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

Date of decision: 26th February, 2020

+ **CM(M) 249/2020**

CHANDER PRAKASH & ANR

..... Petitioners

Through: Ms. Sonia A. Menon, Ms. Vanita Chauhan and Mr. S.K. Tomer, Advocates. (M:9810865468)

versus

SUSHILA RANI

..... Respondent

Through: Mr. Bharat B. Sachdeva, Advocate. (M:9811671653)
Ms. Mini Pushkarna, Standing Counsel for NrDMC. (M:9810674872)

WITH

+ **CM(M) 251/2020**

KHAIRATI LAL & ORS

..... Petitioners

Through: Ms. Sonia A. Menon, Ms. Vanita Chauhan and Mr. S.K. Tomer, Advocates.

versus

SUSHILA RANI

..... Respondent

Through: Mr. Bharat B. Sachdeva, Advocate. Ms. Mini Pushkarna, Standing Counsel for NrDMC

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The present petitions challenge the impugned order dated 19th November, 2019 passed by the Rent Control Tribunal (“RCT”), by which the

RCT has held that the order of the Rent Controller (“RC”) by which the application under Order VII Rule 11 CPC was dismissed, is not an appealable order, and has hence rejected the appeal.

2. Two petitions for eviction were filed by the Respondent - Ms. Sushila Rani against her tenants in respect of two shops bearing Nos. WZ-850 (Private Shop no. 3) Main Bazar, Rani Bagh, Delhi-110034 at ground floor and WZ-850 (Private Shop No. 2) Main Bazar, Rani Bagh, Delhi-110034 (*tenanted premises*). The eviction petitions were preferred under Section 14(1) (e) for the purposes of *bona fide* use. In the said eviction petition, an application under Order VII Rule 11 CPC was filed by the Tenants on the ground that the Delhi Rent Control (“DRC”) Act, 1958 does not apply to the tenanted premises as the same has not been notified under Section 1(2) of the DRC Act and since a specific notification is required for the application of the DRC to a particular colony. The said application was rejected by the Id. RC on various grounds. The findings of the Id. RC are as under:

“12. On bare perusal of present petition in question it is revealed that the suit property is stated to be located at Rani Bagh, Delhi-34. Further, during the course of submissions on present issue the Ld. Counsel for petitioner referred to the copy of original Sale Deed dated 08.09.1953 according to which the address of the suit property is given as vacant land measuring 300 sq. yards situated in the Village Salem Pur, Madipur, Delhi City. Thus it is clear and there is no material to the contrary on record that the area where the suit property is situated is urbanised over a period of time and even approved as a colony by the government, as is happening in many parts of Delhi. Therefore, it appears that subsequently such area is known as Rani Bagh area. Thus based on such documents and the arguments addressed by the parties, it is held that that

the suit property belongs to the area of Village Salem Pur, Madipur. It may further be noted that as a result of notification dated 14.04.1960 the Village Salem Pur, Madipur ceased to be a rural village and was urbanised . Further, there is a notification under the proviso to Sub-Section 2 of Section 1 of DRC Act dated 27.03.1979 placed on record by the petitioner side in this regard.

13. As such, it is held that this court of Rent Controller has subject matter jurisdiction to entertain the present petition. With these observations the present application U/O 7 R 11 CPC is disposed of.

14. As such, put up for filing of proposed rejoinder/documents, arguments on review application/ issue under consideration as well as for arguments on leave to defend application as already observed in order dated 06.07.2018 and appropriate order on the same on 18.02.2019.”

The said order passed was appealed against before the RCT, and the RCT had rejected the appeal on the ground that an order by which an application under Order VII Rule 11 CPC is dismissed, is not an appealable order.

3. The present petition was listed on 25th February, 2020, on which date part arguments were heard, both on the question of maintainability, as also the question as to whether the DRC Act applies to the tenanted property. Considering the fact that issues in respect of the relevant notifications and applicability of the DRC Act in respect of Rani Bagh were raised, the Court had requested the assistance of Ms. Mini Pushkarna, who is the Standing Counsel for all the Municipal Corporations, including the North Delhi Municipal Corporation.

4. The submission of Id. counsel for the Tenants is that the Rani Bagh

colony has not been notified under the DRC Act, and hence the eviction petition under the said Act is not maintainable. She relies firstly upon Section 1(2) of the DRC Act and thereafter relies upon the judgment of the Supreme Court in *Mitter Sen v Shakuntala Devi (2000) 9 SCC 720*. It is her submission that even when a non-urbanised colony is urbanised, a specific notification is required to make the DRC Act applicable to such colony. She also relies upon a judgment of a Id. Single Judge of this Court in *Shri Sarvesh Kumar & Anr. v. Shri Ratan Lal (Since Deceased) Through His Lrs. RSA No. 396-87/2006 (Decided on 30th March, 2011)*. Her submission, therefore, is that since Rani Bagh is a specific area which has been given a distinct nomenclature way back in the 1960s, it ought to have been notified under the DRC Act.

5. On the other hand, Id. counsel appearing for the Landlady submits that the sale deeds in respect of this property shows that the property was originally part of an unauthorised area called Salimpur-Majora-Madipur, Delhi which was thereafter authorised/ regularised and the name Rani Bagh was given to this area. The said area clearly falls under the original notification which was issued by the MCD on 23rd May, 1963/13th June, 1963 as also the notification dated 28th July, 1961. It is his submission that in respect of these areas i.e, Shakurpur and Salimpur-Majora-Madipur, specific notifications have been issued even under the DRC Act, vide notification dated 27th March, 1979. Accordingly, he submits that the DRC Act clearly applies to the present case and hence the plea of the tenants is completely erroneous and not tenable.

6. Ms. Mini Pushkarna, Id. Amicus, places on record the above notifications and also submits that the Rani Bagh area is not an area which

requires a specific notification under Section 507 of the Delhi Municipal Corporation Act, 1957, inasmuch as this area was earlier an unauthorised colony, which was thereafter included within a Municipal Committee and the municipal limits on this area would automatically fall within the DRC Act. The powers of the Municipal Corporation extend to this area as well. She submits that in fact, the Municipal Corporation runs a school in Rani Bagh, against which an eviction petition is pending before the Trial Court in an unconnected matter. It is further submitted that the notifications dated 23rd May, 1963 and 28th July, 1961, which have been handed over, make it clear that the erstwhile Salimpur-Majora-Madipur and Shakurpur areas are part of the modern Rani Bagh area, and hence fall within the First Schedule of the DRC Act.

7. In rejoinder, Id. counsel appearing for the Tenants relies upon extracts from the MCD website to show that till date, on the website, Madipur, Rani Bagh, Salempur-Majra-Burari, Shakurbasti and Shakurpur are shown separately, as different colonies. Thus, there ought to have been a notification extending the DRC Act to the said colonies. Id. counsel also relies upon *Mange Ram v. Union of India 2000 V AD (Delhi) 684* to argue that in paragraph 12 of the said judgment, the distinction between Salimpur-Majora-Madipur and Rani Bagh has been brought about, though in land acquisition proceedings, wherein compensation was determined.

8. A perusal of the various notifications shows that vide notification dated 13th June, 1963 the revenue estates of Salimpur-Majora-Madipur and Shakurpur ceased to be rural areas and were urbanized. The DRC Act was extended to these areas vide notification dated 27th March, 1979.

9. It is submitted that Rani Bagh as a colony fell in the revenue estate of

Salimpur-Majora-Madipur and Shakurpur. There is no reason to doubt this fact, inasmuch as even the list submitted by the Petitioners themselves, as downloaded from the website of the MCD, clearly shows that the colonies of Rani Bagh, Shakurpur and Majra, Madipur fall within municipal limits.

10. Under the Delhi Rent Control Act, Schedule I, if any area falls within the municipal areas of Delhi and under the jurisdiction of the municipal authorities, the DRC Act would extend to the said areas. The submission that since Rani Bagh was separately having a name since 1961 and was not specifically notified, would not hold good inasmuch as none of the parties dispute that Rani Bagh is part of the municipal areas of Delhi and the MCD in fact, even runs a school in the area of Rani Bagh.

11. The sale deed in the present case, which is registered and is titled 'Document No. 7543' itself specifically mentions that the tenanted premises falls within Salimpur-Majora-Madipur, Delhi. The recital reads as under:

“Whereas one piece of land admeasuring area 300 sq. yards whose measurement is 30-30 ft. towards north and south and 90-90 towards east and west sides, which is situated within the new populated area Salempur Mujariya, Madipur, Delhi City and whose boundaries are as under:-...”

The recital in the sale deed thus leaves no doubt whatsoever that the tenanted premises falls within the municipal limits of Delhi, and under the jurisdiction of the Municipal Corporation.

12. The **Mitter Sen** judgment deals with land, which was originally in a rural area and thereafter was urbanized, which required a specific notification. Even going by this judgment, the area of Rani Bagh would fall within the ambit of the DRC Act, inasmuch as a specific notification has

been issued on 27th March, 1979 extending the provisions of the DRC Act to the area of Salimpur-Majora-Madipur and Shakurpur, within which the colony of Rani Bagh is situated. Thus, even applying the judgment in ***Mange Ram***, it is clear that the tenanted premises located in Rani Bagh, is governed by the DRC Act. Insofar as the judgment in ***Mange Ram*** is concerned, the same related to fixation of compensation in land acquisition proceedings, wherein the Court is seeking to draw a distinction between the Salimpur-Majra-Madipur, Mangolpur Kalan, Pritam Pura and Rani Bagh colonies. The facts of ***Mange Ram*** show that the Section 4 notification in the said case was issued on 24th October, 1961, at which time all the notifications which have now been considered by the Court had not yet been issued. Thus, the said judgment is of no assistance to the Petitioner. This Court is of the opinion that the notifications, which have been placed on record clearly show that the suit property falls within the area which is covered by the DRC Act.

13. The petition and all pending applications are disposed of with costs of Rs.15,000/-. The same shall be paid on or before the next date in the Trial Court.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 26, 2020
dj /RG