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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % ***Date of decision: 06.09.2023***
 + **RC.REV. 73/2023 & CM APPL. 11632/2023**
RATAN KUMAR AND ANR Petitioners
 Through: Mr. Chandan Kumar Mandal, Adv.
 versus
SMT SANTOSH JALUTHARIA AND ORS Respondents
 Through: Mr. R. K. Saini, Adv. and Ms.
 Neelam Saini, Adv. for R-1.

CORAM:

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J.: (ORAL)

1. The present Revision Petition has been filed by the Petitioner/tenant assailing the Order dated 24.11.2022 [hereinafter referred to as the "Impugned Order"] passed by the learned Additional Rent Controller, Central, Tis Hazari Courts *qua* the premises bearing Shop No. 74/5557, Regharpura, Karol Bagh, New Delhi- 110005 [hereinafter referred to as the "demised premises"]].
2. By way of Impugned Order, the Trial Court has dismissed the Leave to Defend Application filed by the Petitioner/tenant.
3. Learned Counsel for the Petitioner/tenant has, in support of the present Petition, raised the following contentions:
 - (i) The demised premises is not owned by the Respondent/landlord but by the Delhi Development Authority [hereinafter referred to as the "DDA"]]. It is further contended that the DDA was not a party to the Eviction Petition filed before the Trial Court and hence the Eviction Petition is bad for misjoinder of parties.



(ii) The Respondent/landlord is not the owner of the demised premises but the owner was one late Shri Ramji Lal @ Ramdeva and therefore he is not entitled to file the Eviction Petition.

(iii) No other contention has been raised by the Learned Counsel for the Petitioner/tenant.

4. Learned Counsel for the Respondent/landlord, on the other hand, submits that for the Eviction Petition filed under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as the “Act”], the following essential ingredients required to be proved by the Respondent/landlord:

- (a) The existence of landlord and tenant relationship between the parties;
- (b) The demised premises are required for the *bona fide* use of the Respondent/landlord or his family members that are dependent upon him.
- (c) There is no suitable alternate accommodation available to the Respondent/landlord.

4.1 Learned Counsel for the Respondent/landlord submits that so far as concerns (a) above, the Petitioner/tenant has not disputed the same and that to prove the existence of the landlord and tenant relationship, the Respondent/landlord has placed on record the photocopies of the rent receipts in favour of the Respondent/landlord for the demised premises.

4.2 Learned Counsel for the Respondent/landlord submits that so far as concerns (b) above, it has been submitted that the tenanted premises are *bonafidely* required by the Respondent/landlord for residential purpose and that the Respondent/landlord is suffering from various ailments due to her



old age, therefore, the Respondent/landlord would require the Ground floor for residence as climbing stairs to the first floor would be difficult at her old age. It has been further pleaded that the Respondent/landlord does not wish to reside with her son, and wishes to occupy her own premises which is the Ground Floor of the demised Premises as it is more convenient and suitable to the Respondent/landlord.

4.3 Learned Counsel for the Respondent/landlord submits that so far as concerns (c) above, there is no averment in the Leave to Defend raised by the Petitioner/tenant that the Respondent/landlord has suitable alternative accommodation.

4.4. Learned Counsel for the Respondent/landlord further submits that the demised premises was originally owned by the Respondent/landlord's father-in-law late Shri Ramji Lal @ Ramdeva and after his demise his son, Shri Kushal Chand, who was the husband of the Respondent/landlord, inherited the demised premises. The other legal representatives of late Shri Ramji Lal @ Ramdeva, had released and relinquished their rights in the demised premises in favour of late Shri Kushal Chand. After the demise of late Shri Kushal Chand, his wife, Respondent No.1 became the landlord.

4.5 Learned Counsel for the Respondent/landlord seeks to rely upon the documents filed along with the Eviction Petition and the Impugned Order. Reliance is placed on paragraphs 13 and 14 of the Impugned Order wherein there is a finding *qua* devolution of the demised premises upon the Respondent No.1.

4.6 It is further contended by the learned Counsel for the Respondent/landlord that the challenge to ownership of the Respondent/landlord is, in any event, barred by the provisions of Section



116 of the Indian Evidence Act, 1872 [hereinafter referred to as the “1872 Act”]. In this regard, Learned Counsel seeks to rely on the judgment of the Supreme Court in the case of *Smt. Shanti Sharma v. Ved Prabha*¹.

4.7 *Qua* the contention of the Petitioner/tenant that DDA is the owner of the demised premises, learned Counsel for the Respondent/landlord submits that the demised premises is a lease hold property and that DDA is merely a lessor and not the owner of the demised premises. Learned Counsel for the Respondent/landlord seeks to rely on the copy of the perpetual lease deeds dated 06.05.1953 and 23.06.1972 which were filed before the Trial Court alongwith the Eviction Petition, hard copies of which have been handed over today.

5. Let the copies of the said lease deeds be placed on record by the learned Counsel for the Respondent/landlord within the next two days.

6. The Petitioner/tenant has firstly, laid a challenge to the ownership of the Respondent/landlord in the matter. It is contended that the demised premises is owned by DDA and hence the provisions of Act are not applicable.

6.1 The other contention of the Respondent/landlord is that the demised premises was owned by late Shri Ramji Lal @ Ramdeva and not by the Respondent/landlord is misconceived. The Respondent No.1 is the daughter-in-law of the original owner and in terms of the documents annexed alongwith the Eviction Petition, upon the demise of the original owner, the demised premises was bequeathed to the husband of the Respondent/landlord and pursuant to his demise the other co-owners/legal

¹ (1987) 4 SCC 193



representatives of the demised premises relinquished their rights in the demised premises in favour of the Respondent/landlord.

7. The demised premise is a lease hold property at Regharpura, Karol Bagh, New Delhi under DDA. The perpetual lease deed dated 23.06.1972 was executed between DDA and late Shri Ramji Lal @ Ramdeva, predecessor-in-interest of the Respondent/landlord.

7.1 It is contended by the Petitioner/tenant that the demised premises was built up on a land taken up on lease from DDA and hence the Respondent/landlord therein, could not be said to be the owner of the premises, therein. It was stated that the Respondent/landlord is not the owner but a lessee of DDA.

7.2 In a similar situation, this contention of a tenant was rejected by the Supreme Court in the *Smt. Shanti Sharma* case. The Apex Court held that if this contention of a tenant was to be accepted, then more than 50% of the properties in Delhi which stand on lease hold plots would not come under the purview of this Act and that could not have been the legislative intent of this statute :

“13. Admittedly if this contention of the learned Counsel for the appellant is accepted in Delhi more than 50 per cent of the properties stand on leasehold plots and therefore it would not be possible for any landlord to seek an order or decree for eviction on the ground of bona fide requirement. It appears that it is therefore clear that if the legislature had this narrow meaning of ownership in mind, it would not have used it, as it could not be contended that the legislature did not keep in view that in most of the modern townships in India the properties stand on plots of land leased out either by the government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of the bona fide requirement and it is in this context that we have to examine this contention.”

[Emphasis supplied]



8. The challenge to the ownership of Respondent/landlord in a petition under Section 14(1)(e) of DRC Act is no longer *res integra*. The Supreme Court has in catena of judgments held that what has to be considered as ownership *vis-a-vis* a tenant is someone who had a better title than the tenant. The Supreme Court in **Smt. Shanti Sharma** case while dealing with a Petition under Section 14(1)(e) of the Act, where the tenant challenged an Eviction Order by contending that since the lease executed by DDA in favour of the landlord was cancelled by DDA, the landlord was not entitled to eviction under Section 14(1)(e) of the Act.

8.1 While dealing with the word “owner” under the Act, the Supreme Court in paragraph 14 of the **Smt.Shanti Sharma** case has held that the “owner” has to be understood as someone who built his property and lets it out to a tenant and *vis-a-vis* a tenant should be something more than a tenant. The Supreme Court in **Smt. Shanti Sharma** case has held as follows :

*“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. **This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and***



bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. *So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term “owner” as is contemplated under this section...*”

[Emphasis supplied]

8.2 The *Smt. Shanti Sharma* case further, while relying on a judgment of this Court in *T.C. Rekhi v. Smt Usha Gujral*², held as follows :

“...This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in *T.C. Rekhi v. Smt Usha Gujral* [1971 RCJ 322, 326 (Del HC)] as under:

“The word ‘owner’ as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word ‘owner’ in this clause seems to me to have been inspired by the definition of the word ‘landlord’ as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word “owner” is used in clause (e), it seems to me to include all persons in the position of Smt Usha Gujral who have taken a long lease of sites from the government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of clause (e) and

²1971 RCJ 322, 326 (Del HC)



*would render all such landlords remediless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the legislature and I repel the appellant's contention. **I consider it proper before passing on to the next challenge to point out that the word 'owner' as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe someone as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon.***

[Emphasis supplied]

9. The provisions of Section 116 of the 1872 Act also come in the way of Petitioner/tenant. Section 116 of the 1872 Act states that no tenant shall during the continuance of the tenancy, be permitted to deny the title of the landlord if such landlord at beginning of the tenancy had title to such immovable property as follows :

"116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

9.1 The Petitioner/tenant in the present case has not denied taking on lease the demised premises from late Shri Ramji Lal @ Ramdeva, thus, he is estopped from challenging the title of the successor-in-interest to the late Shri Ramji Lal @ Ramdeva in the demised premises, i.e., the Respondent/landlord herein.



10. In view of the foregoing discussions, this Court finds no ground to interfere with the Impugned Order as no infirmity or illegality exists in the Impugned Order that would merit interference.
11. Accordingly, the present Revision Petition is dismissed.
12. All pending Application(s), if any, stands disposed of.
13. The Respondent/landlord is entitled to obtain the possession of the demised premises bearing Shop No. 74/5557, Regharpura, Karol Bagh, New Delhi- 110005.
14. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 6, 2023/SA

Click here to check corrigendum, if any