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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA Nos.286/2016, 287/2016 & 288/2016

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26th September, 2016

1. **RSA No.286/2016 and C.M. Nos.35315/2016 (stay) & 35316/2016 (exemption)**

BHAGIRATH VERMA

..... Appellant

Through: Mr. Rakesh Kumar, Advocate, Mr. Prabhat Kaushik, Advocate, Mr. Rupesh Kumar Sinha, Advocate, Ms. Swati Mishra, Advocate and Mr. Lakhan Singh, Advocate.

versus

DADA DEV MANDIR PRABANDHAK SABHA (BARAH GAON) PALAM

..... Respondent

Through:

2. **RSA No.287/2016 and C.M. Nos.35355/2016 (stay) & 35356/2016 (exemption)**

RAJESH SOLANKI

..... Appellant

Through: Mr. Rakesh Kumar, Advocate, Mr. Prabhat Kaushik, Advocate, Mr. Rupesh Kumar Sinha, Advocate, Ms. Swati Mishra, Advocate and Mr. Lakhan Singh, Advocate.

versus

DADA DEV MANDIR PRABANDHAK SABHA (BARAH GAON) PALAM

..... Respondent

Through:

3. **RSA No.288/2016 and C.M. Nos.35365/2016 (stay) & 35366/2016 (exemption)**

SANJAY SINGH

..... Appellant

Through: Mr. Rakesh Kumar, Advocate, Mr. Prabhat Kaushik, Advocate, Mr. Rupesh Kumar Sinha, Advocate, Ms. Swati Mishra, Advocate and Mr. Lakhan Singh, Advocate.

versus

DADA DEV MANDIR PRABANDHAK SABHA (BARAH GAON) PALAM

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. These three Regular Second Appeals under Section 100 of the Code of Civil Procedure, 1908 (CPC) are filed against the identical and concurrent Judgments of the courts below; of the Trial Court dated 15.12.2014 and the First Appellate Court dated 10.6.2016; by which the courts below have decreed the suit for possession filed by the respondent/plaintiff/society/landlord against the appellants/defendants/tenants with respect to suit properties being shops in Dada Dev Mandir Complex, Palam, Delhi. For the sake of convenience, since facts are more or less identical, I will refer to the facts of RSA No.286/2016 which is with respect to the suit for possession of shop no.27.

2. Respondent/plaintiff is a society registered under the Societies Registration Act, 1860. Appellant/defendant admits that he is a tenant of the respondent/society. In Delhi, when a suit is filed by a landlord against a tenant for possession and mesne profits with respect to the tenanted premises, it is to be seen firstly as to whether there is a relationship of landlord and tenant between the parties, secondly as to whether if the suit premises are governed by the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') i.e if the rent is more than Rs.3,500/- per month then the tenant does not have protection of the Act or if the Act is not extended to the area where the tenanted premises are located, and thirdly and finally as to whether the tenancy of the tenant has been validly terminated.

3. In the present case, there is no dispute that there is a relationship of landlord and tenant between the parties. So far as the issue of service of legal notice for termination of the monthly tenancy is concerned, it is seen that the Legal Notice dated 16.7.2012 issued by the respondent/landlord has been proved and exhibited as Ex.PW1/9 (Colly.). In any case, service of a legal notice, and as rightly held by the trial court, is not *sine qua non* for filing of the suit for possession against a tenant because filing of the suit itself is treated as a notice of termination of tenancy under Section 106 of the Transfer of Property Act, 1882 in view of the judgment of this Court in the case of ***Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) & Anr. 2011 (183) DLT 712.***

To the same effect is the judgment of the Supreme Court in the case of *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)*, (2008) 2 SCC 728.

4. The first important issue in this case to be determined is as to whether the tenanted premises have or do not have protection of the Act. Another issue raised on behalf of the appellant/defendant/tenant is as to whether the suit has been properly filed on behalf of the respondent/plaintiff/society.

5. As per Section 1(2) of the Act, those tenanted premises have protection of the Act for which a notification is issued by the Government covering that area under the Act. This is clear not only from the plain reading of Section 1(2) of the Act, but this issue has also been pronounced by the Supreme Court in its judgment in the case of *Mitter Sen Jain Vs. Shakuntala Devi* (2000) 9 SCC 720.

6(i) Let us therefore examine as to whether there is any notification issued under Section 1(2) of the Act with respect to the area in question where the tenanted shop is located.

(ii) In this regard, it is seen that on behalf of the appellant/defendant, evidence was led of the government witness who appeared as DW3 and this witness proved the two notifications issued by the Central Government under the proviso to Section 1(2) of the Act and which were exhibited as Ex.DW3/A (Colly.) and Ex.DW3/B. This witness DW3 also deposed that except the

aforesaid two notifications, no other notification was issued by the Central Government extending the operation of the Act to an area which is not covered under the notifications Ex.DW3/A (Colly.) and Ex.DW3/B. Admittedly, the area of village Palam where the tenanted shop is situated does not fall in the areas covered under the notifications Ex.DW3/A (Colly.) and Ex.DW3/B, and therefore, the courts below have rightly found that the suit premises do not have protection of the Act. This aspect is noted by the trial court in paras 14, 33 and 34 of its judgment and which paras read as under:-

“14. The witness at Sr. No.2 in the application for summoning of witnesses i.e., concerned officer from Ministry of Urban Development (Government of India), Nirman Bhawan, New Delhi was examined as DW3 who has proved the summoned record, i.e., various notifications issued by the Central Govt under proviso to section 1(2) of Delhi Rent Control Act and same are Ex.DW3/A (Colly) & Ex.DW3/B. It has further been deposed by him that no notification other than the notifications Ex.DW3/A & Ex.DW3/B has ever been issued by the Central Government under proviso to section 1(2) of Delhi Rent Control Act, 1958 and as per the notifications Ex.DW3/A (Colly) and Ex.DW3/B, the Delhi Rent Control Act has not been extended to ‘Palam Village’ where the suit property is situated.

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ISSUE NO.2: Whether the suit of the plaintiff is barred under Section 50 of the DRC Act? OPD.

33. Onus to prove the aforesaid issue was upon the defendant. Defendant has failed to lead any evidence in support of his plea that suit of the plaintiff is barred Under Section 50 of DRC Act. According to counsel for the defendant, the area where suit of property is situated has already been notified by Central Government as Urban area vide notification No.F33/Engg/TP(DP)/11424/94 dated 24.10.1994 under Section 507 of DMC Act, 1957 and since rent of suit property is less than Rs.3500/- the tenancy of the defendant is a protected tenancy under Delhi Rent Control Act and hence this court has no jurisdiction to try and entertain the present suit for recovery of possession against defendant. In view of the aforesaid pleadings, admittedly, the area where the suit property is situated was not mentioned in Schedule-I of the Delhi Rent Control Act as on the date of commencement of the aforesaid Act and has been subsequently urbanized under Section 507 of the DMC Act. As such in view of the judgment of Hon'ble

Supreme Court in *Mitter Sen Jain Vs Shakuntala Devi (2000) 9 Supreme Court cases 720*, a further notification under proviso of Section 1 (2) of Delhi Rent Control Act was required so as to make provisions of Delhi Rent Control Act applicable to aforesaid area. It has nowhere been pleaded by the defendant in entire Written Statement that any notification under Section 1 (2) Delhi Rent Control Act has ever been issued by the Central Government with respect to area where suit property is situated. In fact, DW3 Assistant from Ministry of Urban Development i.e defendant's own witness has deposed that no notification with respect to Palam Village has been issued by the Central Government in terms of proviso to Section 1 (2) of Delhi Rent Control Act 1958 till date. Besides, according to him, no notification under proviso of Section 1 (2) of the Delhi Rent Control Act has been issued by Central Government after 26.02.1986. Admittedly, the notification under Section 507 of DMC Act with respect to Palam Village has been issued by the Central Government on 24.10.1994 and the notification under proviso to Section 1 (2) of DRC Act can be issued only after an area is urbanized. Thus, in view of testimony of DW3 it has been established beyond doubt that no notification in terms of proviso of Section 1 (2) of DRC Act has been issued with respect to Palam Village till date. In fact no such notification has been produced by the defendant during trial.

34. It has next been contended by counsel for the defendant in his written submissions that village Palam was earlier part of Revenue Division of Najafgarh which is duly notified under Section 1(2) of Delhi Rent Control Act, as such there is no need for any separate notification for village Palam. The aforesaid contention of Ld counsel for the defendant is clearly contrary to the pleadings of the defendant, nor any material has been placed on record by Ld counsel for the defendant in support of his aforesaid contention. A similar contention with respect to village Dabri which was urbanized vide the same notification dated 24.10.1994 has already been dealt with by Hon'ble Delhi High Court in *Rajpal Singh Vs Deen Dayal Kapil* RSA No.129/2013 decided on 23.01.2014 holding therein that the notifications dated 23.05.1963 and 27.03.1979 had no applicability to the areas urbanised vide notification dated 24.10.1994. Besides, very recently it has been held by Hon'ble Delhi High Court in *Santosh Solanki Vs Dada Dev Mandir Prabandhak Sabha (Barah Gaon) Palam* RSA No.105/2014 decided on 22.04.2014 that no notification under Section 1(2) of DRC Act in respect of Village Palam has been issued by the Government till date. In view of the aforesaid discussions, issue no.2 is decided in favour of the plaintiff and against the defendant.”

(underlining added)

(iii) The first appellate court has in this regard similarly observed in para 19 of its judgment and which para 19 reads as under:-

“19. Learned counsel for the defendant has also argued that the suit filed by the plaintiff was barred under Section 50 of the Delhi Rent Control Act, as the

suit property falls in the area of Palam, being part of Najafgarh Estate where the provisions of Delhi Rent Control Act are applicable. Learned Trial Court has rightly held that defendant has failed to lead any evidence in support of his plea that suit of the plaintiff is barred under Section 50 of the Delhi Rent Control Act. As per the defendant, the area where suit property is situated has already been notified by Central Government as Urban area vide notification No.F33/Engg/TP(DP)/11424/94 dated 24.10.1994 under Section 507 of Delhi Municipal Corporation Act, 1957 and since rent of suit property is less than Rs.3,500/- the tenancy of the defendant is a protected tenancy under Delhi Rent Control Act and hence the learned trial court has no jurisdiction to try and entertain the present suit for recovery of possession against the defendant. The aforesaid pleadings, admittedly, the area where the suit property is situated was not mentioned in Schedule-I of the Delhi Rent Control Act as on the date of commencement of the aforesaid Act and has been subsequently urbanized under Section 507 of the Delhi Municipal Corporation Act, 1957. As such in view of the judgment of Hon'ble Supreme Court in ***Mitter Sen Jain Vs Shakuntala Devi (2000) 9 Supreme Court Cases 720***, a further notification under proviso of Section 1(2) of Delhi Rent Control Act was required so as to make provisions of Delhi Rent Control Act applicable to aforesaid area. It has nowhere been pleaded by the defendant in entire written statement that any notification under Section 1(2) of the Delhi Rent Control Act has ever been issued by the Central Government with respect to area where suit property is situated. DW3 Assistant from Ministry of Urban Development i.e defendant's own witness has deposed that no notification with respect to Palam Village has been issued by the Central Government in terms of proviso to Section 1(2) of the Delhi Rent Control Act 1958 till date. Besides, according to him, no notification under proviso of Section 1(2) of the Delhi Rent Control Act has been issued by the Central Government after 26.02.1986. Admittedly, the notification under Section 507 of Delhi Municipal Corporation Act, 1957 with respect to Palam Village has been issued by the Central Government on 24.10.1994 and the notification under proviso to Section 1(2) of Delhi Rent Control Act can be issued only after an area is urbanized. The learned Trial Court has rightly held that in view of testimony of DW3 it has been established beyond doubt that no notification in terms of proviso of Section 1(2) of Delhi Rent Control Act has been issued with respect to Palam Village till date. No such notification has been produced by the defendant during trial."

7. I may while on this aspect note that tenants of village Palam had formed a society and had filed a writ petition for seeking extension of the Act to the entire village Palam but this writ petition being CW No.4284/2000 titled as ***Palam Area Tenants Association Vs. Union of India & Anr.*** was dismissed by

a Division Bench of this Court vide its Judgment dated 29.7.2003 by making the following observations:-

“This matter is placed before this court as it is stated that it is a Public Interest Litigation. **The main prayer is for issuance of notification extending Delhi Rent Control Act, 1958 to the revenue estate of entire Palam village retrospectively with effect from 03.11.1994, i.e from the date on which the area was declared urbanized.** Such amendment cannot be allowed by this Court. The law is very clear on the subject. The Apex Court in “**Union of India V/s Shree Gajanan Maharaj Sansthan JT 2002 (Suppl. 1) SC 94**” has stated as under:

“This Court observed that no mandamus could be issued to the Executive directing it to commence the operation of the enactment; that such a direction should not be construed as any approval by the Court, of the failure on the part of the Central Government for a long period to bring the provisions of the enactment into force.”

In this view of the matter, this petition is required to be dismissed.

Ordered accordingly.”

(emphasis is mine)

8. The courts below have therefore rightly held that the suit premises would not be governed by the Act and the appellant/defendant/tenant could not have protection of the Act. No substantial question of law will therefore arise with respect to these findings and conclusions of the courts below which are absolutely correct in facts and law.

9(i) The second aspect which is urged on behalf of the appellant/defendant is that the suit has not been correctly filed by the respondent/plaintiff. It is however not in dispute that the respondent/plaintiff/landlord is a society registered under the Societies Registration Act with registration no.S-2660. The argument on behalf of the

appellant is that the person who filed the suit is not the President of the respondent/plaintiff/landlord and therefore the suit is not validly filed.

(ii) In this regard, it is seen that respondent/plaintiff has filed in the court the Resolutions dated 6.5.2012, 20.5.2012 and 16.8.2009, Ex.PW1/2 to Ex.PW1/4 respectively, which show that President Sh. Chander Bhan the President was duly authorized to file the suit. I fail to understand as to how a tenant can in any manner have *locus standi* to question the filing of the suit by the society inasmuch as it is not as if the benefit of the decree for eviction/possession will go to an individual but it will go to the society and it is clarified that decree for possession will be in favour of the society and for the society to take benefit of the same and not any individual person in the society. As per Section 6 of the Societies Registration Act, a legal proceeding can be instituted by the President for the society. The appellant/defendant has no *locus* to question the election in which the President Sh. Chander Bhan was elected. In fact, defences such as the present are totally frivolous defences and are only taken to delay the disposal of the suit filed by a landlord against his tenant who has no defence whatsoever to the suit for possession and mesne profits.

10. In view of the above, no substantial question of law arises for these second appeals to be entertained under Section 100 CPC. It is seen that costs which were granted by the trial court in terms of its judgment totaled to a sum of Rs.1,035/-. First appellate court has not granted any costs to the

respondent/plaintiff. Accordingly each of these appeals is dismissed with costs of Rs.50,000/- for each of the appeals and which costs will be paid by the appellant in each of the three appeals to the respondent/landlord, i.e a total sum of Rs.1.50 lacs will be paid to the respondent/plaintiff, within a period of four weeks.

11. The second appeals are therefore dismissed with costs as stated above.

SEPTEMBER 26 2016
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VALMIKI J. MEHTA, J

