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

+ CM(M) 146/2018 & CM No. 4648/2018

SANDEEP & ANR

..... Petitioners

Through: Mr. Rajat Aneja & Ms. Chandrika
Gupta, Advocates.

versus

DAYA PRAKASH & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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27.02.2018

The background against which the present petition was filed was set out in the order dated 06.02.2018 which, to the extent relevant, reads as under:

“This petition arises out of proceedings taken out in the eviction case which was instituted by Daya Prakash, first respondent, against Kanta Rani Mahendru, predecessor-in-interest of the petitioners and of second and third respondents herein invoking the provision contained in Section 14(1)(a) of Delhi Rent Control Act, 1958. It appears that the said respondent Kanta Rani Mahendru died during the pendency and was substituted by the petitioners under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (CPC). The said eviction case was decided by the Additional Rent Controller (West) by order dated 29.08.2017 whereby the benefit of the protection under Section 14(2) of Delhi Rent Control Act, 1958 was declined and the eviction order passed, as prayed, in

favour of the first respondent.

The petitioners have taken out appeal (RCT 25/2017) before the Rent Control Tribunal for West District at Tis Hazari Courts. The said appeal was adjourned by the Reader by order sheet dated 23.01.2018 noting that there is a vacancy in the office of the District & Sessions Judge (West) who would ordinarily function as the Presiding Officer of Rent Control Tribunal for that district. Meanwhile, on the application (Execution no.759/2017) of decree holder, the Additional Rent Controller has proceeded to execute the eviction order issuing warrant of possession by order dated 08.12.2017 which is returnable on 09.03.2018. It is noted from a copy of the said order that the first respondent was to appear before the Administrative Civil Judge for appointment of bailiff on 19.01.2018.

Thus, while the execution of the eviction order is apprehended, the petitioners are without any hearing or protection in the appeal presented by them before the Rent Control Tribunal.

The learned counsel for the petitioners was asked to find out from the Registry as to what is the alternative arrangement in position qua the vacancy in the office of the presiding officer of Rent Control Tribunal for West District, the incumbent having retired upon attaining the age of superannuation on 31.10.2017. The learned counsel was asked to approach the concerned branch in the Registry and accordingly, the matter was passed over.

Mr. Naresh Chand Garg, Joint Registrar (Gaz.) has appeared in the court and submits that the only instructions in position are in the form of communication dated 20.04.2009 which was addressed to all the District Judges in terms of which the senior-most Additional District & Sessions Judge posted and available on duty in the District is expected to perform the function of District Judge of such district during his / her absence. The Joint Registrar is not aware as to the conferment of the powers

of the Rent Control Tribunal on the senior - most Additional District & Sessions Judge of the district.

The Registry shall submit a detailed report in above regard on the next date of hearing.

Issue notice to first respondent on appropriate steps.

Meanwhile, the execution of the eviction order in question shall remain stayed till the next date of hearing.

Order XXXIX Rule 3 CPC shall be complied with within three days.

Be listed on 27.02.2018.

Dasti under the signatures of the Court Master.”

The first respondent, though served, has not appeared on the matter being called out.

The registry has submitted a report pursuant to the directions in the above-quoted order dated 06.02.2018 which confirms that by notification dated 28.06.2000 of the Government of NCT of Delhi, the powers of the Presiding Officer of Rent Control Tribunal were conferred on such officer of Delhi Higher Judicial Service as was posted in the capacity of District Judge-I and by another notification of the same date the powers of Additional Rent Control Tribunal were conferred on all officers of Delhi Higher Judicial Service, for the purposes of Delhi Rent Control Act, 1958. Though, after bifurcation of Delhi into eleven districts, the Government of India, vide notification dated 14.05.2015, has constituted eleven Rent Control Tribunals – one for each district – designating the courts of respective District Judges as the Rent Control Tribunal, the notification dated 28.06.2000 issued under Section 38A of Delhi Rent Control Act,

1958 appointing and conferring the powers of Additional Rent Control Tribunal on each officer of Delhi Higher Judicial Service continues to be operative.

The report of the Registry, as submitted today, further reveals that the office of District & Sessions Judge (West) fell vacant on retirement of the incumbent with effect from 01.11.2017. It further indicates that the Full Court of this court in the meeting held on 17.04.2009 had resolved as under :-

“It was decided that the senior-most Additional District & Sessions Judge posted and available on duty in the District shall perform the functions of the District Judge of that District during his absence.”

The above decision of the Full Court was circulated by letter dated 20.04.2009.

The report of the Registry confirms that Mr. Sanjay Kumar, Additional District Judge-02 (West) is the senior most officer of Delhi Higher Judicial Service posted in the West district and, therefore, in terms of the instructions issued in the wake of the Full Court resolution dated 17.04.2009 is expected to perform all the functions of the District Judge of such district till the vacancy in the office of the District & Sessions Judge (West) is filled.

The officiating District Judge holds the rank of Additional District Judge and by virtue of the notification dated 28.06.2000, the powers of Additional Rent Control Tribunal have been conferred upon him, he being a member of Delhi Higher Judicial Service.

Therefore, there should not have been any inhibition in dealing with the matters coming up before the Rent Control Tribunal for the West District by the said officer. In this view, he is expected to exercise jurisdiction in all urgent matters arising out of rent control appeals brought before the Rent Control Tribunal of the district, so long as there is a vacancy in the office of the District and Sessions Judge of the concerned district.

Thus, while extending the stay against execution of the eviction order till such date the Rent Control Tribunal passes an effective order on the pending application for stay, this petition is disposed of with above observations.

Dasti under the signatures of Court Master.

FEBRUARY 27, 2018/uj

R.K.GAUBA, J