11.9.2009. Execution proceedings were filed and the suit property were taken over in the course of the said proceedings by the landlady on 03.5.2010. She, however, could not occupy the suit property. Accordingly, after a period of six months on 27.9.2010 an application was filed by the tenant seeking restoration of the possession of the suit property. Status quo orders were passed on 16.10.2010. Contention of the landlady all along was that she could not occupy the premises as it required a lot of renovation and she did not have the funds to carry out the said renovation. The garage which was adjacent to her property being very old was in a totally dilapidated condition and as such the physical occupation of the suit property could not be effected and could not be used for the aforementioned reasons. It was in the context of these facts that the landlady had moved an application on 18.02.2011 seeking permission of the Court to transfer/sell the property. All these facts were brought to the notice of the ARC. It was brought to the notice of the ARC that she did not have the funds to get the property repaired. Since her only son was living abroad she had sought

permission of the Court to sell the suit property. This application was thereafter withdrawn on 06.4.2011. These facts were noted by the Trial Court in the correct perspective but the Trial Court had failed to appreciate that although the physical possession of the suit property had been taken over by the landlady but because of the financial constraint which she was suffering and as explained by her in her application wherein she had no alternate but to sell the property. Her contention all along was that the garage (suit property) was in such a dilapidated condition that it could not be put to use.

14 The fact that the garage was in a dilapidated condition and till its renovation was carried out the same cannot be used is an admitted position. The further fact that the landlady could not take over the possession of the garage for the aforementioned reason and being a senior citizen aged 80 years of age did not have sufficient funds to carry out renovation has also not been disputed by the tenant.

15 Noting all these facts the ARC yet arrived at a conclusion that the tenant in this background was entitled to an order of repossession was an order which was passed on an illegal premise; it was a perverse finding.

16 Record clearly evidences the reasons why the landlady was precluded from occupying and living in the garage; this had been explained and noted by the ARC. The ARC however then went on to pass the order granting repossession to the tenant. This order was assailed before the ARCT. The ARCT had again noted the facts of the case and arrived at a finding that such an order calls for an interference; being a perverse finding returned by the ARC which is contrary to the record. The ARCT had rightly set aside the order passed by the ARC.

17 The landlady was admittedly 80 years of age. She had moved into the tenanted premises by breaking it up from outside but renovation and alternations were required to make the garage habitable. It even had no windows for the purposes of ventilation. She had also explained the reason why she was constrained to file an application seeking to sell the property. It was stated that she being a single lady and living alone in the house and beside the fact that she had no money to renovate the property, property dealers were hounding and troubling her all the times that had led her to file an application seeking to sell the property but she later on withdrew this application. She in fact being a law abiding citizen under the advice of her children had moved the said application but thereafter having found the

house a little more comfortable with a minimum expenditure has chosen to withdraw the application.

18 The judgments relied upon by the learned counsel for the petitioner have no application to the factual matrix of the instant case. They only reiterate the legal position that it is only on a substantial question of law that interference is called for by the RCT.

19 The finding of the ARC being perverse; a substantial question of law had arisen before the ARCT who had rightly held that the ARC had returned an illegal finding. Impugned order in this background calls for no interference. Petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

APRIL 28, 2016

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