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

+ CM(M) 956/2007

OM PARKASH

..... Petitioner

Through: Mr. R.S. Sahni & Mr. Deep Dhamija,
Advts.

Versus

SURINDER KUMAR (THROUGH LRs)

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 22nd December, 2006 of the Additional Rent Control Tribunal (ARCT), Delhi in RCA No.226/2005 and RCA No.267/2005.
2. The petition was entertained and notice thereof issued.
3. The counsel for the respondent / tenant appeared before this Court on 25th July, 2008.
4. Thereafter the matter was adjourned from time to time.
5. The respondent / tenant Surinder Kumar died during the pendency of this petition and his legal representatives were substituted vide order dated 4th March, 2010 and the counsel who was earlier appearing for the respondent / tenant continued to appear for the legal representatives as well. None has appeared for the respondents on 21st January, 2015, 2nd March, 2015, 19th May, 2015, 13th October, 2015, 2nd February, 2016, 3rd May, 2016, 5th October, 2016, 4th January, 2017 and 27th March, 2017.

6. None appears for the respondent / tenant today also. The respondents are proceeded against *ex parte*.
7. The counsel for the petitioner / landlord has been heard.
8. Though vide order dated 3rd May, 2016, the trial court record was requisitioned but what has been received in pursuance thereto is the record of the ARCT and not of the Additional Rent Controller (ARC).
9. The counsel for the petitioner / landlord has argued i) that the petitioner / landlord instituted a petition for eviction of the deceased / respondent Surinder Kumar from two rooms forming part of property No.10817-XV, Jhandewalan Road, Paharganj, New Delhi under Section 14(1)(a), (d), (j) and (h) of the Delhi Rent Control Act, 1958; ii) the ARC vide order dated 6th April, 2005 allowed the petition for eviction under Section 14(1)(a) and (h) of the Act and dismissed the petition for eviction under Section 14(1)(d) and 14(1)(j) of the Act; iii) that the petitioner / landlord did not challenge the order of the ARC of dismissal of the petition for eviction under Section 14(1)(j) of the Act and which order has attained finality; iv) the petitioner / landlord however preferred an appeal to the ARCT, against the order of dismissal of petition for eviction in so far as under Section 14(1)(d); v) the respondent / tenant also applied against the order of the ARC allowing the petition for eviction under Section 14(1)(a) and (h); vi) the ARCT, vide the impugned common order dated 22nd December, 2006 has upheld the order of eviction under Section 14(1)(a) but reversed the order of the ARC of eviction under Section 14(1)(h) of the Act and maintained the order of the ARC of dismissal of petition for eviction under Section 14(1)(d) of the Act; and, vii) that the respondent / tenant has

complied with the order under Section 15(1) of the Act and thus has availed the benefit of Section 15(2) of the Act.

10. The counsel for the petitioner / landlord has assailed the order of the ARCT insofar as dismissing the petition for eviction under Section 14(1)(d) and (h) of the Act.

11. I have perused the paper book.

12. Though it is not in dispute that the respondent / tenant, in the name of his wife has acquired alternative residence and has along with his family shifted thereto and neither the respondent / tenant nor his family members were residing in the tenancy premises for a period of over six months prior to the institution of the petition for eviction, but the ARCT has dismissed the petition for eviction for the reason of holding that the premises were let out for residential-cum-commercial purposes.

13. I may in this regard notice that though the ARC also dismissed the petition for eviction under Section 14(1)(d) of the Act for the same reason but nevertheless allowed the petition under Section 14(1)(h) of the Act.

14. The counsel for the petitioner / landlord draws attention to the deposition of the respondent / tenant before the ARC where he has *inter alia* deposed as under:

“It is correct that the house at Ramesh Nagar is in my possession but is in the name of my wife. It is correct that the property in dispute was let out by the Custodian to my father for residential purposes. Vol. however since the inception of tenancy commercial activities are being done from the said property. It is wrong to suggest that the suit property was let out purely for residential purposes and that it is still being used for the same purposes.”

15. It is contended that once the respondent / tenant unequivocally admitted that the tenancy premises were let out to the father of the deceased respondent / tenant by the custodian of evacuee property for residential purposes, merely by use of the premises by the respondent / tenant ever since inception of tenancy for residential-cum-commercial activities would not change the purpose of letting.

16. The ARCT in the impugned order has also reasoned that the petitioner / landlord in his deposition in an earlier proceeding when the petitioner / landlord also was a tenant in adjoining premises, had deposed the purpose of letting to be residential-cum-commercial.

17. The counsel for the petitioner / landlord has argued that the ARCT in this regard has wrongly read the evidence in the earlier proceedings. Attention in this regard is invited to para 14 of the impugned order of the ARCT where the relevant deposition of the petitioner / landlord is recorded as under:

“I do not remember whether my statement was recorded in the eviction petition filed by Shri Partapbir Kakkar bearing E. No.79/79. Certified copy of statement recorded in eviction petition No.79/79 shown to the witness on which he identified his signature. The statement is Ex.PW1/R1. The certified copy of W.S. filed in that case is shown to the witness on which he identified his signature at point A. Same is ex.PW1/R2. I do not remember whether in para 4 of the W.S. certified copy of which is Ex.PW1/R2. I have mentioned that premises are residential cum commercial (court observation:- in para 4 in reply on merits of the W.S. it is mentioned that premises were left out for residential cum commercial purposes). It is correct that I obtained commercial license from MCD for the premises in dispute. It is incorrect that premises is still being used for residential cum commercial purposes.”

18. The counsel for the petitioner / landlord has contended that the petitioner / landlord as well as the father of the deceased tenant were both let out the premises by the custodian of evacuee properties for residential purpose, though both had been using it for residential-cum-commercial purpose.

19. Having bestowed consideration to the material on record, I am of the view that a case for interference in exercise of power under Article 227 of the Constitution of India with the order of the ARCT is made out.

20. The ARCT has indeed perversely read the deposition of the deceased respondent / tenant himself and which should have put the matter beyond any pale of controversy. The deceased respondent / tenant clearly distinguished between the purpose for which the premises were let out and the purpose for which they were being used. He deposed that the premises were let out by the custodian for residential purpose but were being used since inception of tenancy for residential-cum-commercial purpose. The use of the premises by the tenant for a purpose other than that for which let out cannot be said to be with the consent of the landlord unless the same is pleaded and proved. There is no plea or evidence to that effect. Moreover as aforesaid, the grant of tenancy was by the custodian of evacuee property and merely from the factum of the custodian of evacuee property, an office under the government, having not objected to use of the premises for commercial purpose also it cannot be inferred that the landlord i.e. the custodian of evacuee property consented to change of purpose of letting.

21. Once the evidence is so read, the conclusion that the grounds of eviction under Section 14(1)(d) and (h) of the Rent Act are made out is inescapable in the light of other admissions and findings.

22. I may at this stage state that though the petitioner / landlord ought to have preferred separate petitions with respect to the order of the ARCT, though common but in separate appeals, but the petition having remained pending in this Court for the last seven years without any objection by the respondent / tenant to the said effect, the said technicality cannot be allowed to defeat the petition.

23. The petition is accordingly allowed. The order dated 22nd December, 2006 of the ARCT in RCA No.226/2005 and RCA No.267/2005 is set aside. Axiomatically, an order of eviction is passed in favour of the petitioner / landlord and against the respondent / tenant with respect to the premises as described in Columns 1,2 and 8 of the petition for eviction and as shown in the site plan proved before the ARC on the grounds besides under Section 14(1)(a) also under Section 14(1)(d) and (h) of the Act.

24. The respondent / tenant having not contested the petition, no costs.

RAJIV SAHAI ENDLAW, J.

JULY 12, 2017

‘gsr’..