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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 17th November, 2021
+ **RSA 24/2021 & CM APPLs. 8269/2021, 8270/2021, 8271/2021**
NARESH JAIN Appellant
Through: Mr. Piyush Gupta & Mr.Siddharth
Sharma, Advocates
versus
DHARAMVEER SINGH Respondent
Through: Mr. Ankit Singh & Mr. Virendra
Singh, Advocates (M: 9899923389)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present second appeal has been filed challenging the impugned judgment dated 17th March, 2020, passed by the by the Id. ADJ-1, North East District, Karkardooma Courts, Delhi (*hereinafter, "First Appellate Court"*) in **RCA DJ No. 31/2019**. Vide the said order, the appeal against the decree dated 23rd January, 2019 passed by the Id. ASCJ, North East, Karkardooma Courts, Delhi (*hereinafter, "Trial Court"*), in **Suit No. 340/2018**, has been dismissed.
3. The Trial Court on 23rd January, 2019 decreed the suit in favour of the Plaintiff/landlord/Respondent (*hereinafter, "landlord"*) under Order XII Rule 6 CPC, and had directed possession to be handed over to the landlord. The operative portion of the order of the Trial Court reads as under:

"Arguments considered.

As per para 3 of reply of the defendant, he is willing to pay the rent but the plaintiff is not receiving the rent. In reply to legal notice dated 14.06.2018 it is admitted that the defendant paid rent @ Rs.700/- to be plaintiff in

good faith. In his reply to legal notice dated 30.11.2009 the defendant has also admitted his tenancy.

The plaintiff on the other has filed several rent receipts to show Dharambir as the tenant and the payment made towards rent. Perusal of record shows that the previous case under Rent Control Act was dismissed on 24.10.2017 withdrawn as the suit was not maintainable, property being commercial in nature.

Firstly, the defendant has himself admitted that the tenancy was determined by way of notice dated 28.04.2003 by the plaintiff whereby he/defendant was required to handover vacant and peaceful possession. Secondly, the admission of the defendant that he is a tenant and paid Rs.700/- monthly rent to the plaintiff is then categorical. The only dispute left to be sorted is whether the claim of the plaintiff to seek damages @ Rs.30,000/- per month from defendant is justified/rightful.

The suit of the plaintiff is partly decreed in his favour. The defendant is directed to handover the possession of the suit property i.e. Shop measuring 10-1/2 X 22 bearing No.S-33/7, Braham Puri Main Road, Gali No. 24, Delhi-110053 to the plaintiff.

List on 07.03.2019 for admission denial of documents and framing of issues.”

4. The First Appellate Court has also upheld these findings of the Trial Court and has held that the Delhi Rent Control Act, 1958 (*hereinafter*, “*the DRC Act*”), would not apply to the area in question.
5. The brief background is that the landlord had rented out the property bearing Shop No. S-33/7, Brahampuri Main Road, Gali No. 24, Delhi-110053, to the Defendant/tenant/Appellant (*hereinafter*, “*tenant*”). After his retirement from service, the landlord had filed an eviction petition under

Section 14(C) of the DRC Act claiming *bonafide* need, however the same was dismissed by the ARC. Thereafter, upon termination of the tenancy, the landlord had approached the Rent Controller under Section 14(1)(e) of the DRC Act seeking possession of the premises. In the said petition before the Rent Controller, the tenant had taken a stand that the petition under the DRC Act is not maintainable as the Village Ghonda Chauhan Bangar, also known as Brahampuri, Main Road, Delhi was not notified as covered under the DRC Act. The said plea taken in the affidavit of the tenant reads as under:

“That instant eviction petition under Delhi Rent Control Act, 1958, is not maintainable because as per notification dated 28.5.1966/3rd June 1966, the Delhi Rent Control Act, 1958, is not applicable in the area of Brahampur, Main Road, Delhi, where suit property is situated (Copy of notification is annexed herewith for kind perusal of this Hon’ble Court). Thus the eviction petition is not maintainable and deserves dismissal.”

6. Along with the said affidavit, the notification dated 28th May, 1966, electricity bills, photographs etc. were all annexed to the leave to defend Application. In view of this stand of the tenant, the landlord had withdrawn his petition under Section 14(1)(e) of the DRC Act.

7. Thereafter, once again, the landlord filed a suit for possession before the Trial Court. The reliefs sought in the said suit were as under:

“It is therefore most respectfully prayed that in the fact and circumstances mentioned above, the Hon'ble ,Court may kindly be pleased to pass a decree of possession in favor of plaintiff and against the defendants, directing thereby to the defendants for handing over the peaceful and vacant possession of the suit property i.e Shop' measuring 10-1/2'X 22' bearing no. S-33/7, Braham Puri Main Road, Gali No-24, Delhi-

11003, which has been shown as red in the site plan annexed herewith the plaint.

The Hon'ble Court may further be please to pass a decree of mesne profits and damages @Rs. 30,000/- Per month in favor of plaintiff and against the defendants since the date of filing the present suit before this Hon'ble court till possession will be handed over to the plaintiff.

Any other or' further relief, which this Hon'ble Court deems fit and proper may also be granted passed in favor of the plaintiff and against the defendants.”

8. It is this suit that has been decreed by the Trial Court on 23rd January 2019, in terms as extracted above. The findings of the Trial Court are that the landlord-tenant relationship is not disputed, and even the termination of the tenancy vide notice dated 28th April, 2003 is not disputed. The only question that remained, as per the Trial Court, was whether damages at the rate of Rs. 30,000/- per month would be liable to be paid to the landlord. Thus, the partial decree, in respect of handing over the possession of the suit property was passed by the Trial Court in favour of the landlord.

9. Before the First Appellate Court, for the first time, the issue of the applicability of the DRC Act to the area of the suit property was raised. This was considered by the First Appellate Court, which observed that though the tenant's argument was that the DRC Act would be applicable to the suit property, he failed to produce any notification under Section 507 of the Delhi Municipal Corporation Act, 1957, or any notification by GNCTD extending the applicability of the DRC Act to the said area. The Court further observed that the said tenant had himself, in the eviction petition under Section 14(1)(e) of the DRC Act, before the Rent Controller had taken

a completely opposite stand that the DRC Act is not applicable to the said premises. Paragraphs 11 & 13 of the First Appellate Court's order are set out below:

“11. In the present case also, the appellant has also admitted the relationship of landlord and tenant between the respondent (plaintiff) and the appellant (defendant), but, he has object that the same was not sufficient to decree the suit of the respondent, under Order XII Rule 6 CPC. The Ld. counsel for the appellant has stressed that as per the plaint, the rate of rent was only Rs.700/- per month and therefore, the provisions of the Delhi Rent Control Act were applicable to the suit property. But, the ld. counsel for the appellant has failed to produce any notification under Section 507 of the Delhi Municipal Corporation Act, 1957 or any notification of GNCTD, extending the applicability of the Delhi Rent Control Act, 1958, to the area, where the suit property was situated. Even during the arguments on the present appeal, no such notification has been produced by the appellant before this Court.

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13. Furthermore, it is not in dispute that in the previous petition preferred by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, the appellant has admitted the respondent as the landlord of the suit property and in the said petition, a similar objection was taken by the appellant, regarding the non-applicability of the Delhi Rent Control Act, 1958, to the suit property and therefore, on the objection of the appellant, the respondent had withdrawn the said petition and thereafter, the present suit bearing CS No.340/18, was filed by the respondent/plaintiff, before the Ld. Trial Court.”

10. The First Appellate Court also considered the other applicable decisions on this issue, and dismissed the appeal against the decree, vide the impugned order.

11. Mr. Piyush Gupta, Id. Counsel appearing for the tenant has again relied upon the notification dated 28th May, 1966, as also a land acquisition Award bearing No. 01/2013-14, passed by the Land Acquisition Collector, District North East, Delhi, to argue that the Village Ghonda Chauhan Bangar is an urbanised village as per the said notification, and the DRC Act has been extended to the said area vide notification dated 27th March, 1979 passed by the Delhi Government

12. Id. Counsel for the landlord, on the other hand relies upon the stand of the tenant in his affidavit before the Assistant Rent Controller, in the matter that was withdrawn by the landlord, to argue that the tenant cannot blow hot and cold. He has placed on record the same very notification, according to which, the tenant had taken a stand before the ARC that the DRC Act is not applicable to the area of the suit property.

13. Heard Id. Counsel for the parties and perused the record.

14. A perusal of the affidavit filed by the tenant before the Id. ARC in **RC ARC 134/17** titled ***Dharamvir Singh v. Naresh Jain***, which has been extracted above, shows that it was the categorical stand of the tenant that the eviction petition is not maintainable as the area concerned has not been notified under the DRC Act. The same very notification dated 28th May, 1966 is relied upon in the said affidavit of the tenant. Due to the said affidavit of the tenant, the landlord had withdrawn the said proceedings before the ARC. The order recording the same, reads as under:

*“Statement of Sh. Dharam Vir Singh S/o Late Sh. Mangal Singh R/o H No. 150/62, near PNB Bank, Rajpur Mohalla, Village Ghonda, Delhi.
On SA*

I am petitioner in the present petition. In view of the objection raised by the respondent to the effect that- DRC Act is not applicable on the area where suit premises is situated as well as the law point settled by Hon'ble High Court in RSA No. 56/2017, I am allowed to withdraw the present petition with liberty to take appropriate legal action.”

15. A perusal of the above statement clearly shows that the landlord in the present case had initially availed of remedies under the DRC Act, only to have been told that the said proceedings are not maintainable as the land has not been notified under the provisions of the DRC Act. Thereafter, the landlord filed the instant civil suit seeking possession and mesne profits against the tenant.

16. This is the third round of litigation between the parties. In the present case, the landlord-tenant relationship is admitted. The payment of rent by the tenant to the landlord is also admitted. Since the ownership of the suit property is not in dispute, and the landlord-tenant relationship is also not in dispute, the only question raised by the tenant, is in respect of applicability of provisions of the DRC Act to the area concerning the suit property.

17. It is noticed that the record of the proceedings before the ARC have not been placed before this Court, along with this second appeal filed by the tenant. The same ought to have ideally been done. The record of the said proceedings has only been filed by landlord, along with his reply to this second appeal. The averment of the tenant before the ARC is clear and

unambiguous, that the DRC Act is not applicable. The tenant cannot be allowed to approbate and reprobate. Such inconsistent stands cannot be permitted to be taken, especially to the detriment of the landlord. This is the settled position of law as held by the Supreme Court in ***R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683***, wherein it was held:

“Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury's Laws of England, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).

The said principle has also been reiterated by a Id. Single Judge of this Court in ***K.S. Patcha v. Arun Sarna (2008) 151 DLT 784***, wherein it was held:

“7. It is settled law that a person cannot be allowed to approbate and reprobate. No party can take stand as per convenience and a party cannot be allowed to withdraw from the admissions made by it in the pleadings in respect of the same subject matter. In the civil case, the landlord came clear before the Court and claimed rent at the rate of Rs. 3700/- p.m. relying upon the initial agreement. The tenant/respondent however, stated that this agreement had come to an end and after expiry of this agreement a new oral agreement was entered into between the parties and

the agreed rent was Rs. 3100/- per month. He also relied upon certain rent receipts issued by the landlord for Rs. 3100/- and he took the plea that the Civil Court had no jurisdiction. Even before the High Court, the tenant/respondent had not stated that the rent was Rs. 3700/- rather he maintained his plea that the rent was Rs. 3100/- p.m. In view of this contention of the tenant that the monthly rent of the premises was Rs. 3100/- and an oral agreement was entered into after the expiry of written agreement reducing the rent, the landlord/petitioner withdrew his suit before the Civil Court and filed this eviction petition under the Delhi Rent Control Act. The tenant thus, cannot be allowed to take a plea that the rent was not Rs. 3100/- but Rs. 3700/-. The tenant had all along been tendering the rent @ Rs. 3100/-. The learned ARC completely went beyond jurisdiction in allowing the application under Section 25-B of the Delhi Rent Control Act even to the limited extent of rate of rent. Once the tenant had stated in the Civil Suit that the rate of rent was Rs. 3100/- p.m. in terms of an oral agreement, the landlord has a right to sue the tenant on the basis of his admission before the Civil Court. Even if, the tenant takes the plea that the rent was Rs. 3700/- p.m., the ARC on the face of it should have rejected this plea and should have also rejected the application under Section 25-B of the Delhi Rent Control Act.

8. The Courts and the Rent Controller must keep in mind that the Courts cannot be converted into a wrestling field, for trial of tricks where the Court has to act as an umpire. The Courts must effectively intervene and nip the evil of perjury and false statements in bud. Where a tenant takes different stand in different Courts to defeat the effort of landlord to get the premises vacated at the time of need such an effort must be curbed down by the Courts effectively by binding him with his earlier statement in respect of the same premises and his plea of raising a dispute in

respect of the rent admitted by him should not be heard and entertained. If the parties are allowed to approbate and reprobate at their sweet will and convenience and take the Courts for a ride, the whole judicial system shall fail. The courts must effectively check such parties, who take inconsistent stand according to their convenience in different proceedings. I consider the Trial Court grossly erred in holding that a triable issue was there regarding the rate of rent. Once the respondent had taken the stand in one Court that the rent was reduced to Rs. 3100/- p.m, and the Civil Judge had no jurisdiction only Rent Controller had jurisdiction, now he cannot be allowed to reprobate that Rent Controller had no jurisdiction and Civil Court had jurisdiction.”

18. The Trial Court’s decree under Order XII Rule 6 CPC and the First Appellate Court’s judgment upholding the said order of the Trial Court are in effect concurrent findings on facts as well as law. The landlord’s admission is clearly and categorically there that the DRC Act does not apply. Accordingly, the decree passed by the Trial Court as well as the judgment of the First Appellate Court are liable to upheld.

19. It is noticed that the tenant has been in possession of the suit property at least since 1994. The tenant has enjoyed the premises for more than 25 years, irrespective of the landlord having attempted avail of his remedies under the provisions of the DRC Act as well as the CPC. The landlord has been attempting to get the tenant evicted from the suit property since 2003, when according to him certain violations were carried out by the tenant. Since then, it has been 18 years and the tenant cannot be permitted to be in occupation of the property *ad infinitum*.

20. The question of whether the DRC Act applies to Village Ghonda

Chauhan Bangar or not is also settled by this Court in at least two other decisions. In ***Sayada Begum v. Qaiser Dad Khan (RSA 56/2017, decided on 5th March 2018)***, a ld. Single Judge of this Court has observed as under:

“1.....What is to be considered is: Whether as per Clause (c) aforementioned, the municipal area in which the suit property was situate, had been urbanised. The process of urbanisation from a rural to urban area in Delhi is an established procedure, resulting in publication of a Notification under section 507 of the DMC Act. The statement of the SDM concerned, Ex. DW 2/1, shows that of the 7 villages in Seelampur only four had been urbanised; he admitted that apropos village Ghonda Chauhan Bangar, he could not produce any information under section 507 of the DMC Act or any record or notification extending applicability of the Delhi Rent Control Act to the said village. Furthermore, the Kanoongo from the office of SDM stated that he could not produce a notification under section 507 of the DMC Act for the aforesaid Sub Division.

2. The appellant/plaintiff had proceeded for the eviction of the respondent in her civil suit because the DRC Act had not been extended to the village/area where the premises were located. Indeed, she had no option. What she had to do was to contend that the DRC Act was not applicable to the suit property because there was no requisite notification in this regard. Apart from stating the non-existence of any such notification, she could not have done more. A void, a negative, a non-existence cannot be proven.

3. A plea of change in status of land from rural to urban or coverage of an area under a specific law is to be supported by documents, records and the requisite notification under the relevant statute. Mere assertion is not enough. Therefore, when the respondent had asserted that the area had been urbanised under the

DMC Act and the Delhi Rent Control Act extending to the village Ghonda Chauhan Bangar in which the suit premises is situated, the evidence i.e. official records should have been produced by them. No such evidence was led to prove the assertion. Therefore, their contention was without basis and ought to have been rejected”

21. Recently in ***Rajender Kumar and ors. vs. Nitin Kumar Goel and ors (RSA 77/2021, decided on November 15, 2021)***, this Court has observed as under:

*“11. The Court has perused the notifications which have been placed on record. A perusal of the said notifications shows that the Defendants are relying upon the first notification No. F. 9(20)/66-Law-Corp dated 13th June, 1963, notification No. F.2(49)/65-LSG dated 28th May, 1966, and a subsequent notification No. S.O. 1236 dated 27th March, 1979, issued by the Central Government. The said notifications do not show clearly that village Ghonda Chouhan Bangar has been specifically notified both under Section 507 of the DMC Act and under Section 1 of the DRC Act. The village Ghonda appears to have various portions and unless and until there are specific notifications qua each of the portions, under each of the enactments, it cannot be said that the area is covered by the DRC Act. The judgment in **Mitter Sen Jain (supra)** is clear to this effect that notifications would be required under both legislations. The relevant portion of the said judgment is set out below:*

“1. The appellant herein is a tenant of the premises situated at Sagarpur in Delhi, whereas the respondent is the landlord. The landlord let out the premises to the appellant on a monthly rent of Rs. 400/- per month. Subsequently, the landlord terminated the tenancy by giving notice under Section 106 of

the Transfer of Property Act. The landlord thereafter brought a suit for ejectment of the tenant as well as for recovery of arrears of rent and mesne profit. Before the Trial Court the tenant filed a written statement wherein one of the pleas taken was that the premises which was let out to him was covered by Delhi Rent Control Act, 1958 and as such the suit is not maintainable. The Trial Court held that the premises was not covered by the Delhi Rent Control Act, 1958. Consequently, the suit was decreed. First Appeal was preferred to the learned District Judge, which was dismissed. Thereafter the appellant filed a Second Appeal before the High Court and the same was also dismissed. It is in this way the appellant is before us in appeal.

2. The only argument raised on behalf of the appellant is that since the premises of which the appellant is a tenant is covered by Delhi Rent Control Act and therefore, the suit filed by the landlord in Civil Court was not maintainable and decree passed therein is void ab initio. In order to appreciate the argument, it is worthwhile to extract the relevant provisions of Delhi Municipal Corporation Act as well as Delhi Rent Control Act, which are as follows:

“Section 507 of Delhi Municipal Corporation Act:

(a) the Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;

Sub-section (2) of Section 1 of the Delhi Rent Control Act:

It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.

3. Subsequently, by a notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur where the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the

proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.”

12. Even in the decision in **Sayada Begum (supra)**, the Court has clearly come to the conclusion that the notification concerning urbanisation of the area under Section 507 of the DMC Act, and the notification under Section 1(2) of the DRC Act have not been produced, and the said decision clearly relates to this very area which is in question. Thus, the question of law raised by the Defendants does not arise in the present appeals.”
22. All these cases also related to the Village Ghonda Chauhan Bangar and the tenant in the present case cannot be extended any benefit which is different than the parties in the said case.
23. In view of the above discussion, this Court finds no merit in the present second appeal. No substantial question of law arises. It is made clear that the landlord is entitled to seek market rent from the time of passing of the order dated 23rd January, 2019, at the rate of Rs.8,000/- per month. If any amounts are lying deposited, the same would be liable to be released in favour of the landlord.
24. The appeal is accordingly dismissed. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 17, 2021/mw/AK