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

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Judgment delivered on: 05.03.2018

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RSA 56/2017

SAYADA BEGUM

..... Appellant

Through: Mr. Raman Kapur, Senior Advocate
with Mr. F. Hasan and Mr. Farooq Chaudhry,
Advs.
Versus

QAISAR DAD KHAN

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This second appeal impugns an order dated 14.10.2016 of the First Appellate Court in RCA no. 76/2016 which set aside the decree granted in favour of the appellant in her suit for eviction of the respondent from an area forming part of village Ghonda Chauhan Bangar in north-east Delhi. At the first appellate stage, the respondent had argued that the suit area being “urbanised” and forming part of Seelampur Revenue District was covered under the Delhi Rent Control Act, therefore, the Civil Judge could not have adjudicated upon the suit. The evidence considered by the first Appellate Court was a statement of the Kanoongo (from the office of the SDM of the area). However, a perusal of his testimony would show that he did not bring or produce or allude to any notification under section 507 of the Delhi Municipal Corporation (DMC) Act, 1957; nor to a notification extending coverage of the Delhi Rent Control (DRC) Act, 1958 over the suit property.

The impugned order considered the testimony on behalf of the defendant according to which the entire area of Seelampur Sub Division was declared “urbanised” in view of the Notification dated 28.05.1966 no. F.9 (2)/66-Law. Corp. dt. 28.05.1966, which was on record. Especially, in Clause (c) of the notification dt. 25.03.1979 of the Government of India, Ministry of Works and Housing which is Ex. DW-3/1, the Central Government extended all the provisions of DRC Act, 1958 to-

(c) to the localities mentioned in the Schedule to the notification of the Municipal Corporation of Delhi No. F.9(2)/66-Law. Corp., dated the 28th May, 1966 (copy enclosed as Annexure 'C') published in Part IV of the Delhi Gazette no. 41, dated the 3rd June, 1966 and which by virtue of that notification have formed part of the urban areas within the limits of the Municipal Corporation of Delhi.” (emphasis supplied)

2. What is to be considered is: Whether as per Clause (c) aforementioned, the municipal area in which the suit property was situate, had been urbanised. The process of urbanisation from a rural to urban area in Delhi is an established procedure, resulting in publication of a Notification under section 507 of the DMC Act. The statement of the SDM concerned, Ex. DW2/1, shows that of the 7 villages in Seelampur only four had been urbanised; he admitted that apropos village Ghonda Chauhan Bangar, he could not produce any information under section 507 of the DMC Act or any record or notification extending applicability of the Delhi

Rent Control Act to the said village. Furthermore, the Kanoongo from the office of SDM stated that he could not produce a notification under section 507 of the DMC Act for the aforesaid Sub Division.

3. The appellant/plaintiff had proceeded for the eviction of the respondent in her civil suit because the DRC Act had not been extended to the village/area where the premises were located. Indeed, she had no option. What she had to do was to contend that the DRC Act was not applicable to the suit property because there was no requisite notification in this regard. Apart from stating the non-existence of any such notification, she could not have done more. A void, a negative, a non-existence cannot be proven.

4. A plea of change in status of land from rural to urban or coverage of an area under a specific law is to be supported by documents, records and the requisite notification under the relevant statute. Mere assertion is not enough. Therefore, when the respondent had asserted that the area had been urbanised under the DMC Act and the Delhi Rent Control Act extending to the village Ghonda Chauhan Bangar in which the suit premises is situated, the evidence i.e. official records should have been produced by them. No such evidence was led to prove the assertion. Therefore, their contention was without basis and ought to have been rejected.

5. In view of the above, the impugned order, setting aside the decree is erroneous and cannot be sustained. Accordingly, it is set aside. The appeal is allowed.

NAJMI WAZIRI, J.

MARCH 05, 2018/acm