

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

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Reserved on: July 05, 2021

Pronounced on: August 03, 2021

+ CM (M) 646/2020, CM APPL.33917/2020 (by the petitioners u/S 151 CPC for directions)

SWAMI GOVERDHAN RANGACHARIJI & ORS

.....Petitioners

Through: Mr. Anil Airi, Sr. Advocate with
Mr. Antony R Julian, Advocate

Versus

M/S A.J. PRINTERS

.....Respondent

Through: Mr. S. K. Sharma and
Mr. Yogender Kumar, Advocates

+ CM (M) 656/2020, CM APPL.34559/2020 (by the petitioner u/S 151 CPC for stay)

M/S A.J. PRINTERS

.....Petitioner

Through: Mr. S. K. Sharma and Mr.
Yogender Kumar, Advocates

Versus

SWAMI GOVERDHAN RANGACHARIJI & ORS

.....Respondents

Through: Mr. Anil Airi, Sr. Advocate with
Mr. Antony R Julian, Advocate

**CORAM:
HON'BLE MS. JUSTICE ASHA MENON**

J U D G M E N T

[VIA VIDEO CONFERENCING]

ASHA MENON, J.

1. Since these two petitions under Article 227 of the Constitution of India have been filed challenging the same judgement of the learned Principal District and Sessions Judge/Rent Control Tribunal (“**RCT**”) dated 10th November, 2020, the petitions are being disposed of vide this common order.

2. The litigation between the parties seems to have had a chequered history. Two eviction petitions, being, No. E-1/86 and E-16/99 had been filed on 24th December, 1985 and 19th May, 1988 respectively by Shri Swami Goverdhan Rangachari ji Maharaj, Managing Trustee, and other trustees on behalf of Shri Thakur Rangji Maharaj Trust (“**the Trust**”) which manages the Rangji Temple, Vrindavan, Distt. Mathura, U.P against M/s. A.J. Printers, under Section 14(1)(j) & (k) and Section 22 of the Delhi Rent Control Act, 1958 (“**DRC Act**”) as amended from time to time respectively. We are concerned here only with the eviction petition filed under Section 14(1) (j) & (k).

3. For the sake of convenience, since two petitions are being disposed of by this common order, the Trustees, being the petitioners in the original eviction petitions shall be referred to as “petitioners” herein and M/S A.J. Printers, the respondents in the original eviction petition shall be referred to as “respondents” in this order.

4. The case set up by the petitioners was that three rooms, drawing-cum-dining, Pantry, kitchen, two servant quarters and one garage on the ground floor of Bunglow No.97, Sunder Nagar, New Delhi had been let out to the respondents in terms of a written Lease Deed dated 1st October, 1972 for residential purposes at the monthly rent of Rs.2,500/-, excluding electricity, water and other charges. The petitioners alleged that the respondents had unauthorisedly covered the open inner courtyard by glass and a room had been unauthorisedly constructed in the rear portion of the premises, apart from Duchhatti over the corridor. It was also alleged that the respondents had changed the main gate of the premises which was facing south and unauthorizedly constructed another main gate, facing west. This resulted in substantial damage to the premises. Further, the Land & Development Office (“L&DO”), which was the superior lessor, served a notice on the petitioners alleging breach of the terms of the Perpetual Lease granted to the petitioners on account of such unauthorized constructions and also threatened to forfeit the lease and re-enter the premises.

5. The respondents had contested the allegations and denied that they had made any unauthorized construction in the premises. It was submitted that originally, the inner courtyard was covered with Asbestos Sheets, which had decayed during the course of several years and were replaced by glass panes. It was denied that any additional room had been unauthorisedly constructed and it was claimed that this room had been in existence at the time when the premises were let out. It was claimed that minor deviations could be regularized by the L&DO on payment of

nominal compounding charges and there was no occasion for the constructions being described as a breach of the terms and conditions of the lease. It was denied that the L&DO had threatened re-entry.

6. Vide judgement dated 16th July, 2003, the learned Rent Controller (“**RC**”) held that the tenanted premises had remained in the same nature and condition as it was when it was originally let out and the respondents could not be attributed with any action resulting in a breach of the terms and conditions of the Perpetual Lease Deed between the Petitioners’ Trust and the L&DO. Thus, the petition under Section 14(1)(j) &(k) was dismissed. Vide the same judgement, the eviction petition under Section 22 of the DRC Act was also dismissed.

7. An appeal being RCA No.29/09/03 was filed by the petitioners on 19th August, 2003 against this judgement before the learned District Judge/Rent Control Tribunal. During the pendency of this appeal, in another petition filed by the petitioners before the High Court of Delhi for permission to lead evidence with regard to the site plan, the permission was granted to them to file and prove the site plan. Thus PW-1 Shri Raghunath Singh was examined by the learned RCT. Further, during the pendency of the said appeal, the learned RCT directed an official from the L&DO to appear before it and report about the breaches, if any, and whether such breaches were capable of being compounded or ignored by the superior lessor. Vide order dated 17th November, 2008 of the learned RCT, it was recorded that the respondents were willing to pay the damages as calculated by the L&DO in pursuance to the affidavit filed by it regarding the breaches and the compoundable nature of such breaches.

8. The learned RCT vide order dated 30th November, 2009, upheld the dismissal of the eviction petition under Section 14(1)(j) of the DRC Act. However, it came to the conclusion that the evidence on record established that breaches had been caused by the respondents in contravention of the terms and conditions of the Perpetual Lease Deed. Thus, it set aside the order of the learned RC to the extent it had dismissed the eviction petition under Section 14(1)(k) of the DRC Act. It concluded that the petitioners had fully proved that the respondents while in possession of the premises in question, used or dealt with the same in a manner contrary to the conditions imposed upon the petitioners in the Perpetual Lease Deed executed between them and the superior lessor. Thus, they were entitled to obtain eviction of the respondents from the suit premises under Section 14(1)(k) of the DRC Act.

9. However, since a finding under Section 14(1)(k) of the DRC Act required an inquiry under Section 14(11) of the DRC Act, the matter was remanded to the learned RC to comply with section 14(11) of the DRC Act. The then learned RC conducted an inquiry by obtaining affidavits from the L&DO and on the basis of the examination of one Sh. Pradeep Kumar from L&DO, vide order dated 11th April, 2012 in E-217/09/86, the learned RC referred to the listed breaches found at site in para 7 of the said order, which are as follows: -

Misuse

- (i) *FF/one room measuring 21ft 105. in x 16ft= 350 sq. ft. is being used as office of M/s Digvijay Cement Co.*

Unauthorised Construction

- (i) *BF/U/a pucca extension of Barsati Floor area measuring 23 ft 3 in x 8 ft 9 in = 203.437 sq. ft.*
- (ii) *BF/unauthorised pucca W.C with fixed ACC sheets roofing area measuring 6 ft 9 in x 6 ft has been constructed.*
- (iii) *GF/internal courtyard at GF area measuring 212 ft.7.5in x 17ft 1.5 in-has been covered with glasses and is being used as regular form.*
- (iv) *GF/unauthorised coverage in front of garage area measuring 3ft 3 in x 9ft.*

10. It then directed the respondents to remove/stop these breaches/unauthorised constructions within a period of two months from the date of order also recording, “*failing which an eviction order shall be **deemed to have been passed** against the respondent*”. The learned RC further directed preparation of a separate file to ascertain “*whether respondent has complied with this order or not*” and further directed that the said file be put up on 2nd July, 2012.

11. The record discloses that the respondents, through Sh. Anil Narendra, filed an affidavit in compliance of the said order dated 11th April, 2012 on 6th June, 2012. An additional affidavit was also filed on 13th July, 2012 pursuant to directions issued by the learned RC. Objections were filed by the petitioners to these two affidavits submitting therein that the breaches still existed and there was non-compliance of the orders dated 11th April, 2012. A response to these objections was also filed by the respondents and finally, the learned RC, vide order dated 22nd

May, 2013 in E-M 8/12 arising out of E-217/09/86, concluded that the respondents had removed/stopped the breaches as mentioned in the order dated 11th April, 2012 and also declared there shall be no deemed eviction in terms of the said order dated 11th April, 2012.

12. Aggrieved by this order of the learned RC, an appeal, RCT No. 14/13 was filed by the petitioners on 2nd July, 2013, which was disposed of vide order dated 15th November, 2016, holding that valuable rights of the parties were at stake, the matter was once again remanded back to the learned RC, directing that a fresh and complete inquiry under Section 14(11) of the DRC Act be conducted to determine as to whether there was timely removal of the breaches, in view of the fact that the order dated 11th April, 2012 had ordered deemed eviction, if removal was not carried out within the said period granted, of two months.

13. On remand, the learned RC vide orders dated 7th June, 2018 in RC ARC 37/16, declared that since the first affidavit had been filed within two months of the order dated 11th April, 2012, the breaches were removed by the respondents within two months from the date of that order, and no deemed eviction had occurred in terms of the order dated 11th April, 2012.

14. Aggrieved by this decision, the petitioners filed the appeal, RCT ARCT No.20/2018 on 20th July, 2018 before the learned Principal District & Sessions Judge/RCT. The learned RCT vide the impugned order dated 10th November, 2020 disposed of the appeal, remanding the matter back to the RC to give an opportunity to both the parties to adduce evidence to

determine if there was timely removal of the unauthorized construction within a period of two months from the date of the order of 11th April, 2012. Both parties are aggrieved by this order. On the lines of the oral arguments, written submissions have been filed by both the petitioners as well as the respondents.

15. Mr. Anil Airi, learned senior counsel for the petitioners submitted that the learned RCT ought to have considered the decision of the learned RC on merits and in the light of its observations that neither were the affidavits nor were the photographs proved as per law, it ought to have concluded that the respondents had failed to prove that they had removed the unauthorized construction within two months as claimed by them. It was submitted that the learned RCT rightly observed that the onus could not have been placed on the petitioners to establish otherwise. Yet, it erred in remanding back the matter for recording of evidence.

16. The learned Senior Counsel submitted that the RCT had rejected the two affidavits vide its order dated 10th November 2020 and the learned RC on remand, could not have returned the finding of due compliance on the basis of the very same affidavits. No other evidence was brought on record. In other words, despite the earlier remand, the respondents had failed to conclusively establish that they had removed the unauthorized construction on 20th May 2012. It was further submitted that when the learned RC had already determined the question and decided that the removal of the unauthorized construction was timely, no issue or aspect remained to be determined and the order of the learned RCT was not in keeping with the provision of Order XXXI Rules 23 &

25 CPC, and the respondents could not have been granted one more opportunity to prove their case and bring on record such documents, which they had not produced or proved in the earlier proceedings.

17. Thus, in short, the learned Senior Counsel submitted that the appeal ought to have been allowed and the impugned orders of the learned RC set aside and the deemed eviction as ordered on 11th April, 2012 given effect to, which reliefs be now granted by this Court.

18. Mr. S.K. Sharma, learned counsel for the respondents submitted that there was no dispute with regard to the removal of the breaches. The question was whether it had been removed within the two months period granted by the learned RC vide order dated 11th April, 2012. According to learned counsel for the respondents, the learned RC vide order dated 7th June, 2018 had recorded the satisfaction that this has been so. Therefore, it was submitted, there was no occasion for the learned RCT to have set it aside and remanded the matter back. It was further argued that vide order dated 11th April, 2012, no directions had been issued to the respondents to file a compliance affidavit, let alone within a specified time period. The matter had only been adjourned to 2nd July, 2012 to ascertain compliance. In this background, the respondents had found it appropriate to file an affidavit on 6th June, 2012 informing the RC that the order dated 11th April, 2012 had been complied with. On the date of hearing i.e., 2nd July 2012, the learned RC sought an affidavit specifying the date of removal of the unauthorized construction. Therefore, the second affidavit dated 13th July, 2012 was filed stating the date of removal as 20th May 2012.

19. It was further submitted that the learned RC had not, on remand of the case, directed the respondents to lead evidence. Therefore, there was no occasion to lead evidence on the affidavits and photographs. However, once the affidavits had been filed, then it was on the petitioners to prove that in fact, the unauthorized constructions had not been removed within the given time. Instead, all they did, was to file photographs of the Barsati and Garage, which were not in the tenancy of the respondents. However, in respect of the petition filed by the respondents before this Court, it was submitted that the learned RCT ought not to have re-evaluated the evidence as the appeal was under Section 38 of the DRC Act and therefore, the impugned orders of the learned RCT dated 10th November, 2020 was liable to be set aside and the orders of the learned RC dated 7th June, 2018 ought to be upheld.

20. In the written submissions filed on behalf of the respondents, it has also been mentioned that the evidence of both parties was being recorded, after remand, since there was no stay of proceedings and that, now, there was only one witness of the respondents remaining to be cross examined by the petitioners, whose affidavit has also been filed .

21. From the material on record, it is more than apparent that two breaches were found in the suit premises, namely,

1. GF/internal courtyard at GF area measuring 22 ft. 7 .5 in x 17 ft 1.5 in has been covered with glasses and is being used as regular form;

2. GF /unauthorized coverage in front of garage area measuring 3ft in x 9ft.,

22. The super lessor had issued a notice for removal of these breaches of the terms and conditions of the Perpetual Lease Deed pursuant to which the petition under Section 14(1)(k) was filed. In the light of the affidavit of the L&DO that the breaches were not of a nature that could be permitted by regularization and on payment of damages, the learned RC had directed the removal of the unauthorized construction within two months from 11th April, 2012. Thereafter the successor RC vide order dated 22nd May, 2013 compared the inspection notes dated 24th May, 2011 and 23rd July, 2012 and came to the conclusion that the order dated 11th April, 2012 stood duly complied with and the breaches had been removed and therefore, there was no “deemed eviction”.

23. When this order was challenged in appeal, vide order dated 15th November, 2016 it was observed that since the order dated 11th April, 2012 had also directed a deemed eviction in the event of non-removal within the period of two months, it was not sufficient that the breaches stood removed, as recorded by the learned RC, but it was important to ascertain when they were removed. To determine that question, affecting the valuable rights of the parties, the matter had been remanded back.

24. The learned RC sought to make further inquiry into the matter. It referred to the affidavits and also to the photographs that both sides had filed and to a letter dated 11th June, 2012 that was sent by the respondents to the L&DO, informing them that the breaches had been removed and asking them to inspect the premises. The learned RC concluded on a consideration of these materials, that the breaches had been removed within two months. The learned RC took the view that had the breaches

been not removed, the affidavit dated 6th June 2012 and the letter to the L&DO dated 11th June 2012 would not have been filed or sent. Thus, it concluded that on the basis of the affidavits, the first one because it was filed on 6th June, 2012 i.e., before the two months period had expired, and the second one because it mentioned the date of 20th May 2012, taken in the context of the letter to the L&DO dated 11th June, 2012 were sufficient to establish the fact that the unauthorized construction was removed within the two months period granted. The learned RC also found that the petitioners had not brought anything on record that would prove that the breaches had not been removed in a timely fashion.

25. The learned RCT has rightly observed in the impugned order that the onus had been wrongly placed upon the petitioners and on their failure an inference must be drawn in favour of the respondents. As it was the assertion of the respondents that they had removed the unauthorized construction within the two months period, specifically on 20th May, 2012, unless, they established the fact, the burden could not have been shifted on to the petitioners to have to be proven otherwise.

26. What needs to be remembered is that there is no dispute that the unauthorized construction had been removed by the respondents, but what was crucially to be determined in the light of the order of 11th April, 2012 was whether that removal was within the given time or not. The learned RC in the order dated 22nd May, 2013 had also noticed that the breaches that the petitioners were claiming were continuing were not relating to the tenanted premises. Therefore, it was for the respondents to establish their case of having complied with the orders dated 11th April,

2012, in a timely fashion and were protected against deemed eviction.

27. Though a full-fledged trial is not contemplated under Section 14(11) of the DRC Act, nevertheless, it is for the learned RC to determine whether it was necessary, in the facts and circumstances of the case, to record such evidence as was required. There is no rule of the thumb to say that filing of the affidavits would suffice. The affidavits in question were challenged by the petitioners. Moreover, a fact that was to be determined and that was the date of the removal of the unauthorized construction. It may have required more than a cursory enquiry. Reliance on affidavits that were not tested on the anvil of cross-examination was perhaps, not justified. It needs to be mentioned here, that, while the learned Senior Counsel for the petitioners argued that there was no occasion for granting an opportunity to the respondents to now examine witnesses, a perusal of the impugned order of the RCT would show that this was the primary argument stressed before it on behalf of the petitioners, namely, that they had no opportunity to cross-examine the person, who had filed the affidavits, namely, Sh. Anil Narendra. They cannot be permitted to blow hot and cold.

28. The contention of the learned counsel for the respondents that the learned RCT could not have considered the evidence and could only consider an error in law, and therefore, the remand order was erroneous, is without substance inasmuch the learned RCT has decided on the questions of law, namely, the placing of the onus and the acceptance of unproved documents.

29. The argument of the learned Senior Counsel for the petitioners that since the eviction petitions were filed before the amendment to section 38 of the DRC Act, and hence the case was governed by the pre-amended Act, is rejected as being without any force as the appeal was filed under the amended Act.

30. This Court finds that the RCT was right in coming to the conclusion that the affidavits and photographs had not been proved in accordance with law and the learned RC had erred in relying on the affidavits and further that the placing of the onus on the petitioners was not correct without the respondents having first discharged the onus of proving that the unauthorized construction had been removed in a timely fashion.

31. We find no error or perversity in the orders of the learned RCT. Both the petitions being devoid of merit are accordingly, dismissed along with the pending applications.

32. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 03, 2021
pkb/ms/ck