

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

+ **RSA No.239/2017**

% **9th October, 2017**

TULSI DASS AHUJA (SINCE DECEASED) THROUGH HIS LRS
& ANR. Appellants

Through: Mr. D.K. Rustagi, Advocate with
Mr. Mayank Rustagi, Advocate and
Mr. Kapil Gulati, Advocate.

versus

CHATTAR SINGH (SINCE DECEASED) THROUGH HIS LRS &
ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. No.36056/2017 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

RSA No.239/2017 and C.M. No.36055/2017 (stay)

2. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the legal heirs of the one defendant and by the second defendant in the suit i.e effectively the appeal is filed by the two defendants in the suit. The

appellants/defendants impugn the concurrent judgments of the courts below; of the Trial Court dated 16.4.2013 and the First Appellate Court dated 31.5.2017; by which the courts below have decreed the suit for possession and *mesne* profits filed by the predecessors-in-interest of the respondents, and who were the two plaintiffs in the suit. The operative portion of the judgment of the trial court decreeing the suit reads as under:-

“

RELIEF

In light of the findings on various issues above, the present suit of the plaintiffs is decreed in the following manner:-

1. Plaintiffs are entitled to the decree of possession against the defendants in respect of land measuring 5 biswas situated in Khasra No.1314/628/340 at Village Sadohra Khurd Saria Rohilla, Double Phatak, Guru Gobind Singh Marg, New Delhi-05 as shown red color in the site plan.
 2. Plaintiffs are also entitled for mandatory injunction against the defendants with directions to the defendants to remove all their belongings including the entire structure existing on the land as mentioned above within two months from the date of this judgment.
 3. Plaintiffs are also entitled to decree for a sum of Rs.900/- against the defendants towards rent for the period 01.06.88 to 31.05.1991.
 4. Plaintiffs are also entitled to a decree for an amount towards use and occupation against the defendants calculated @ 25/- (twenty-five) per month w.e.f. 01.06.91 till the date of recovery of possession by the plaintiffs.
 5. Plaintiffs are also entitled to the costs of the suit.
- Decree sheet be prepared accordingly. It is here made clear that the decree towards recovery of amount for use and occupation charges shall not be executable unless the deficient Court fees, if any, is deposited by the plaintiffs.”

3. Whereas the case of the respondents/plaintiffs was that what was let out to the appellants/defendants was only land and not a

constructed premises, the case of the appellants/defendants was that what was let out to them was not land but was land along with four constructed rooms and one additional room being thereafter constructed on the suit premises by the appellants/defendants with the consent of the respondents/plaintiffs. The issue turns upon Section 50 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') and which states that a civil court will not entertain a suit for possession if the tenancy is a tenancy which is covered under the Act. As per Section 2(i) of the Act, premises means any building or a part of building i.e for a premises to be premises within the Act what must be let out is a building or a part of building. Putting it in other words if what is let out is only land or land with some temporary construction, then what is let out is not 'premises' for the tenant to get protection under the Act. Similarly a tenant does not get protection of the Act if what is let out is land and the tenant is given permission to construct upon the land.

4. I have recently had an occasion to deal with this aspect in the judgment in the case of *Elcee Plastic Industries & Ors. Vs. Harkishan Dass (since deceased) through its LRs* in RSA

No.228/2017 decided on 20.9.2017. I have by referring to the provision of Section 2(i) of the Act held that a tenant will not have protection of the Act if what is let out is not a building or part of the building. The relevant paras of the judgment of the *Elcee Plastic*

Industries & Ors are paras 4 and 5, and which paras read as under:-

“4. The Delhi Rent Control Act applies to ‘premises’. Premises are defined under Section 2(i) of the Delhi Rent Control Act, which Section reads as under:-

“**Section 2(i)** "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes.-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or par of the building;

but does not include a room in a hotel or lodging house;”

5. A reading of the definition of premises under Section 2(i) of the Delhi Rent Control Act leaves no manner of doubt that the premises has to be a building or part of a building. Putting it in other words, if what is let out is only land and not building, the tenanted premises being land will not be a premises which will have benefit of protection under the Delhi Rent Control Act. This is clear from even a cursory reading of a definition of premises and therefore I need not refer to a catena of judgments on the point that the Delhi Rent Control Act only applies when what is let out are premises under Section 2(i) of the said Act and not where only land is let out or land is let out with a temporary structure only.”

5. It is not disputed before this Court that this Court has to only examine one issue that if what was let out was only land then the appellants’ objection under Section 50 of the Act would not be sustainable but if what was let out to the appellants/defendants was land alongwith constructed premises of four rooms, then, the

appellants/defendants would have the benefit and protection of Section 50 of the Act. As regards this aspect trial court has framed issue no.2 as to whether the suit was barred by Section 50 of the Act. Both the courts below have held by relying upon two documents being jamabandi and khasra girdawri, Ex.PW2/1 and Ex.PW3/1, that there was no construction which existed when the premises were let out in December, 1947. In the documents Ex.PW2/1 (jamabandi i.e record of rights of the year 1947-48) and Ex.PW3/1 (Khasra girdawri of yearly record of cultivation and possession of the years 1952-59) there is no mention of any construction existing. The case of DW-1/son of the original defendant was that he was 6-7 years old in December, 1947 when the property was let out, and that being so, he would have no personal knowledge of letting out. Therefore once the suit property is let out in December, 1947 and documentation of subsequent years after letting out, being unimpeachable documents of the revenue record, shows that no construction was shown to exist on the suit property, in my opinion, the courts below have rightly arrived at a conclusion that what was let out was only land and not a constructed premises. No substantial question of law arises under Section 100

CPC for this appeal to be entertained once the view which is taken by the courts below is based upon the evidence which was led before the trial court, and more so such evidence being unimpeachable documentary evidence of revenue record being jamabandi and khasra girdwari.

6. Counsel for the appellants/defendants very vehemently argued that it was admitted by PW-1/Sh. Chattar Singh in his cross-examination on 14.8.1997 that a rent agreement was entered into and that since this rent agreement has not been filed by the respondents/plaintiffs, hence an adverse inference must be drawn against the respondents/plaintiffs and it should be held that what was let out was not a land but land with four constructed rooms. The relevant portion of the cross-examination relied upon by the appellants/defendants of the cross-examination of PW-1 reads as under:-

“xxxx by the counsel for defendant No.2 Sh. V.M. Issar Adv.

It was an ancestral land which belongs to my forefather. The ancestrals were Suraj Mal and Kalu Mal. Suraj Mal is survived by two sons Raghu Nath and myself. Kalu Mal had married but died issueless. The suit premises was let out in June, 1992 by myself and Raghu Nath. The tenancy was created by written agreement but I am not in possession of the same. The said agreement was signed by me and my brother Raghu Nath. Kalu Mal had also thumb marked the said agreement. It was got written by deed writer at the suit premises itself. Dwarka Dass was also present probably his

father was also there. It was unregistered agreement. The said agreement was in possession of my brother Raghu Nath who died. I do not have any copy of the same. I do not know anything about the whereabouts of the said agreement. I had informed my counsel that this tenancy was created by a written agreement. No specific purpose of letting was agreed, Dwarka Dass started manufacturing lime stone there. At the time of letting neither I asked for what purpose the premises will be used nor he told me. It is wrong to suggest that the premises in dispute was let out for manufacturing mine or that it was so written in the agreement. There was no construction. It is wrong to suggest that the tenanted premises comprising of four rooms, a shed and open courtyard. It is wrong to suggest that rent agreement is in my possession and I am intentionally not producing the same as it clearly described the suit premises with built up room and purpose of letting as manufacturing.” (underlining added)

7. I cannot agree with the argument urged on behalf of the appellants/defendants as no doubt the law is that an adverse inference must be drawn against a person who deliberately refuses to produce a document, but before an adverse inference is to be drawn, it must be shown that a person against whom such adverse inference has to be drawn definitely has possession of the relevant document and deliberately he is not producing the same, however, in the aforesaid cross-examination Sh. Chattar Singh has deposed that he was not in possession of the document being the rent agreement. Therefore no adverse inference can be drawn as argued by the appellants/defendants. Equally importantly what is required to be noticed is that the rent agreement if it had contained details of letting out of four rooms, then, surely for now around seven decades i.e from

the year 1947 till today in the year 2017, such construction would have definitely been shown in the property tax record of the local Municipal Corporation of Delhi and the appellants/defendants could have led evidence to show that construction is found to exist on the suit property in the municipal records and the same is being subject to the property tax on a constructed building, but admittedly the appellants/defendants have led no evidence of the municipal records showing that there was a constructed property and the same was subject to property tax. Therefore in my opinion in the facts of the present case no substantial question of law arises under Section 100 CPC once on the basis of evidence which is led in the trial court, and which is in fact documentary evidence Ex.PW2/1 and Ex.PW3/1, courts below were entitled to take and have taken one possible and plausible view that what was let out was not constructed premises but land. The first argument of the appellants/defendants is therefore rejected.

8.(i) The second argument which is urged on behalf of the appellants/defendants is that the suit ought not to have been decreed because in the site plan which is filed and exhibited by the

respondents/plaintiffs as Ex.PW1/1 no dimensions of the suit property are given. What is argued is that once there is vagueness with respect to the description of the property, the suit could not have been decreed for an immovable property.

(ii) In my opinion even the second argument urged on behalf of the appellants/defendants carries no substance for various reasons. The first reason is that though the appellants/defendants had taken a plea with respect to the description of the suit property being vague as per the written statement filed, however, the appellants/defendants in law are taken to have waived such an objection because no such specific issue was got framed by the appellants/defendants before the trial court that the suit is not maintainable on account of vague description of the suit property. Merely because some question is put in cross-examination to the witness PW-1 of the respondents/plaintiffs that the description of the property is vague will not help the appellants/defendants because no amount of evidence can be looked upon on the plea which is not put forth and reduced in the form of an issue. The object of putting forth a factual plea, and an issue on the same being framed, is to give notice of the same to the other party and

if this factual issue was taken then the respondents/plaintiffs could well have rectified any shortcomings in the site plan and therefore in my opinion the appellants/defendants cannot be allowed to raise this argument of vagueness in the description of the suit property.

(iii) In any case the fact of the matter is that the respondents/plaintiffs are owners of five biswas of the land situated in Khasra no.1314/628/340 of village Sadohra Khurd Sarai Rohilla, New Delhi and therefore once possession will be taken by the respondents/plaintiffs in execution proceedings, then, the executing court will get execution proceedings of possession done through the local revenue officials whereby only the five biswas of the suit land in Khasra no.1314/628/340 of the respondents/plaintiffs is given back to the respondents/plaintiffs. I would also like to add that it is not the case of the appellants/defendants that there is any doubt as to the identification of the suit land of which they are tenants inasmuch as tenancy is undoubtedly of the five biswas of land situated in Khasra no.1314/628/340 of the village Sadohra Khurd Sarai Rohilla and the trial court in the operative part of the judgment has given clear directions as to which is the suit land of which decree of possession

has been passed. The second argument of the appellants/defendants is also therefore rejected.

9.(i) The third and the last argument urged on behalf of the appellants/defendants was that the suit land was situated in a slum area and once the suit land is situated in a slum area then by virtue of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as the 'Slum Act') the suit could not lie in the civil court unless permission was first taken of the competent authority under the Slum Act.

(ii) Even this argument urged on behalf of the appellants/defendants lacks substance because the first appellate court has rightly relied upon a judgment passed by this Court in the case of *Shri Chiraguddin Vs. Smt. Urmila Rani & Ors. 213 (2014) DLT 699* and which holds that unless objection as to lack of permission required under Section 19 of the Slum Act is taken at the very first opportunity in the trial court, such objection has to be taken to be waived. This was so held by this Court because if the objection is taken at the first opportunity then the landlord does not prejudicially suffer the continuation of the legal proceedings for the entire period of the proceedings in the trial court if

the objection was taken the suit would have been withdrawn at the initial stage itself for taking permission under Section 19 of the Slum Act. Consequently it has to be held that the bar of Section 19 of the Slum Act is waivable and was waived as the appellants/defendants did not take up this defence in the trial court.

10.(i) Learned counsel for the appellants/defendants very vehemently argued that the judgment in the case of ***Chiraguddin (supra)*** has no application to the facts of the present case because the first appellate court in fact because of an application filed before it with respect to the bar of the suit under Section 19 of the Slum Act permitted parties to lead evidence and therefore in the facts of the present case the judgment of ***Chiraguddin (supra)*** will not apply because the evidence has in fact been led by the parties and therefore it cannot be held that the appellants/defendants had waived the objection.

(ii) I cannot however agree with the argument urged on behalf of the appellants/defendants because no doubt evidence was led with respect to the property falling or not falling within the Slum Act before the first appellate court, but that evidence was led before the

first appellate court and no such defence was taken or issue raised by the appellants/defendants in terms of Section 19 of the Slum Act before the trial court. The ratio of the judgment passed by this Court in the case of *Chiraguddin (supra)* therefore clearly applies and the first appellate court has rightly dealt with this issue in paras 13 to 15 of its judgment and which paras reads as under:-

“13. Ld Predecessor of this court by order dated 6.4.15 however dismissed the application of the appellants on the ground that since such plea of bar U/s 19 of the Slum Area Improvement & Clearance Act 1956 was not taken during the whole trial of the suit which lasted for about 22 years since its institution, Ld. Predecessor of this court while relying upon the judgment of Hon’ble High Court in **Chiraguddin V. Urmila Rani 213(2014)DLT699**, held that since in judgment Hon’ble High Court has also held that plea of bar of Section 19 of the Slum Area Improvement & Clearance Act 1956 if taken at the belated stage of the proceedings would tantamount to waiver of such plea and cannot be entertained. Ld. Predecessor of this court on such reasoning thus dismissed the application of the appellants by order dt.6.4.15.

14. Such order dt. 6.4.15 of the Predecessor of this court was challenged by filing CM(M) No.651/15 by appellants before Hon’ble High Court. Such petition was disposed off by order dated 14.3.2016 by Hon’ble High Court with the observations that since the issue relating to applicability of Act 1956 is an open issue left, same therefore shall be decided by the Appellate Court with the appeal. In such manner, issue relating to bar of Section 19 of the Slum Area Improvement & Clearance Act 1956 was kept open to be decided with the present appeal.

15. I have heard counsels for the parties and has gone through the record including the trial court. I have also gone through the written arguments filed on behalf of the appellants as well as respondents. While I take up first this issue of Section 19 of Slum Area (Improvement & Clearance) Act, question for consideration is whether plea under the above said provision for taking prior permission before institution of the suit, could be taken even at the appellate stage or not. In this regard, I may again refer to judgment in **Chiraguddin Vs. Urmila Rani & Ors. 213 (2014) DLT 699**, Single judge bench of Hon’ble Delhi High Court, wherein in more or less similar situation, considering the scope of section 19 of Slum Area

(Improvement and Clearance) Act, 1956, it was observed in Para 10 & 11 of Judgment as

“I may note that if the argument which is urged on behalf of the petitioner with respect to non-maintainability of the petition under section 14(1)(a) of the act is accepted on the ground that there was no jurisdiction of the Additional Rent Controller to pass the judgment decreeing the petition under Section 14(1)(a) of the Act, the same would create a very peculiar position because it is perfectly possible that an eviction petition may be decreed right till the Supreme Court and thereafter in execution proceedings an objection would be taken with respect to the fact that the eviction petition itself was not maintainable in view of the fact that the premises are situated in a slum area and permission of the slum authority was not taken under Section 19 of the Slum Act. To accept such an argument would mean grave harassment of the landlady in allowing a tenant to plead the rights which were waived by him i.e the tenant will be allowed to plead non-existence of jurisdiction although such an issue is an issue of a right which can be waived, and was in fact waived by not raising the same. After many years of litigation in which the landlady is successful in obtaining an eviction order, to argue that the entire proceedings for eviction must fail cannot be accepted. I cannot subscribe to such a view in view of the categorical ratio of the judgment of the Supreme Court in the case of *Martin and Harris Ltd.* (supra). In Para 14 of the judgment in the case of *Martin and Harris Ltd.* (supra) Supreme Court has applied the principle of estoppels in a case having facts such as the present because if objection under Section 19 of the Slum Act was taken in the written statement, the landlords would have simply withdrawn the petition at that stage and sought permission under Section 19 of the Slum Act. Thus landlords having changed their position to their detriment by pursuing the eviction petition for a longer period of time (at least eight years), petitioner is estopped from raising the issue of maintainability only before the first appellate court. It is an extremely important aspect to note that ‘slum area’ is now only a mere nomenclature because really there are no slums and there is no slum area except that an area in the old Delhi, popularly known as walled city of Delhi, has been categorized as a ‘slum area’ under the Slum Act although in fact and reality the entire walled city of Delhi/old Delhi is totally built-up area and therein exist some of the most valuable immovable properties; both commercial and residential; in Delhi. Actually Slum Act was passed in the year 1956 as per the situation then prevailing but today in the year 2014 really there are no slums but only huge costly buildings, both commercial and residential though technically they continue to be labeled as a ‘slum area’.”

11. In my opinion in any case the argument urged on behalf of the appellants/defendants of the suit being barred under Section 19 of the Slum Act, even if appellants/defendants are permitted to raise this defence and that this plea was not waived by the appellants/defendants, yet, the issue is covered against the appellants/defendants in terms of the Full Bench judgment of this Court in the case of ***Punnu Ram and Others Vs. Chiranji Lal Gupta and Others AIR 1982 Delhi 431*** which holds that protection contemplated under the Slum Act is for a tenant as recognized by law and a mere occupier i.e illegal occupant/trespasser cannot be equated to a tenant. An occupier can be a trespasser or a licensee or a tenant, and if an occupier is a trespasser then the concept of welfare state cannot extend to giving protection to the trespasser or persons who have no right of occupation under Section 19 of the Slum Act. I have had an occasion to consider this aspect in the judgment in the case of ***Vijay Kumar Sharma Vs. Manoj Kumar Garg*** in RSA No.179/2016 decided on 20.7.2016 wherein I have accordingly applied the ratio of the Full Bench judgment in the case of ***Punnu Ram (supra)*** and held that the benefit of Section 19 of the Slum Act is only available to a

tenant and not to a trespasser or a licensee. The relevant paras of the judgment in the case of *Vijay Kumar Sharma (supra)* is para 5 and this para reads as under:-

“5. Before adverting to the contentions urged on behalf of the appellant, I may note that possibly the understanding of the respondent/plaintiff/landlord that permission was required of the slum authority for eviction of the appellant/tenant is based upon a wrong understanding of law inasmuch as permission under Section 19 of the Slum Act is required with respect to a tenant and not a trespasser. Once the appellant/defendant was a tenant at a rent of Rs.8,000/- per month and was not having protection under the Delhi Rent Control Act as per the case of the respondent/landlord as his tenancy was terminated by efflux of time, as against such a person being the appellant/defendant who continued in possession in spite of expiry of lease by efflux of time, such continuation in possession is as a trespasser and as against an illegal occupant/trespasser no prior permission was required of the slum authority under the Slum Act as held by a Full Bench judgment of this Court in the case of *Punnu Ram and Others Vs. Chiranji Lal Gupta and Others AIR 1982 Delhi 431*. Para 27 of the judgment is relevant and the same reads as under:-

“27. This brings us to the consideration of a few other aspects agitated at the Bar. Sub-section (3) of Section 19 of the Act postulates grant or refusal of the permission to institute any suit or proceedings for obtaining a decree or order for eviction of a tenant or where any decree or order is obtained in any suit or proceedings instituted before the commencement of the Act for eviction of a tenant from any building or land in an area declared as a slum area. The question that arises for consideration is what is the meaning of the term “tenant”. As noticed earlier, this term is not defined by the Act. Mr. Narula submits that tenant contemplated by Section 19 is a person in occupation or a person likely to be evicted, if permission is granted to institute eviction proceedings or execute an order of eviction. We do not agree. The protection contemplated is for a tenant as recognized by law. A mere occupier cannot be equated to a tenant. An occupier may be a trespasser or a licensee or a tenant. The concept of welfare State cannot extend to giving protection to the trespassers or persons who have no right of occupation. Therefore, when the Legislature used the term ‘tenant’ in Section 19 as well as in the Preamble of the Act it meant tenant-in-law”

(underlining added)

12. I would also like to note that an SLP was filed against the aforesaid judgment dated 20.7.2016 in the case of ***Vijay Kumar Sharma (supra)*** and that SLP being SLP (C) No. 27944/2016 has been dismissed by the Supreme Court vide order dated 30.9.2016.

13. In the present case once the tenancy of the appellants/defendants of the suit property being land stood terminated, the status of the appellants/defendants was not of a tenant or licensee. The status of the appellants/defendants after termination of tenancy became that of an illegal occupier of the suit property and therefore in view of the ratio of the judgment in the case of ***Punnu Ram (supra)*** the appellants/defendants even if they would have taken the plea under Section 19 of the Slum Act yet such a defence would not have been successful. Therefore the last argument urged on behalf of the appellants/defendants is also rejected.

14. No substantial question of law arises. Dismissed.

OCTOBER 09, 2017
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VALMIKI J. MEHTA, J