

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

% **Judgment Reserved on: 10th December, 2021**
Judgment Delivered on: 22nd December, 2021

+ **CM(M) 1132/2021 & CM Nos.44410/2021 & 44413/2021**

DEV RAJ

..... Petitioner

Through: Mr.Ranjit Singh Chowdhary,
Advocate

Versus

SAROJ SINGHAL (DECEASED) THROUGH
HER LRS. & ORS.

..... Respondents

Through: Ms.Aruna Mehta, Advocate

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present petition under Article 227 of the Constitution of India impugns the order dated 4th October, 2021 passed by the Rent Control Tribunal (RCT), Central, Tis Hazari Courts, Delhi in RCT No. 30191/2016, whereby the appeal filed on behalf of the petitioner (hereinafter referred to as the 'tenant') against the order dated 7th October, 2013 passed by the Additional Rent Controller (ARC) in Case No. E-159/13/1996, has been dismissed.
2. The counsel for the caveator/respondent no.6(ii) appears on caveat and therefore, submissions of both the counsels have been heard.
3. Brief facts as recorded in the orders of the ARC and RCT are set out hereinafter:

3.1 The premises bearing no. B-1074, Shastri Nagar, Sarai Rohilla, Delhi - 110052 (hereinafter referred to as the 'subject property') was let out by Sh. Bela Ram Singhal (hereinafter referred to as the 'landlord'), the predecessor-in-interest of the respondents, to the tenant in the year 1976. Initially one shop was let out for Rs. 200/- per month and the second shop was let out after one or two months for Rs. 140/- per month.

3.2 While no written agreement was executed between the parties at the time of the inception of tenancy, it was stated in the eviction petition that subject property was let out for commercial purposes, for running of a shop for selling biscuits and confectionary items.

3.3 However, in or around the year 1990/1991, the tenant converted the user of the shop for manufacturing bakery items and installed a *bhatti* along with one chimney without the written consent of the landlord. The installed ovens were emitting excessive smoke and heat, and creating polluting and nuisance, leading to the subject property becoming inhabitable and badly damaged.

3.4 The landlord sent the tenant a notice under Section 14(5) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'DRC Act') on 20th August, 1996 to stop the said misuse, however the misuse did not stop immediately or within one month of the said notice being served.

3.5 In light of the aforesaid, the landlord filed the eviction petition under Section 14 (1)(c) of the DRC Act in 1996 in respect of the subject property on the grounds that the subject property was being used for a purpose other than for which the said property was let, and such misuse was creating a public nuisance, damage to the subject property and was detrimental to the interest of the landlord.

3.6 The eviction petition was allowed vide order dated 7th October, 2013 passed by the ARC reasoning/observing that:

- (i) the tenant had used the subject property for manufacturing purposes, while it had been let out for commercial use;
- (ii) there was a distinction between commercial purpose and manufacturing (industrial) purpose and reliance in this regard was placed on the judgment of the Supreme Court in ***Ram Gopal Vs. Jai Narian & Ors.*** 1995 Supp. (4) SCC 648 and the judgment of this Court in ***Shri Ram Saroop & Anr. Vs. Messrs Janki Dass Jai Kumar & Anr.*** 1975 SCC OnLine Del 180;
- (iii) the tenant changed the user of the subject property without taking the consent of the landlord in writing;
- (iv) notice was duly sent by the landlord in terms of Section 14(5) of the DRC Act and the same was replied to by the tenant on 14th October, 1996;
- (v) it was not disputed that the tenant did not change the user of the subject property within one month from the date of service of notice as RW4 (tenant's witness) had testified that the manufacturing activity stopped only in the year 1999;
- (vi) it was the admitted case of the tenant that the manufacturing process was stopped only in compliance with the order dated 25th January, 1999 of the ADJ; and
- (vii) it has been admitted in the cross examination of RW1 (tenant's witness) that one *bhatti* and one chimney was installed by the tenant and it was functional.

3.7 The aforesaid judgment was challenged by the tenant by way of an appeal under Section 38 of the DRC Act, which was dismissed vide the impugned judgment dated 4th October, 2021. It is to be noted that the landlord died during the pendency of the eviction petition.

3.8 While dismissing the said appeal, the RCT has reasoned/observed that:

- (i) merely because the amended memo of parties was not filed before the ARC, it could not be said that the eviction petition had been abated. The non-filing of amended memo of parties was merely a procedural formality since the application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 had been signed by all the legal representatives of the landlord Sh. Bela Ram Singhal. Anyway, the ARC had rectified the said irregularity by taking on record the amended memo of parties, subject to payment of costs and the said amended memo of parties named Poonam Singhal and Ritu Singhal, being the legal representatives of the landlord Sh. Bela Ram Singhal;
- (ii) if the co-owner who did not join the eviction proceedings did not object to the said eviction proceedings, the eviction proceedings initiated by other co-owner(s) would be legally maintainable;
- (iii) in the present case even if certain legal heirs of the landlord Sh. Bela Ram Singhal had not filed the eviction proceedings, since, they had not objected to the eviction petition, the eviction petition would not stand abated;
- (iv) as per the evidence of the landlord Sh. Bela Ram Singhal, the tenants had misused the subject property as the subject property was let out for running the bakery shop and not for manufacturing of bakery products;

- (v) RW1 (tenant's witness) in his cross-examination had admitted that he had installed one *bhatti* and one chimney and while working the *bhatti* smoke gets spread;
- (vi) there was no merit in the contention of the tenant that manufacturing of bakery items would not convert the commercial use into industrial use. The manufacturing of bakery products with the use of ovens and chimneys was an industrial process and not just commercial activity;
- (vii) the tenant did not stop the misuse of the property despite notice under Section 14(5) of the DRC Act; and
- (viii) in view of the non-impleadment of Sh. Ganga Ram Singhal, a person in whose favour the eviction order had been passed, in his individual capacity, the appeal would not be maintainable.

4. The counsel appearing on behalf of the tenant assails the impugned order passed by the RCT on the following grounds:

- (i) Running of a shop for selling bakery products would necessarily include having a manufacturing facility at the subject property for the manufacture of bakery products.
- (ii) Even if there was any misuse, it was only in one of the two shops that comprised the subject property. Reliance is placed on the decision of this Court in *Amrik Chand Vs. Harbans Singh* 7 (1971) DLT 125 to state that for eviction under Section 14(1)(c) of the DRC Act, the tenant has to misuse the entire premises, whether it is a building or a part of a building, let out to him.
- (iii) In view of the language of Section 14(5) of the DRC Act, the satisfaction of the ARC with regard to misuse of the subject property has to be seen on the date of the passing of the eviction order and not prior thereto.

Reliance in this regard has been placed on the decision of the Supreme Court in *Mohd. Shafi Vs. VII Addl. Dist. & Sessions Judge, Allahabad and Ors.* AIR 1977 SC 836, to contend that the applicability of a provision of law when not considered by the lower Court can be considered by the High Court.

(iv) Non-inclusion of Sh. Ganga Ram Singhal was on account of a typing mistake and the predecessor Court of the RCT had permitted the impleadment of Sh. Ganga Ram Singhal, therefore, the successor ARC could not have gone into this aspect.

(v) As per the decision of the Supreme Court in *Trimbak Gangadhar Telang and Anr. Vs. Ramchandra Ganesh Bhide and Ors.* AIR 1977 SC 1222, under Article 227 of the Constitution of India, the Courts can exercise their discretion when the order of a Tribunal is violative of fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice.

5. The counsel for the respondent/respondent no.6(ii), appearing on caveat, supports the impugned order passed by the ARC as well as the order passed by the RCT. It is submitted that the failure of the tenant to comply with the notice issued by landlord for stoppage of the user has to be done within one month of the date of service of notice and not as on the date of passing of the eviction order.

6. I have heard the counsels for the parties and perused the record of the case.

7. The clear picture that emerges from the record is that the subject property was given for the commercial use for selling bakery products. The

said subject property could not be used for the purposes of manufacturing bakery products without the consent of the landlord as that would amount to a user other than the purposes for which the property was let out.

8. The Supreme Court in its judgment in **Ram Gopal** (supra) has clarified that even the extent of installing an *atta chakki* and *oil kohlu*, would amount to installation of machinery to manufacture. This Court in **Ram Saroop** (supra) has clearly stated that there is a distinction between commercial purpose and industrial purpose as follows:

“ 13. ...there is a distinction between “commercial purpose” and “industrial purpose”. The former involves an element of exchange or buying and selling, while the latter involves an element of manufacture. Whether a particular activity is commercial in nature or industrial in nature has to be decided by considering the nature of the particular activity in question in each case...”

9. What was envisaged in the tenancy at hand was that the shops would be used for selling bakery products. In the garb of selling bakery products, the tenant could not have installed a chimney and a *bhatti* for manufacturing of bakery products.

10. In view of the judgments above and the detailed findings on fact by the ARC and the RCT, it is apparent that the tenant converted a commercial tenancy into an industrial/manufacturing one. There is no merit in the submission of the counsel for the tenant that change of user from selling of bakery products to manufacture of bakery products would not amount to misuse of the subject property under Section 14(1)(c) of the DRC Act.

11. The ARC has returned succinct findings to the effect that smoke used to come out from the *bhatti* when it was functional and complaints had been launched by a number of residents of the locality, wherein the subject

property was located, to stop the nuisance. The ARC also found that the subject property had developed cracks and the upper portion of the said property was inhabitable because of the heat and smoke generated by the *bhatti*. Thus, I am of the view that the findings of the ARC to the effect that the misuse by the tenant was causing public nuisance, damage to the subject property, and was detrimental to the interest of the landlord are neither vague nor unclear so as to warrant interference either by the RCT or this Court.

12. With respect to the contention of the counsel for the tenant that the misuse under Section 14(1)(c) of the DRC Act had to be established in respect of the entire premises and not just part thereof, it is prudent to note the findings of the ARC in its order dated 7th October, 2013 as follows:

“8. ...there is no material on record to rebut the case of petitioner that the tenancies were later on consolidated and rent of Rs. 340/- per month was being paid. It is pertinent to mention here that in a petition filed u/s 45 of the Act Ex. PW1/4, the respondent had made statement in the court that he is tenant @ 340/- p.m. Moreover, it is not the case of the respondent that both the shops were used for different purpose and were registered separately under different Government agencies. In view of the above, when the entire premises (both the shops) was used by respondent for the same purpose and the petition seeking his eviction on the ground of misuser, there is no bar on the petitioner to file one petition in respect of the entire premises and rather in view of this court, that is the correct approach to avoid multiplicity of litigation.”

In light of the aforesaid, this Court finds no merit in the submission of the counsel for the tenant that the misuse was only in part of the subject property, and therefore, the order of eviction under Section 14(1)(c) of the DRC Act could not be passed.

13. Furthermore, there is no merit in the contention of the counsel for the tenant that stoppage of misuser has to be seen on the date of the eviction order. If that were to be the case then every tenant would stop misuse just before the eviction order was passed and the eviction proceedings filed by the landlord would come to a nought. The reliance on *Mohd. Shafi* (supra) in this regard is misplaced as the said case in no way supports the said contention of the counsel for the tenant and was concerned with an eviction petition filed under the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 on the grounds that the landlord required the rented premises for her use and occupation, and not on the grounds that the premises were being used for purpose other than that allowed.

14. In the opinion of this Court, the language of Section 14(5) of the DRC Act makes it clear that the landlord is required to serve notice on the tenant requiring him to stop misuse of the premises and the tenant has to stop such misuse within one month from the date of service of notice. Both the authorities below, have written concurrent findings to the effect that in the present case the tenant did not stop the misuse within one month of the receipt of notice. In fact, the same was stopped only in the year 1999, whereas the notice under Section 14(5) of the Act was served on 20th August, 1996.

15. It is a settled position of law that the jurisdiction of this Court under Article 227 of the Constitution of India has to be very narrowly construed in the context of provisions of the DRC Act, especially when there are two concurrent findings written by the authorities below. In this regard reference may be made to the judgment of this Court in *Nawal Kishore Vs. Mohd. Yukub* 2017 SCC OnLine Del 12778. Both the authorities below have

analysed the evidence on record and come to concurrent findings on facts to the effect that the case at hand is a clear case of misuser, which is covered under the provision of Section 14(1)(c) of the DRC Act. Therefore, the ARC and the RCT have allowed the eviction petition filed on behalf of the landlord.

16. The tenant has failed to make a case for interference by this Court under Article 227 of the Constitution of India and in this regard his reliance on *Trimbak Gangadhar Telang* (supra) does not come to his aid. The decision in *Trimbak Gangadhar Telang* (supra) itself states that there shall be no interference if the Courts are unable to discern any legal infirmity or error either in the decision of the Tribunal or the High Court.

17. This Court has been unable to discern any legal infirmity or error either in the decision of the ARC or the decision of RCT and accordingly, the petition and the pending applications are dismissed.

18. Since the petition has been considered on the merits of the case under Section 14 (1)(c) of the DRC Act, need is not felt to go into the issue of non-maintainability of the appeal on the ground of non-impleadment of Sh. Ganga Ram Singhal.

न्यायमेव जयते

AMIT BANSAL, J.

DECEMBER 22, 2021

Sakshi R.