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

+ **RC.REV. 686/2019 & CM APPL. 52449/2019**

DHANTO & ORS

..... Petitioners

Through: Mr. P. Gupta and Mr. S.S. Nizami,
Advocates

versus

RAMESH & ORS

..... Respondents

Through: Mr. Surendra Mishra and Mr. Utkarsh
Mishra, Advocates

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Reserved on: 3rd March, 2023

Date of Decision: 22nd March, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present revision has been filed by the Petitioners, tenants, assailing the order dated 16.08.2019 ('impugned eviction order') passed by the ARC-1, Central District, Tis Hazari Courts, Delhi ('the Trial Court') in Eviction Petition No. E-138/16 whereby the Petitioner's application seeking leave to defend was dismissed and the impugned eviction order was passed in favour of the Respondents, landlords, with respect to one room with bathroom in H No. 6728, Block No.10, Street No.1, Dev Nagar, Karol Bagh, New Delhi- 110005 ('the tenanted premises').

2. By the order dated 03.02.2020, this Court has passed interim order staying the execution of the impugned eviction order, subject to the payment of use and occupation charges by the Petitioners.

3. The eviction petition was filed by the Respondents under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('the DRC Act') on the ground of bona fide requirement of the tenanted premises for residence of Respondent No. 2 and his family.

3.1. The H. No. 6728, Block No.10, Street No.1, Dev Nagar, Karol Bagh, New Delhi- 110005 ('the subject property') consists of ground floor, first floor and second floor, admeasuring 88 sq. yards. The tenanted premises consisting of one room is located on the ground floor of the subject property.

3.2. The Respondents, landlords, have produced the lease deed dated 23.07.1953 executed by Delhi Improvement Trust ('DIT') in favor of late Sh. Ram Ratan, the great grandfather of the Respondents to substantiate their claim of ownership over the subject property ('DIT lease deed').

3.3. The Petitioners in their leave to defend application sought to challenge the ownership of the Respondents. The Trial Court after perusing the record dismissed the said application on the ground that the Petitioners have failed to raise any triable issue.

Arguments of the Petitioners, Tenants

4. The learned counsel for the Petitioners states that the Respondents are neither the owners nor the landlords of the subject property.

4.1. He states that Delhi Development Authority ('DDA') is the owner of the subject property, as it is a Nazul land. He states that neither the Respondents nor their predecessors have any right, title or interest in the subject property.

4.2. He denies that the DIT lease deed executed in favor of late Sh. Ram Ratan, i.e., the great grandfather of the Respondents pertains to the subject

property. He states that the address of the plot mentioned in the DIT lease deed does not correspond with the existing municipal address of the subject property.

4.3. He states that the address mentioned in the DIT lease deed is Bagh Raoji, Block 10B, Khasra No. 245/152 (Plot No. 83), in the Municipality of Delhi with respect to 'plot' of land admeasuring 88 sq. yards. He states that the said address mentioned in the DIT lease deed does not pertain to the subject property. He states that existing municipal address of the subject property is H. No. 6728, Block No. 10, Street No.1, Dev Nagar, Karol Bagh, Delhi- 110005. In other words, he states that these are separate and distinct addresses.

4.4. He states that the findings of the Trial Court that the DIT lease deed pertains to the subject property is without any basis as there were no material on record to substantiate the said findings.

5. He states that in the entire neighborhood of Dev Nagar, the other occupiers of the buildings pay demurrage to DDA as the entire neighborhood is owned by DDA.

5.1. He states that the predecessors of the Petitioners herein, i.e., late Sh. Ram Babu was inducted as a tenant in the tenanted premises by DDA. He fairly admits that the Petitioners herein have not filed any document/agreement executed by DDA in their favour or proof of payment of rent to DDA, to substantiate the said plea.

5.2. He fairly admits that the Petitioners are not in possession of any other document which DIT or DDA may have executed in favour of the Petitioners inducting them in the subject property as tenants.

5.3. He also admits that Petitioners herein presently as well do not pay any demurrage to DDA unlike the other residents, who reside in Block No.10, Dev Nagar, Karol Bagh.

6. He states that the relinquishment deed dated 01.08.1989 relied upon by the Respondents to claim ownership rights and maintain the eviction petition does not refer to the DIT lease deed.

6.1. He therefore states that since the ownership of the Respondents is disputed by the Petitioners herein, the issue as regards the existence of landlord-tenant relationship between the parties gives rise to a triable issue.

7. In the alternative, he states that assuming that both the addresses (as mentioned in the DIT lease and eviction petition) are for the same property, he relies upon Clause 4(d) of the DIT lease deed to state that the Respondents were not permitted to sublet the subject property and therefore the subletting to the Petitioners herein is contrary to the said clause of the DIT lease deed. He states that the Respondents are merely lessees in the subject property and the ownership vests with the DDA. He therefore contends that since the subletting in favour of the Petitioners is impermissible, Respondents cannot evict the Petitioners herein.

8. No arguments were addressed by the learned counsel for the Petitioners on the issue of bona fide need of the Respondents for the tenanted premises.

Arguments of the Respondents, landlords

9. Learned counsel for the Respondents state that the subject property was allotted by DIT to late Sh. Ram Ratan, their great grandfather for valuable consideration. He states that, thereafter, the subject property fell to

the share of the father of the Respondents herein, late Sh. Babu Lal s/o Sh. Sohal Lal, *vide* relinquishment deed dated 01.08.1989.

10. He states that the subject property bearing H. No. 6728, Block No. 10, Street No.1, Dev Nagar, Karol Bagh, Delhi- 110005 is the existing municipal address of the 'plot' mentioned in the DIT lease deed i.e., Bagh Raoji, Block 10B, Khasra No. 245/152 (Plot No. 83).

10.1. He states that the municipal area of Dev Nagar forms part of Karol Bagh zone and is the new name for the area earlier known as Bagh Raoji. In this regard, he relies upon 14th Schedule of Delhi Municipal Corporation Act, 1957¹ ('the Act of 1957'). He further relies upon Chapter I-Overview of Land Management in DDA² to state that Bagh Raoji is the Nazul estate of DIT and has been transferred to its successor DDA.

11. He produced before this Court, the original of DIT lease deed as well as the original receipts of payment of ground rent of the subject property in 2010, to DDA, issued in the name of late Sh. Sohan Lal, the grandfather of the Respondents, recording the property address as Bagh Raoji, Block 10B/83.

11.1. He also places reliance on the house tax receipts issued by Municipal Corporation of Delhi ('MCD') for the financial years ('FYs') 2004-05, 2006-07, 2008-09, in the name of late Sh. Sohan Lal S/O late Sh. Ram Ratan, duly recording the new address as H. No. 6728, Block No.10, Street No.1, Dev Nagar, Karol Bagh, New Delhi- 110005.

¹ The Delhi Municipal Corporation Act, 1957, Universal Law Publishing Co. Pvt. Ltd. (2008).

² Report of Comptroller and Auditor General of India on Land Management in Delhi Development Authority, Union Government, Ministry of Urban Development, Report No. 31 of 2016 (Performance Audit), Chapter I, Overview of Land Management in DDA.

11.2. He states that in view of the receipts of payment of ground rent to DDA and the house tax receipts, all issued in the name of late Sh. Sohan Lal s/o late Sh. Ram Ratan, the new municipal address is also borne out from the statutory record. He states that the DIT lease deed forms the basis of the said receipts being issued in favour of late Sh. Sohan Lal.

12. He states that there is no dispute with respect to the identification or the municipal address of the subject property. He states that the municipal address mentioned in the eviction petition filed before the Trial Court is the existing address of the subject property allotted to late Sh. Ram Ratan, *vide* the DIT lease deed.

12.1. He states that the said dispute of municipal address raised is a sham and does not give rise to a triable issue.

Findings

13. This Court has heard the parties and perused the record.

14. The facts relevant for deciding the present revision petition are as follows:

14.1. It is stated in the eviction petition that the tenanted premises, which comprises of a single room, were let out to Sh. Ram Babu, the ancestor of the Petitioners herein, i.e., the husband and father respectively.

14.2. The eviction petition has been filed by the Respondents on the ground of bona fide requirement of the tenanted premises. The Respondents along with their family members are fifteen (15) in number, all residing in the subject property and the tenanted premises are required for the residence of family of Respondent No. 2. The family of Respondent No.2 consists of his wife and four children.

14.3. The subject property, which admeasures 88 sq. yards comprises of ground floor, first floor and second floor.

Ground floor

14.4. It is stated in the eviction petition that the ground floor of the subject property comprises of two rooms on the front side with bathroom; and two rooms and store on the back side with latrine and kitchen.

14.4.1. It is stated that one of room, in the front side, is under the tenancy of Shri. Rukhmani and her children (another tenant).

14.4.2. Admittedly, the other room, in the front side, is occupied by the Petitioners herein, i.e., the tenanted premises.

14.4.3. Further, one room on the backside is occupied by Respondent No.2 along with his wife and four children for their residential purposes.

14.4.4. Similarly, the other room, on the back side, is occupied by Respondent No.4 as his residence. It is also stated that Respondent Nos.2 and 4 are using the common kitchen, latrine and bathroom on the ground floor.

First floor

14.5. It is stated in the eviction petition that the first floor of the subject property consists of 3 rooms and a store. The said floor is in the use and occupation of Respondent Nos. 1 and 3. The Respondent No.1 along with his wife and 4 sons; and Respondent No.3 with his wife are using the said rooms for their residential purposes.

Second Floor

14.6. It is also stated in the eviction petition that second floor of the subject property consists of one small bathroom and kitchen along with small

temporary structure without room and terrace. This accommodation is being used by the families of Respondent Nos. 1 and 3.

15. The bona fide need of the Respondent No.2 that he requires the tenanted premises for the residence of his family has not been disputed by the Petitioners as noted herein above. The number of the family members and the area under their occupation has not been challenged by the Petitioners before this Court. In this view of the matter, the findings of the Trial Court at paragraphs 46, 48, 49 and 50 of the impugned eviction order, with respect to the bona fide requirement of Respondent No.2 has attained finality and the same reads as under:

“46. In view of the settled legal position it is not for the respondents to dictate to the petitioners that they should use some other accommodation for their residence, even if they are indeed available with the petitioners. The tenanted premises belongs to the petitioners and it is for the petitioners to see whether it is suitable for their family's requirement or not. It is the right of the petitioners to choose a property which is going to be more convenient for their family. If the tenanted premises is suitable as per the needs of the family, the petitioners have every right to possess the said premises and the respondents cannot contend that the petitioners' family should manage their affairs otherwise. While deciding the question of bonafide requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord and his family could have adjusted.

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48. In the three rooms and a store room on the first floor, the petitioner no.1, his wife, four sons, petitioner no.3 and his wife are stated to be residing. Therefore, there are 8 persons occupying the three rooms and store room on the first floor.

49. Out of the four rooms and store room on the ground floor, two rooms are in possession of tenants including the respondents herein. That leaves only two rooms and a store room on the ground floor for the residence of the petitioner no.2, his wife, four children and petitioner no.4 (handicapped). So there are 7 persons residing in two rooms and a store room on the ground floor. The children of the petitioner no.2 are more than 9 years of age. Possession of the tenanted premises has been sought for the

residence of the family of the petitioner no.2. In the case of Amrit Lai Vs. Jagpal Singh Verma CR No. 370 of 1985 dated 25.07.1996, the Hon'ble Delhi High Court held that even a child of nine years of age cannot be expected to sleep in the same room where his parents were sleeping.

50. There is also requirement for a drawing room, a guest room and a separate room for the married sisters of the petitioners to stay when they visit the petitioners. In the case of Vinod Kapoor Vs. Kailash Sethi, 2008 RLR 576, the Hon'ble High Court held that the requirement of a guest room is bonafide. It was observed that it is not necessary for the landlord to cramp himself with the available accommodation so that his tenants continue to live in the premises. It was observed that when the family of the landlord grows, the requirement of the landlord and his family members is bonafide requirement.

52. The accommodation available for residence of family of petitioner no.2 is clearly inadequate. The net result is that petitioners have been able to establish that the tenanted premises is required by them for their residence and that they do not have any other reasonably suitable alternative.

(Emphasis supplied)

16. The Petitioners have stated in the leave to defend that the Respondents herein are neither the landlords nor the owners of the tenanted premises. It is stated that the subject property belongs to DDA and is a Nazul land.

16.1. It is also stated in the leave to defend that the Respondents have several other alternate suitable residential properties in their possession and occupation. The Trial Court has however returned a finding that there is no document on record evidencing that there is alternate accommodation available with the Respondents. The finding of the Trial Court at paragraph 42 reads as under:

“42. Since no material has been placed on-record by the respondents to substantiate that the petitioners indeed have alternative suitable accommodations, the contention of the petitioners that there is no residential space-available with them will be accepted to be correct.”

(Emphasis supplied)

The plea of the alternate accommodation was not raised in the oral arguments before this Court. Therefore, the said issue does not arise for consideration of this Court.

17. Therefore, the only issue arising for consideration before this Court is whether the Respondents herein are the owners of the subject property and whether there exists a relationship of landlord-tenant between the parties herein.

17.1. As per the facts and circumstances of this case, the only plea that the Petitioners are seeking to raise is that the municipal address of the 'plot' mentioned in the DIT lease deed relied upon by the Respondents does not pertain to the municipal address of the tenanted premises qua the subject property.

17.2. In reply, the Respondents have contended that the DIT lease deed was executed in favour of their great grandfather in the year 1953. And, subsequently, the title rights of the said plot were transferred in favour of DDA, being the successor in interest of DIT. Bagh Raoji is a Nazul estate which vested in DIT and subsequently stood transferred to DDA.

17.3. It has been contended by the Respondents that with the incorporation of the Act of 1957, the area in which the subject property falls has been renamed as 'Dev Nagar', and the new municipal address of the plot allotted by DIT is H. No. 6728, Block No.10, Street No.1, Dev Nagar, Karol Bagh, New Delhi- 110005.

17.4. He has also relied upon the house tax receipts issued by MCD in the name of late Sh. Sohan Lal, the grandfather of the Respondents herein at the new address of the subject property/plot for the FYs 2004-05, 2006-07,

2008-09, to evidence the fact that the recorded owner of the subject property in the statutory record is the predecessor of the Respondents herein.

Bagh Raoji vis-à-vis Dev Nagar

18. The old municipal address of the ‘plot’ mentioned in the DIT lease deed reads as under:

‘Bagh Raoji, Block 10B, Khasra No. 245/152 (Plot No. 83).’

18.1. The new municipal number of the tenanted premises qua the subject property reads as follows:

‘H. No. 6728, Block No.10, Street No.1, Dev Nagar, Karol Bagh, New Delhi- 110005’

19. The Respondents have not disputed that the subject property is located on the land owned by DDA. The area of Dev Nagar which forms part of Bagh Raoji, as per the materials placed on record is admittedly a Nazul estate vesting in DIT and has been transferred to DDA as its successor.

20. During the course of proceedings, this Court had directed the learned standing counsel for MCD to appear and assist this Court with respect to the plea of the Petitioners that the municipal addresses of the ‘plot’ mentioned in the DIT lease deed and the subject property are different.

20.1. The standing counsel for MCD, Mr. Ajay Arora and Mr. Kapil Datta, upon instructions from the Executive Engineer, Karol Bagh, stated that ‘Bagh Raoji’ was the name of a large tract of land; and ‘Dev Nagar’ has been carved out of the larger area of Bagh Raoji. He states that ‘Dev Nagar’ is the new name given to the said carved out area and forms part of ‘Bagh Raoji’.

20.2. In view of the statement of the learned standing counsel for MCD, this Court is satisfied that that Dev Nagar, Karol Bagh is the new municipal

name for the area forming part of Bagh Raoji. In this regard, the reliance placed by the Respondents upon the 14th Schedule of the Act of 1957 also substantiates the said submission.

Relinquishment deed dated 01.08.1989

21. This Court also notes that the relinquishment deed dated 01.08.1989 executed between the legal heirs of late Sh. Sohan Lal, duly records that H. No. 6728, i.e., the subject property which is erected on the 'plot', forming part of Khasra No. 245/152 and is situated in Gali No.1, Block No.10, Dev Nagar, Karol Bagh, New Delhi- 110005. The relevant portion of the relinquishment deed dated 01.08.1989 reads as under:

"Whereas Late Shri Sohan Lal s/o Shri ram Rattan, was the sole and absolute owner of the immoveable property/properties as mentioned below:

1) House No. 6728, erected in the lease hold plot, measuring about 80 sq. yds. part of Khasra No. 245/152, situated at Gali No.1, Block No.10, Dev nagar, Karol Bagh, New Delhi-110005.

(Emphasis supplied)

21.1. The said recital in the relinquishment deed registered with the Sub Registrar duly recognizes that the new municipal number H. No. 6728 is located in Khasra No. 245/152, and therefore corroborates the submission of the Respondents. It also shows that the existing municipal number of H. No. 6728 corresponds to the old municipal number of 'plot' located in Khasra No. 245/152.

22. Therefore, this Court is of the opinion that the old municipal address of the 'plot' mentioned in the DIT lease deed and the new municipal address of the tenanted premises qua the subject property pertains to the same premises and is currently a part of 'Dev Nagar, Karol Bagh.'

23. In view of the aforesaid, this Court is satisfied that the Trial Court has rightly returned a finding that the DIT lease deed and relinquishment deed

dated 01.08.1989 pertains to the subject property and that the title, interest over the subject property has devolved from the predecessors upon the Respondents herein. The relevant portion of the impugned eviction order at paragraphs 21, 22, 26, 29 and 30 reads as under:

“21. The respondents have denied that the petitioners are owners of the tenanted premises. They have stated that it is the DDA which is the owner and landlord of the premises and that they have been paying rent/occupation charges to DDA. However, besides making these bald oral assertions, no document has been filed by the respondents which establishes that they are tenants under DDA and have been making payment to them for their occupation of the property. A private individual may not issue receipts while receiving rent. However, the DDA would have definitely issued receipts if any. payment was made to it. No document has been filed by the respondents which establishes that they are tenants under the DDA.

22. On the other hand, the petitioners have filed lease deeds dated 23.07.1953 executed in favour of Sh. Ram Rattan, ancestor of the petitioners. On conjoint reading of the lease deeds and the relinquishment deed filed by the petitioners, it is evident that the lease deed pertaining to property having Khasra No. 245/152 (Plot No. 83) pertains to the tenanted premises which is bearing no. 6728. This lease deed is for long duration of 20 years which can be extended for a period upto 90 years. It is not the case of the respondents that the lease of the petitioners was not extended after a period of 20 years and that is when their ancestors were inducted as tenants in the property by the DDA. **There is nothing on record to believe that the lease in favour of Mr. Ram Ratan, ancestor of the petitioners was not renewed. The lease executed in his favour have all trappings of ownership. There is no requirement for the petitioners to have established absolute ownership over the property. It is evident that the ancestor of the respondents was inducted as tenant by the ancestors of the petitioners.**

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26. Since the respondents/their ancestors were inducted as tenants in the premises by the ancestors of the petitioners, they are now estopped from questioning the title of the petitioners over the tenanted premises.

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29. **The petitioners are legal heirs of late Mr. Ram Ratan, the original lessee of the property under the State. After demise of all ancestors of the petitioners, the properties of Mr. Ram Ratan devolve upon the petitioners**

and their other family members. The title of Mr. Ram Ratan over the property gets transferred upon the petitioners and other persons.

30. There is no gainsaying the fact that the petitioners have not filed any document which establishes that there exist a relationship of landlord and tenant between the petitioners and the respondents. No rent receipts have been filed by the petitioners. However, if the transfer of the landlord's title is valid, and even if the tenancy is not attorned in favour of the transferee, the lease continues. Thus, a transferee of the landlord's rights, steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. Attornment by the tenant is unnecessary to confer validity to the transfer of the landlord's rights and there is no such statutory requirement. Reference may be made to the case of *Hajee K. Assainar vs. Chacku Joseph* AIR 1984 Ker 113. In the case of *Mahendra Raghunathdas Gupta vs. Vishvanath Bhikaji Mogul* AIR 1997 SC 2437, it was held that attornment by tenant is not necessary though it is desirable. Mere non-payment of rent by tenant even for a considerably long period does not extinguish the landlord-tenant relationship. The possession of a tenant cannot be adverse to his landlord. **The petitioners are therefore, the landlords and owners of the tenanted premises.**"

(Emphasis supplied)

Conclusions

24. *Firstly*, this Court holds that the old municipal address of the 'plot' mentioned in the DIT lease deed and the new municipal address as mentioned in the eviction petition pertains to the tenanted premises qua the subject property.

25. *Secondly*, the documents produced by the Respondents, namely, the DIT lease deed, the ground rent receipts and house tax receipts, evidences that the same is issued in the name of the predecessor in interest of the Respondents. In the opinion of this Court, the documents produced by the Respondents sufficiently substantiates their claim that their predecessor, late Sh. Ram Ratan is the allottee of the subject property *vide* DIT lease deed executed in his favour. As the legal heirs of late Sh. Ram Ratan, the said lease hold rights have devolved upon the Respondents herein.

26. *Thirdly*, this Court is unable to accept the plea of the Petitioners that they were inducted in the tenanted premises by DDA. The Petitioners have not claimed any independent right or title in the tenanted premises. The Petitioners have been unable to substantiate their claim of independent right of tenancy created by DDA over the tenanted premises. In fact, the Petitioners have duly admitted before this Court that they are tenants in the subject property, however, they have sought to wrongly deny the landlord-tenant relationship of the parties herein.

27. In view of the aforesaid conclusions, the Respondents, being the owners of the subject property, and the landlords of the Petitioners herein, are entitled to maintain the eviction petition against the Petitioners, tenants from the tenanted premises.

28. This Court is therefore of the opinion that the Trial Court has correctly concluded that there exists landlord-tenant relationship between the parties and the said findings do not merit any interference by this Court. The Respondents have substantiated their plea that they are the legal heirs of the recorded owners of the subject property and therefore, the dispute raised by the Petitioners with respect to the ownership and relationship of landlord-tenant between the parties is a sham and has been rightly rejected by the Trial Court.

29. Accordingly, the present revision petition is dismissed with costs of Rs. 25,000 payable by the Petitioners to Respondent No. 2. The impugned eviction order dated 16.08.2019 is upheld.

30. The Respondents are at liberty to execute the impugned eviction order forthwith. The interim order dated 03.02.2020 staying the execution of the

impugned eviction order stands vacated. All the pending applications stand disposed of.

31. It is clarified that the Petitioners shall continue to remain liable to pay use and occupation charges of Rs. 7,500 per month to the Respondents until the date of handing over of the vacant, peaceful and physical possession of the tenanted premises.

MANMEET PRITAM SINGH ARORA, J

MARCH 22 2023/kv/msh



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