

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

% **Date of decision: 11th July, 2017**

+ **CM(M) 294/2012**

SHANTI SWAROOP THROUGH LRS **Petitioner**

Through: Mr. S.S. Panwar, Adv.

Versus

BADRI BHAGAT JHANDEWALA

TEMPLE SOCIETY

.....**Respondent**

Through: Mr. Alok Kumar and MR. Amit
Kumar Singh, Adv.

AND

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CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These petitions, both under Article 227 of the Constitution of India, impugn the common judgment dated 19th September, 2011 of the Rent Control Tribunal (RCT) in two appeals, one preferred by the respondent/landlord and the other by the petitioner/tenant, against the order dated 6th September, 2007 of the Additional Rent Controller (ARC) in a petition filed by the respondent/landlord for eviction of the petitioner/tenant under Section 14(1)(a), (c), (j) & (k) and Section 22 of the Delhi Rent Control Act, 1958.

2. The learned ARC found, (i) the ground of eviction under Section 14(1)(a) to have been made out; (ii) the ground of eviction under Section 14(1)(c) to have been made out; (iii) the ground for eviction under Section 14(1)(j) to have not been made out; and, (iv) the ground of eviction under Section 14(1)(k) to have been given up by the respondent/landlord and the learned ARC did not render any decision on the ground of eviction under Section 22 of the Act.
3. The petitioner/tenant appealed to the RCT against the finding of the ARC of a ground of eviction under Section 14(1)(c) of the Act to have been made out.
4. The respondent/landlord also appealed to the RCT against the dismissal of the petition for eviction under Section 14(1)(j) of the Act and against non-decision on the ground of eviction under Section 22 of the Act.
5. The counsel for the petitioner/tenant, on enquiry, states that pursuant to the ground of eviction under Section 14(1)(a) having been made out, the enquiry into whether the petitioner/tenant had complied with order under Section 15(1) of the Act and is entitled to the relief under Section 14(2) of the Act or not is still pending consideration before the ARC.
6. The RCT, vide the impugned judgment dated 19th September, 2011 has (a) dismissed the appeal of the petitioner/tenant; (b) dismissed the appeal of the respondent/landlord insofar as against the dismissal of the petition for eviction under Section 14(1)(j) of the Act; and, (c) allowed the petition for eviction under Section 22 of the Act.

7. Hence, there is an order of eviction of the petitioner/tenant, besides under Section 14(1)(a), also under Section 14(1)(c) and under Section 22 of the Act and qua which these two petition have been filed.

8. The petitions were entertained and vide *ex-parte* ad-interim order dated 21st October, 2011, the operation of the impugned order stayed. Resultantly, the petitioner since 21st October, 2011 has inspite of the order of eviction against him enjoyed possession of the premises.

9. The counsel for the petitioner/tenant points out that vide order dated 13th March, 2012, in accordance with ***Atma Ram Properties Vs. Federal Motors (P) Ltd.*** (2005) 1 SCC 705, the petitioner/tenant was directed to pay Rs.2,000/- per month instead of the rent earlier being paid of Rs.12/- per month and the petitioner/tenant has complied with the said order.

10. The counsels have been heard.

11. The case of the respondent/landlord is that the petitioner/tenant used the property, let out for residential purposes, for the purposes of manufacture and sale of furniture therefrom.

12. The counsel for the petitioner/tenant has in this regard challenged the finding qua the purpose of letting being residential only. It is contended that according to the petitioner/tenant, the premises were let out for commercial purposes only and hence there was no misuse thereof to attract Section 14(1)(c) of the Act.

13. The ARC, in the judgment dated 6th September, 2007, held (i) that neither the petitioner/tenant nor the respondent/landlord had filed any document regarding the purpose of letting and thus the issue of purpose of letting had to be decided on the basis of the evidence led in the Court;

(ii) that the witness of the respondent/landlord had deposed that the premises were let out only for residential purpose; (iii) that the petitioner/tenant in spite of opportunity did not lead any evidence; (iv) that there was thus no evidence on behalf of the petitioner/tenant of the purpose of letting being commercial; (v) that the suggestions put by the counsel for the petitioner/tenant to the witness of the respondent/landlord in this regard were denied by the witness and were not available; (vi) that in these circumstances, according to law of probability, the purpose of letting stood proved as residential.

14. The counsel for the petitioner/tenant has argued that the petitioner/tenant had produced before the ARC a rent receipt claimed to have been issued by the respondent/landlord and as per which the purpose of letting was commercial.

15. I have however enquired from the counsel for the petitioner/tenant, whether the said rent receipt produced by the petitioner/tenant was admitted by the witness of the respondent/landlord in cross-examination; else, the petitioner/tenant having not led any evidence, the said rent receipt could not have been proved.

16. The counsel for the petitioner/tenant states that the rent receipt was not admitted by the witness of the respondent/landlord. He however states that the respondent/landlord had itself produced a counterfoil of the rent receipt, though in their evidence, the respondent/landlord did not prove the same.

17. I have put it to the counsel for the petitioner/tenant that even if the respondent/landlord had not proved the document produced by it, such document could always be read against the respondent/landlord.

18. The counsel for the petitioner/tenant has then drawn my attention to a copy of the said counterfoil at page 174 of the paper book in both petitions and therefrom states that the same is identical to the rent receipt produced by the petitioner/tenant which though remained to be proved and though does not mention the purpose of letting but shows the premises let out as land admeasuring 12 sq. yds. He states that the construction on the land as existing was made by the petitioner/tenant / their predecessor-in-interest.

19. I have enquired from the counsel for the petitioner/tenant that if it is the plea of the petitioner/tenant that the letting was of land and not of construction thereon then in any case, the provisions of the Delhi Rent Control Act would not apply and the petitioner/tenant would not enjoy the protection from eviction under the Act and the petitioner/tenant would be liable to be dispossessed from the premises on termination of tenancy and which tenancy already stands terminated by institution of the petition for eviction.

20. The counsel for the petitioner/tenant cannot rebut the aforesaid situation.

21. Once such is the stand of the petitioner/tenant, the petitioner/tenant is not entitled to any protection from eviction under the Delhi Rent Control Act and these petitions preferred (after the deletion of the provision of second appeal which earlier existed under the Rent Control Act) in exercise of the discretionary jurisdiction under Article 227 of the Constitution, are liable to be dismissed on this ground alone.

22. The counsel for the respondent/landlord states that the eviction proceedings before the ARC were instituted 32 years and two months ago and the petitioner/tenant, once admittedly does not have protection from eviction under the Act, is not entitled to perpetuate his possession of the premises any longer.

23. Be that as it may, it is deemed appropriate to adjudicate on merits also.

24. The RCT, in the impugned judgment has held that the approach of the ARC qua the purpose of letting did not require any interference when the petitioner/tenant had failed to lead any evidence. The RCT has further added that vacant land could not have been let out for commercial purposes.

25. No ground to interfere with the concurrent factual findings of the ARC and the RCT constituted under the Act to determine, whether a ground of eviction stipulated in the Act exists or not, is made out. Similarly, no ground for interference, in exercise of jurisdiction under Article 227 of the Constitution of India, with the concurrent factual findings of the purpose of letting, is made out. Suffice it is to state that the reasoning given is in consonance with the material on record.

26. No other ground challenging the finding of the petitioner/tenant being liable to be evicted under Section 14(1)(c) of the Act has been urged.

27. Thus, the petition insofar as impugning the order of the RCT upholding the order of eviction of the petitioner/tenant under Section 14(1)(c) of the Act is dismissed.

28. The counsel for the petitioner/tenant has also argued that as per the counterfoil of the rent receipt aforesaid, only 12 sq. yds. of the land was let out to the petitioner/tenant. He states that the petitioner/tenant is now in possession of 65 sq. yds. of land and in pursuance to the order eviction, cannot be evicted from the remaining land in his possession, besides 12 sq. yds.

29. The counsel for the respondent/landlord states that no such defence has been taken in the written statement filed by the petitioner/tenant.

30. The respondent/landlord in the present case is Badri Bhagat Jhandewalan Temple Society, Jhandewalan Temple, Desh Bandu Gupta Road, New Delhi. Being a resident of Delhi, I can record that the Jhandewalan Temple at Desh Bandu Gupta Road, New Delhi is spread over a large parcel of land. From the address of the tenancy premises, it appears that the tenancy premises are within the said parcel of land.

31. I have thus enquired from the counsel for the petitioner/tenant, whether the remaining land besides 12 sq. yds. of which the petitioner/tenant claims to be in possession of, is within the Jhandewalan Temple estate or outside the Jhandewalan Temple estate.

32. The counsel for the petitioner/tenant states that the entire land in possession of the petitioner/tenant is within the Jhandewalan Temple estate.

33. I have further enquired from the counsel for the petitioner/tenant, whether the petitioner/tenant was in possession of the remaining land claimed to be in his possession, since before taking the 12 sq. yds. on rent.

34. No answer has been forthcoming.

35. Even if the petitioner/tenant, after taking 12 sq. yds. of land on lease from the respondent/landlord has encroached upon adjoining land, also belonging to the respondent/landlord, the respondent/landlord cannot be compelled to institute separate proceedings for recovery of possession of the remaining land so encroached upon by the petitioner/tenant and the petitioner/tenant would be liable to be evicted from the entire land in his possession pursuant to the order of eviction impugned herein. Reference in this regard may be made to Section 108 (d) of Transfer of Property Act, 1882 and to ***Chapsibhai Dhanjibhai Danad Vs. Purushottam*** (1971) 2 SCC 205, ***Bhupinder Kalra Vs. Paramjit Kaur*** 2016 SCC OnLine Del. 5389 and ***Kailash Devi Vs. Brij Pal Manocha*** 2014 SCC OnLine Del. 7109.

36. Qua the order of eviction passed against the petitioner/tenant under Section 22 of the Act, two arguments have been urged. Firstly, it is argued that Section 22 of the Act was not attracted or applicable to the respondent/landlord. Secondly, it is contended that the RCT has decided the ground under Section 22 “*suo moto*”.

37. On enquiry, as to what is meant by the RCT having decided the ground of eviction under Section 22 of the Act ‘*suo moto*’, it is stated that the grievance of the respondent/landlord was of the ARC having not rendered any finding on the ground of eviction urged by the respondent/landlord under Section 22; that if the RCT found any merit in the said plea, it could have at best remanded the matter to the ARC for decision on the ground of eviction under Section 22 and could not have proceeded to decide the said ground itself.

38. I have enquired from the counsel for the petitioner/tenant, whether not the principles as enshrined in Order 41 Rule 24 of the Code of Civil Procedure, 1908 (CPC) providing that where the evidence on record is sufficient, Appellate Court may determine the case finally, would be applicable to the proceedings under the Act also. Supreme Court in ***Bachahan Devi Vs. Nagar Nigam, Gorakhpur*** (2008) 12 SCC 372 held that it is not always mandatory for the Appellate Court to remand the suit when the Trial Court has failed to render findings on any of the issues. Mention in this regard may also be made of Rule 23 of the Delhi Rent Control Rules, 1959 which provides that in deciding any question relating to procedure not specifically provided by the Act, the Controller and the Tribunal shall as far as possible be guided by the provisions contained in the CPC. There is no provision in the Act or the Rules contrary to Order 41 Rule 24 of CPC and thus there is no merit in the ground of the RCT having decided the petition for eviction under Section 22 “*suo moto*”.

39. Insofar as the first argument is concerned, the counsel for the petitioner/tenant has drawn attention to the Explanation to Section 22 of the Act.

40. It is deemed appropriate to herein below set out Section 22 of the Act in entirety:

“22. Special provision for recovery of possession in certain cases—Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance of its activities, then, notwithstanding anything

contained in section 14 or any other law, the Controller may, on an application made to him in this behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied—

- (a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or*
- (b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or*
- (c) that any other person is in unauthorised occupation of such premises; or*
- (d) that the premises are required bona fide by the public institution for the furtherance of its activities.*

Explanation—For the purposes of this section, “public institution” includes any educational institution, library, hospital and charitable dispensary but does not include any such institution set up by any private trust.”

41. The contention of the counsel for the petitioner/tenant is that Clause 22(d) was not applicable to the respondent/landlord because the respondent/landlord is not a public institution, being a private trust. He has in this regard referred to ***Birdhi Chand Jain Charitable Trust Vs. Kanhaiya Lal Sham Lal*** 1972 SCC OnLine Del 222.

42. The counsel for the respondent/landlord had drawn attention to page 129 of the paper book of CM(M) No.294/2012, being a copy of the Memorandum of Association of the respondent/landlord registered as a society under the Societies Registration Act, 1860 and which is stated to have been proved before the ARC as PW-1/2. As per the said

Memorandum of Association, the respondent/landlord society is a charitable society with the object *inter alia* of starting and operating a library, reading room of religious books and for use of the public. The counsel for the respondent/landlord thus controverts the submission of the counsel for the petitioner/tenant that the respondent/landlord is a private trust.

43. The counsel for the petitioner/tenant has drawn attention to head note (i) of ***Birdhi Chand Jain Charitable Trust*** supra. The said head note refers to the top paragraph on page 148 of the judgment, relevant portion whereof is as under:

*“A trust is primarily a legal concept, a mode of transfer of property and of holding property. On the other hand, an institution is primarily a social concept. It is not a legal concept at all. For, there is established legal method by which an institution may come into being. It may be established by way of an organisation which may assume any or no legal form. It may be a trust or a company or a statutory corporation or a mere unincorporated association or a society registered or otherwise. It is its work and place in the society that is the hall-mark of an institution. As observed by Lord Macnaghten in **Mayor, Etc. of Manchester V. Mcadam**, 3 Tax Cases 491 at 497, “it is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle.” In the present case, the founders of the trust may have transferred their property to a charitable purpose and thus created a public trust. But the body to translate the trust into a living and active principle has not yet come into existence. It is that body which will be entitled to be called an institution. It is not a mere legal arrangement like a trust but an active working body with a social impact which can be called an institution.”*

44. It thus appears that Birdhi Chand Jain Charitable Trust which had instituted the petition for eviction in the cited judgment had not come into existence and was not an active working body with a social impact which could be called an institution. It is not the plea of the petitioner/tenant that the respondent/landlord society has not come into existence or is not carrying on any activity for public purpose.

45. The counsel for the respondent/landlord has in this regard also drawn attention to the second paragraph on page 149 of the said judgment where the *bona fides* of the trustees of Birdhi Chand Jain Charitable Trust were been found to be doubtful. That is also not a plea in the present case.

46. A Constitution Bench of Supreme Court, in ***Mahant Shri Srinivas Ramanuj Das Vs. Surjanarayan Das*** AIR 1967 SC 256 held that the distinction between a public trust and a private trust, broadly speaking is, that in a public trust the beneficiaries of the trust are people in general or some section of the people, while in the case of a private trust, the beneficiaries are an ascertained body of persons. The beneficiaries of a “*math*”, though members of a fraternity and of the faith of which the spiritual head of the *math* belongs, were held to constitute at least a section of the public and the *maths* in general were consequently held to be ‘public’ in character and an ‘institution’ within the meaning of the Orissa Hindu Religious Endowments Act, 1939.

47. Thus, no merit is found also in the challenge to the eviction order under Section 22 of the Act.

48. Resultantly, both petitions are dismissed with costs payable to the counsel for the respondent/landlord of Rs.50,000/- in each of the petitions. The costs shall be recoverable from the personal assets of the petitioner/tenant.

RAJIV SAHAI ENDLAW, J.

JULY 11, 2017

Bs.

