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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 16th February, 2018

Decided on : 06th March, 2018

+ RC. REV. 215/2011 and CM APPL.12857/2011

MOHD. CHAMAN

..... Petitioner

Through: Mr. S.D. Ansari, Advocate with
Mr. I. Ahmed, Advocate

Versus

MOHD. ATIQUUR REHMAN

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. On the eviction petition (E.No.71/2009) instituted by the respondent joining with one Mohd. Naseem (since deceased and consequently deleted from the array), by judgment dated 08.12.2010, the Additional Rent Controller (ARC) passed an order of eviction in his favour and against the petitioner on the ground of *bona fide* need under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 in respect of the premises described as property bearing No.1218, Gali Mahal Sarai, Haweli Hissamuddin Haider, Punjabi Phatak, Ballimaran, Delhi-110006, as specifically shown in colour red in the site plan filed therewith. It is the said order the correctness, legality and propriety whereof is challenged by the petition at hand.

2. The eviction order was originally presented also making allegations about the subletting of the tenanted premises by the petitioner (concededly the tenant) but at the very inception the said ground was withdrawn and, therefore, the petition was pressed only on the ground under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 and the special procedure under Section 25-B of the Delhi Rent Control Act, 1958 invoked.

3. Upon the petitioner appearing in response to the summons, he submitted application for leave to defend which was allowed by order dated 15.11.2007. He, thereafter, filed written statement and on the basis of pleadings that came on record the case was put to trial, in the course of which evidence was led by both sides. The ARC found, by the impugned judgment, that the respondent had proved that he was not only the landlord in relation to the petitioner in respect of tenanted premises but also the owner of the subject property. He also found that the respondent had proved that he *bona fide* requires the tenanted premises for residence of self and members of his family dependent upon him for such purposes and that he did not have any other suitable alternative accommodation, such finding eventually leading to the eviction order being granted, as prayed.

4. The prime contention raised in defence before the rent controller by the petitioner was that the respondent had never claimed to be the owner of the property and that the correspondence had been received from Delhi Waqf Board that the property was under their management. He questioned the claim of the respondent as to the

ownership of the subject property on the ground that the documents shown were in the nature of letter of the Government of India, Ministry of Rehabilitation indicating the allotment to be provisional which, according to his pleadings, would not constitute transfer or conferment of complete title of the property.

5. Though questions were also raised before the ARC having a bearing on the case of the respondent for need of additional accommodation for self and members of his family dependent upon him, at the hearing on the revision petition at hand, the only contention pressed is to the effect that the subject property belongs to Delhi Waqf Board and, therefore, the eviction proceedings before the ARC are barred and further that, on this account, a finding cannot be returned that the petitioner is the owner of the subject property.

6. Having heard the learned counsel for the petitioner and having gone through the record, this court finds no substance in the above mentioned contentions.

7. A perusal of the written statement would indicate that there was no denial of the factum of landlord and tenant relationship between the parties. Reference was made to correspondence received from Delhi Waqf Board and during the trial the only correspondence shown received from Delhi Waqf Board was in the shape of notice dated 08.04.2005 (Ex.RW1/5) requiring the presence of the petitioner at a meeting in the office of Delhi Waqf Board on the subject of “change the tenancy”. This communication is to be read in the context of letter dated 20.04.2004 (Ex.RW1/4) purportedly sent by the petitioner to

Secretary, Delhi Waqf Board seeking copy of the complete record of the subject property to be furnished, the nature of case described in the said application being “disputed”. It appears from the pleadings and submissions on behalf of the petitioner that he had reason to make said application to Delhi Waqf Board on account of he having come across entry at serial No.73 in a document purportedly to be copy of the Delhi Gazette showing subject property to be a waqf property.

8. There is nothing proved by the petitioner on record indicating Delhi Waqf Board having at any stage asserted any right qua the subject property against the petitioner. During trial, particularly appearing as his own witness (RW1), the petitioner admitted that he has not tendered or paid rent in respect of tenanted premises to anyone except the respondent. To put it simply, it has never been the case of the petitioner that Delhi Waqf Board had ever demanded rent in respect of the subject premises from him or that he had the occasion to tender or pay rent to Delhi Waqf Board.

9. The petitioner having conceded that he had been paying rent to the respondent, the relationship of tenant and landlord stands established beyond any doubt. From this, it naturally follows that the petitioner had attorned as a tenant in favour of the respondent and consequently he is estopped from questioning the title of the respondent qua the subject property (Section 116 of the Evidence Act, 1872). It is trite that in a case of this nature the landlord is not required to prove his title to the subject property in the way he would

be expected to do so in a title suit. It is sufficient if he can show that his title to the subject property is better than that of the tenant.

10. In *Shanti Sharma vs. Ved Prabha*, (1987) 4 SCC 193, it was observed thus:-

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e.

the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term “owner” as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in T.C. Rekhi v. Smt Usha Gujral [1971 RCJ 322, 326 (Del HC)] as under:

“The word ‘owner’ as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word ‘owner’ in this clause seems to me to have been inspired by the definition of the word ‘landlord’ as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word “owner” is used in clause (e), it seems to me to include all persons in the position of Smt Usha Gujral who have taken a long lease of sites from the government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of clause (e) and would render all such landlords remediless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the legislature and I repel the appellant's contention. I consider it proper before passing on to the next challenge to point out that the word ‘owner’ as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to

deal with the property as he likes. To describe someone as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject matter and object and the occasion on which the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from the context (see Halsbury's Laws of England, Third Edn., Vol. 36 para 893 p. 394). The meaning of the word "owner" in clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision."

(emphasis supplied)

11. For the foregoing reasons the revision petition is found to be wholly devoid of substance and merit. It is consequently dismissed.
12. The pending application also stands disposed of.

R.K.GAUBA, J.

MARCH 06, 2018

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