

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

%

Reserved on: 10th December, 2018
Pronounced on: 18th December, 2018

+ **RC.REV. 328/2018 and CM APPL.28768/2018, 42832/2018**

NATHA SINGH

..... Petitioner

Through Mr.N.N.Jha and Mr.Abhinav
Singh, Advocates.

versus

SUKHPAL SINGH

..... Respondent

Through Mr.Ajay Kohli, Mr.Sumit Kundu
and Ms.Bhumika Kapoor,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges an order of eviction dated 19.03.2018 passed by learned ARC, Tis Hazari Courts, Delhi in Eviction Petition RC/ARC 23/2017 titled as *Shri Sukhpal Singh vs. Natha Singh* in respect of the premises A-3, Kailash Park, Najafgarh Road, Delhi.

2. Before coming to the impugned judgment it would appropriate to state few facts; the respondent had filed the Eviction Petition under Section 14(1)(e) read with Section 25 (B) of Delhi Rent Control Act against the petitioner herein. It was alleged the suit premises was let out by the previous owner Sh.Mahender Pratap Gupta to Sh.Jamait Singh, father of the petitioner vide a rent deed dated 10.10.1966. On the death of Sh.Jamait Singh, his son namely Natha Singh, the petitioner herein, succeeded to the tenancy and he started paying rent to Sh.Mahender Pratap Gupta.

3. After the death of Sh.Mahender Pratap Gupta the petitioner continued paying rent to Smt.Angoori Devi widow of Late Sh.Mahender

Pratap Gupta. After the death of Smt.Angoori Devi, her son namely Mr.Suraj Bhan sold the suit property to one Ms.Poonam Chopra vide a sale deed dated 18.06.1996. She re-sold it to one Mr.Jaswinder Singh Gulati vide a registered Sale Deed dated 20.10.2000. The mutation, despite objections by the petitioner, was effected in the name of Mr.Jaswinder Singh Gulati. He thereafter sold the property to the present respondent vide a registered Sale Deed dated 23.23.2010.

4. The respondent has alleged his family consist of his wife and two married sons and they all are residing in a house of 60 sq. yds. with his two brothers at village Garhi, Bakhtawarpur, Delhi which accommodation is not sufficient for him and hence the premises is required for establishing the business for his sons as the premises is situated in the commercial area. The respondent intend to establish shops on the ground floor of the property and residential accommodation on its floors above.

5. The petitioner herein admitted his father was a tenant since 1966 under Sh.Mahender Pratap Gupta and then he became tenant and have been paying rent to Mrs.Angoori Devi and after her death, to her son namely Mr.Suraj Bhan. He alleges Mr.Suraj Bhan sold this property to Mrs.Poonam Chopra. Since there was some dispute with Mrs.Poonam so the petitioner filed a suit for injunction against Mrs.Poonam Chopra and her husband Mr.Pradeep Chopra, which was decreed on 31.03.1997 by the learned Civil Judge, Delhi. Mrs.Poonam Chopra then filed a suit for possession and damages against the petitioner but it was dismissed for non-prosecution. It is alleged that Mrs.Poonam Chopra in collusion with one Mr.Virender Kumar filed a criminal case under Section 420, 504 IPC against the petitioner herein at Jammu which was dismissed and

then the petitioner had filed a suit for damages/compensation against Mrs.Poonam Chopra and her husband but they could not be served as had left this address. The said suit was later decreed in favour of the petitioner and whereas Mr.Virender kumar compromised and paid the damages to the petitioner.

6. Thus, the petitioner herein has attacked the eviction order, primarily, on four grounds *(a)* the sale deed executed by Mrs.Poonam Chopra in favour of Mr.Jaswinder Singh Gulati is a forged document since is not signed by Mr.Jaswinder Singh Gulati at all and since it notes that she had handed over the physical possession of the premises to Mr.Jaswinder Singh whereas the actual possession of the property was with the petitioner herein and further says the sale deed describe the suit property as a free hold built up property whereas it is only a land, per rent deed dated 10.10.1966; *(b)* the petitioner was never given any notice of sale, hence did not attorn to any subsequent purchaser; *(c)* the rent deed dated 10.10.1966 which was executed between Sh.Mahender Pratap Gupta and Late Sh.Jamait singh, the father of petitioner herein described the premises as an open space/land though it gave the tenant a right to construct primary structure and to remove it as and when he was asked to vacate. It is alleged the petitioner and his father have been running a timber business since 1966 in the said premises and *(d)* the learned Trial Court had not considered an additional affidavit wherein the petitioner has contested the eviction petition, allegedly, on the ground the premises was an open land.

7. Qua contentions *(a)* and *(b)* viz. the attornment and the challenge to the sale deeds dated 20.10.2000 executed by Mrs.Poonam Chopra in favour of Mr.J.S.Gulati and its finer points is most fallacious since the

petitioner is merely a tenant and has no right to challenge such sale deeds in eviction proceedings. All that under Section 14(1)(e) of the Delhi Rent Control Act (DRC Act) the respondent/landlord needs to show is that he has a better title than the tenant. Admittedly the petitioner has registered sale deed executed in his favour executed by Mr.J.S.Gulati and he has explained the entire chain of ownership documents. Admittedly the petitioner considered him a tenant in respect of the premises even under Poonam Chopra. Thus the learned ARC has rightly held the petitioner, if challenges the ownership, needs to disclose as to who else is the owner of the premises. Claiming the chain of Sale Deeds to be forged documents would never be a triable issue. A person who has got the registered sale deed in its favour is considered to be the owner and even otherwise the concept of his ownership in DRC Act is not of absolute ownership but merely of something more than the tenant, as held in *Krishna Devi Sharma thr. LRs & Anr. vs. Yadukul Guglani & Ors.* RC.Rev.568/2015

8. Further in *Gopal Kishan vs. Ram Saroop* RC.Rev. No.443/2017 and in *Vijay Sharma vs. Namita Aggarwal* RC.Rev.422/2017 the Court rather held the attornment is not required.

9. Qua contention (c) I may refer to a legal notice dated 11.07.1996 sent by Mrs.Poonam Chopra wherein she had alleged that vide a rent deed dated 10.10.1966 a piece of land was let out to the petitioner on a monthly rental of ₹ 178/- and which tenancy has since expired and she has given instruction to her counsel to file a suit for possession against the petitioner herein. The petitioner herein gave a reply dated 24.07.1996 wherein the petitioner alleged the lease is for the premises and is governed by the Delhi Rent Control Act and not under the Transfer of Property Act. Secondly he alleged after the death of his father he became

the lessee of the premises which was then constructed and a fresh lease was created in favour of the petitioner by an oral agreement and therefore the premises would fall under the Delhi Rent Control Act.

10. Admittedly a suit for possession was filed by the respondent wherein in his written statement the petitioner had claimed the Rent Controller has jurisdiction, hence the said suit for possession was not carried forward by Smt.Poonam Chopra and was dismissed for non-prosecution. Mrs.Poonam Chopra then sold the premises to Mr.J.S.Gulati. Now once the petitioner has taken a stand viz. the rent controller only has jurisdiction then he is not permitted to take a new plea viz. the subject premises is an open land before the Additional Rent Controller to say that Delhi Rent Control Act would not be applicable.

11. On contention (*d*) the petitioner has failed to satisfy if he has any right to file additional affidavit(s), as and when he wishes even though within the period for filing his leave to defend. He may have rather amended his leave to defend application. Even otherwise, I have perused the additional affidavit wherein the petitioner has yet again taken the same stand viz. the premises was a plot let out to his late father and the learned Additional Rent Controller had no jurisdiction to deal with the subject. However, considering his own reply and written statement filed by the petitioner to the suit for possession filed by Mrs.Poonam, his plea of open land has lost its relevance.

12. The law cited by the learned counsel for the petitioner viz. *Subhash Chandra Vs Mohammad Sharif and Ors.* AIR 1990 SC 636 is not applicable since it relates to a case where the original landlord had only a right of possession and had no power of its disposition. However in the

present case no challenge is made to the right of disposition of either Sh.Mahender Pratap Gupta or Smt.Angoori Devi or of Mr.Suraj Bhan.

13. The another judgment cited by the petitioner is *Noor Elahi (D.) vs. Shaikh Abdul Gafar* 1982 Rajdhani Law Reporter 192 which held whether the property is premises within the meaning of Rent Control Act is not a pure question of law but is a mixed question of law and fact and it is upon the plaintiff to show his admission was not true, hence it was argued by the learned counsel for the petitioner that even if he has admitted it was the premises and not an open land in reply and in written statement, such admission, should have been ignored. I am not inclined to accept this argument as the admission is not only qua the open land/premises but he has also made admission of the fact that after the death of his father, he become a tenant of the premises under an *oral tenancy*. Thus the rent agreement dated 10.10.1966, even otherwise, would be of no relevance in view of these admissions, hence the judgment cited is not applicable on facts.

14. Considering the facts above I find no illegality/infirmity in the view taken by the learned Additional Rent Controller, hence, the petition being devoid of merit is dismissed.

15. Pending application, if any, is also dismissed.

YOGESH KHANNA, J.

DECEMBER 18, 2018

DU