



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 06 November 2023**
Judgment pronounced on : 29 November 2023¹

+ **RC.REV. 409/2018 & CM APPL. 34567/2018**

VINAY KUMAR VERMA & ANR. Petitioners
Through: **Mr. Praveen Suri and Ms.**
Nayra Rastogi, Advs.
versus

HARJIT SINGH SHAH Respondent
Through: **Counsel for the respondent**
(Appearance not given)

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This revision petition has been filed under Section 25-B (8) of the Delhi Rent Control Act, 1958, as amended upto date², assailing the impugned order dated 03.07.2018 passed by Shri Sushant Changotra, learned ACJ/ARC/CCJ (New Delhi) Patiala House Courts, New Delhi³ in Eviction Petition bearing E.No. 30/2015 titled as 'Shri. Vinay Kumar Verma & Anr. v. Shri Harjit Singh Shah', whereby the application of the respondent for leave to defend dated 19.10.2015 was allowed.

FACTUAL BACKGROUND:

2. Briefly stating, the petitioners have filed a petition under Section 14(1)(e) of the DRC Act stating that late Shri Ram Saran Dass was the owner of property bearing *khasra* No. 1066, Village Naraina,

¹ Written submissions filed on 19.11.2023

² DRC Act

³ ARC



New Delhi and after his death, his three sons, namely Shri Ram Narayan, Shri Mahender Singh and Shri Sheo Ram inherited the right, title and interest therein and became its owners. However, the three sons also expired in due course of time and were survived by their respective wives and children. Petitioner No.1 is the son of late Shri Ajit Singh, who was the pre-deceased son of late Mahender Singh while petitioner No.2 is son of late Shri Ram Narayan. They claim that they inherited the property and became co-owners as well as landlords in respect of property bearing No. CB-384/38 built in *khasra* No. 1066 now known as Indira Market, Ring Road, Naraina, Delhi Cantonment. It was their case that the respondent is a tenant in the premises at a monthly rent of Rs. 1,000/- per month besides other charges and has not made payment of rent on a regular basis.

3. The petitioners have sought eviction of the respondent on the grounds that petitioner No.1 wants to start his own business, who is presently employed with M/s. PMG Integrated Communication Pvt. Ltd. as Associate Accounts Director, which job involves regular travelling as a result of which he is unable to look after his family. Therefore, he wants to start his own business of marketing from the premises not only in occupation of the respondent as a tenant but also other tenants, namely S.S. Shah and Anil Trehan, located in premises bearing No. CB-384/37 and 38 besides CB-384/48. It was stated that despite service of legal notice dated 27.04.2018, the respondent failed to vacate the premises, and hence, they have filed the eviction petition.

4. The eviction petition being governed by the procedure prescribed under Section 25-B of the DRC Act, notice was issued in



the prescribed format to the respondent, who filed an application for leave to defend the eviction petition along with an affidavit on 29.10.2015. The respondent has contested the eviction petition denying that the petitioners are the owners of the premises and further denying existence of any relationship of landlord and tenant between the parties, claiming that only Late Shri Ram Saran has been shown as the owner of building No. 384/1 to 39 and 41 to 48, Naraina, in the record of the Delhi Cantonment Board. It is asserted that no partition has taken place in respect of property of late Ram Sharan. It is further pointed out that in the legal notice as well as in the eviction petition under Section 14 (1) (e) of the DRC Act, the petitioners described the suit premises as consisting of a built up second floor and tin shed on third floor, whereas the suit premises is a three storied building and correctness of the site plan has been denied; further asserting that number of the suit premises has been mentioned at one place as CB-384/37 whereas at other places it is mentioned as 384/38 and the actual area of the property is 175 sq. yards. It is further claimed by the respondent in the application for leave to defend that he has been in peaceful and undisturbed possession of the suit premises prior to 23.12.1999 and earlier thereto his late father Shri Mohinder Singh Shah was in settled possession without any disturbance and no one ever came forward to claim themselves as the owner of the premises in question so much so that his father had executed a General Power of Attorney⁴ dated 23.12.1999 in his favour and sewer connection was sanctioned in his name on 05.06.1996, pursuant to which water

⁴ GPA



charges since 23.10.1996 and the meter in the premises are existing in their names w.e.f. 18.11.2009 and 13.07.2000.

IMPUGNED ORDER:

5. Learned ARC vide impugned order dated 03.07.2018 observed that although the respondent/tenant had taken a defence that that petitioners are not co-owners or owners of the property in dispute, he did not take a specific plea that the property in dispute had been acquired by the government. However, learned ARC took judicial notice of the notification issued by the government, alluding to Judgment dated 09.11.2012 passed by the Court of Shri Alok Aggarwal, the then learned ADJ (South-West), New Delhi, pursuant to the Notification under Section 4 of the Land Acquisition Act, 1894 (Repealed)⁵ dated 13.11.1959, held that the petitioners had played fraud upon the Court as they had concealed such facts. Simultaneously, the Court also found that the relationship of landlord and tenant had been denied and there was no clear averment on the part of the petitioners as to when the respondent was inducted as a tenant into the premises besides the fact that there was an apparent contradiction about the rate of rent. Thus, holding that since certain triable issues were raised, the application for leave to defend was granted to the respondent/tenant.

GROUND FOR CHALLENGE:

6. The impugned order passed by the learned ARC has been assailed *inter alia* on the grounds that the learned ARC failed to

⁵ LA Act, 1894 (repealed) vide The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (now in force).



appreciate that no documents were filed by the respondent/tenant in respect of Notification under Section 4 of LA Act; and as held in **Punjab Stainless Steel House & Anr. v. Sangeeta Kedia**⁶, there was no Award in respect of acquisition of land in *khasra* No. 1066, Village Naraina, New Delhi. Furthermore, it was overlooked that in reply to their RTI, it was categorically brought forth that the possession of *khasra* number in question has not been taken over by the Government and no compensation has been given to the owners (reference invited to Annexure P-7 (Colly); and thus learned ARC failed to appreciate that in view of judgment in the case of **Agya Ram Arora v. Surjeet Mech. Tools**⁷, the petitioner shall remain owner of the premises in question till such time possession is taken over by the Government; and lastly the learned ARC failed to appreciate that the respondent has been shown as a tenant in the records of the Delhi Cantonment Board.

LEGAL SUBMISSIONS:

7. Mr. Suri, learned counsel for the petitioners vehemently urged that till such time the possession is taken over by the Government, the petitioners remain the legal owner of the premises in question and merely because the factum of Notification under Section 4 of the LA Act (repealed) was not disclosed in the eviction petition, it would not result in any adverse legal consequence; and the learned ARC failed to appreciate that the respondent has miserably failed to show as to how he acquired the possession of premises in question and the mere fact

⁶ 2014 SCC OnLine Del 7692

⁷ 2015 SCC OnLine Del 9436



that his father executed GPA in his favour or that sewage, water or electricity amenities have been granted to him, does not invite any logical inference that his father became owner by adverse possession, which plea otherwise cannot be taken in the eviction proceedings.

8. *Per contra*, learned counsel for the respondent urged that the respondent has never claimed that he is the owner of the premises in question by way of adverse possession and referring to Section 12(2) of the Land and Acquisition Act, 1894, it was pointed out that amount of compensation already stands deposited in the accounts of the owner/occupier, which has not been claimed; and since the amount of compensation has not been withdrawn by anyone, it is deemed to have been paid, and thereby passing over the title of the property in question to the Government. In the alternative it was vehemently urged that respondent is not a tenant under the petitioners or their predecessor-in-interest and there is no averment as to how or when the tenancy was created and no reliance is placed on any rent deed or rent receipts. Insofar as decision in *Agya Ram Arora (supra)* is concerned it was distinguished and it was urged that *ratio* in the said case was not in context of Section 24(2) of the Right to Fair Compensation Act, 2013, which was brought into operation from 01.01.2014.

ANALYSIS:

9. This Court has given its thoughtful consideration to the submissions made by the learned counsels for the parties and carefully perused the record as also the written submissions filed on behalf of the petitioner-revisionist. However, the respondent has not cared to



file written submissions within seven days and thereafter till the pronouncement of this judgment.

SCOPE OF INTERFERENC IN REVISION & FACTORS TO WEIGH WHILE DECIDING APPLICATION FOR LEAVE TO DEFEND:

10. First things first, it becomes imperative to understand the scope of the revision in order to embark on an analysis of the facts brought on the record. Avoiding any long academic discourse, reliance is placed on the case of **Abid-Ul-Islam v. Inder Sain Dua**⁸, wherein it was emphasised by the Apex Court that “*the scope of interference in revisional jurisdiction is very restricted, and except in cases where there is an error apparent on the face of the record, the High court would not proceed to disturb the findings rendered by the rent controller*”. It was held that:

“23. The proviso to Section 25-B (8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

11. In order to find if the learned ARC has committed any error which is ‘apparent on the fact of the record’, it would be relevant to

⁸ (2022) 6 SCC 30



reproduce the observations made by the learned ARC vide impugned order dated 03.07.2018, which read as under:

“16. I have given thoughtful consideration to the above mentioned aspect. In the present case the respondent had taken defence that the petitioners are not the co-owners or owners of the property in dispute, but he did not take specific defence that the property in dispute had been acquired by the government. The document so filed on record shows that aforesaid acquisition of land underneath suit property was prior to filing of application for leave to defend. However, it has to be borne in mind that the land was acquired by way of notification. The court is bound down to take judicial notice of notification passed by government. The notification is passed by act of law qua which there cannot be estoppel. Hence, even if such notification is produced before court or effect thereof is mentioned during the course of arguments, the same will have to be considered by the court.

17. The judgment dated 09.11.2012 passed by the court of Sh. Alok Aggarwal, Ld. ADJ, South-West District, New Delhi was in pursuance of notification dated 13.11.1959. Moreover, it has to be kept in mind that the aforementioned notification and the judgment as mentioned above prima facie shows that the petitioners had concealed the fact that the land upon which suit premises is constructed had been acquired much earlier and they were granted additional solatium alongwith compensation and interest. The aforesaid documents prima facie show that the conduct of petitioners tantamount to playing fraud on the court by making false averments. It is the duty of every court to see that no order is passed on the basis of fraud being played upon it by any litigant. Hence, it is imperative for this court to take into consideration the aforementioned fact of acquisition of land upon which the suit property has been built up. Thus, law so relied upon by the counsel for petitioner in this regard is not applicable to the facts of this case.

18. The respondent has denied the existence of relationship of landlord and tenant. The perusal of petition shows that it is silent with regard to date, month or year of creation of tenancy and as to who had inducted the respondent as tenant. The respondent has filed copy of GPA executed by his father Sh. Mohinder Singh Shah dated 23.12.1999 in his favour with regard to property in dispute. He has also filed copy of letter dated 05.06.1996 written by the cantonment board to Sh. Mohinder Singh Shah with regard to sewer connection of the property in dispute. The said document also shows that Sh. Mohinder Singh Shah was in possession of the property in dispute in the year 1996, whereas, as per averments of petitioners the respondent Sh. Harjit Singh Shah was inducted as tenant.



19. It is also required to be kept in mind that in paragraph no. 1 and 11 of the petition, it has been mentioned that respondent is tenant in property no. CB-384/37 and monthly rent is Rs.1800/- per month besides electricity and water charges, whereas, in paragraphs no. 18 (a)(i) & 18 (a)(ii) of the petition it is mentioned that respondent is tenant in property in question i.e CB-384/37 at the monthly rent of Rs.1000/- per month. Even if it is assumed that there was typographical error with regard to number of property, it does not explain the difference in the monthly rent as mentioned in the petition itself. The petitioners have not filed any receipt of payment of rent made by respondent or his predecessor with respect to property in dispute. In the given set of circumstances, the fact that the petitioners are unaware about the alleged date, month and year of commencement of tenancy or the person to whom property was let out and the amount of rate of rent on which property was let out, makes the case of petitioners qua existence of relationship of landlord and tenant between the parties quite doubtful.

20. The petitioners have also placed reliance on the copy of assessment register of Delhi Cantonment Board. However, the said list only shows that respondent has been shown as an occupier of property no. CB384/37 and not as its tenant. Hence, the record of Delhi Cantonment Board also does not show that respondent is tenant.

21. The ld. Counsel for petitioners had also argued that the respondent has not disclosed that according to him who is owner of the suit premises. However, in my considered opinion the notification and public documents placed on record prima facie shows that the land belongs to government, therefore, in such circumstances the fact of non explanation of real owner of the property in dispute by the respondent is of no consequence.

22. Therefore, it has to be concluded that the respondent has raised triable issues. According to the facts stated and grounds raised in the affidavit filed by the respondent seeking leave to defend, it is not possible to take a view that no triable issue arises for consideration. In my view the facts are disputed and the correctness or otherwise of the assertions made by each side are required to be examined. Thus, leave to defend is granted to the respondent to contest the petition.”

12. A careful perusal of the aforesaid reasoning by the learned ARC brings forth that the application for leave to defend was granted primarily on two consideration: **firstly**, that the land underneath the property in question has been acquired by the government, which fact was concealed by the petitioners/landlords; and **secondly** that there



was denial of relationship of landlord and tenant between the parties. Without further ado, the decision of the learned ARC on the first issue is patently erroneous in law. Notwithstanding that the factum of acquisition of land or proposed acquisition of land by the government was not disclosed by the petitioners in the eviction petition, it is well ordained in rent eviction laws that so long as the land sought to be acquired is not physically taken over or actual physical possession is not taken over by the government in pursuance of acquisition proceedings, the owner/landlord continues to retain all legal rights therein. Learned counsel for the petitioners rightly placed reliance on decision in *Agya Ram Arora (supra)*, wherein this Court had categorically laid down that mere fact that the tenanted property has been acquired and the award has been published would not amount to raising a ‘triable issue’ so long as the landlord and the tenants, both are in possession of the suit property. It would be expedient to extract the relevant observations, which are as under:-

“12. Be that as it may, there is no dispute that as on date both Agya Ram and the respondent are in possession of the suit property. In *Sheela Jawarlal Nagori (supra)* the Supreme Court referring to Section 6 of the Land Acquisition Act, 1894 (in short the Act) held that it enables the acquiring authority to take possession of acquired land and when that is taken it would be free from all encumbrances. Thus, as long as physical possession is not taken over, the suit for eviction of the tenant by the landlord even after passing of the award under the Land Acquisition Act was maintainable. In *Special Land Acquisition Officer Vs. Godrej and Boyce (1988) 1 SCC 50* the Supreme Court held that Section 50 of the Land Acquisition Act makes it clear beyond doubt that the title of the land vests in the Government only when possession is taken over by Government. Till that point of time the land continues to be with the original owner and he is also free to deal with the land just as he likes. It was held that under the scheme of Act neither the



notification under Section 4, nor the declaration under Section 6, nor the notice under Section 9 of the Act was sufficient to divest the original owner or other person interested in the land of his rights therein. Thus, contrary to the law laid down by the Supreme Court the learned ARC held that a triable issue was raised in view of the award having been published.”

13. Therefore, the findings recorded by the learned ARC that since the property in question has been acquired, the petitioners have ceased to be the owner thereof, cannot be sustained in law. As regards the dispute raised by the respondent/tenant denying the existence of relationship of landlord and tenant between the parties, learned ARC has rightly pointed out certain **foundational flaws** in the pleadings by the petitioners. Evidently, the petitioners are failing to show as to when and in what manner the property had been partitioned after the demise of recorded owner, namely late Shri Ram Saran. As per the documents filed on the record, which depicts the family tree, there is a note written at the bottom to the effect that late Mohinder Singh had made a registered Will in favour of Mr. Vinay i.e., the petitioner No.1 son of the predeceased son Ajit Singh. No such registered will has been propounded in this matter.

14. It is also on the record that a reply dated 27.01.2014 was received consequent to the RTI by the petitioners, and the Delhi Cantonment Board shows the respondent as ‘occupier’ and not as ‘tenant’ in their records. It appears from the documents on the record that the “occupiers” in various parts of the property including the respondent’s predecessor have been paying house tax on behalf of the original owner i.e., late Shri Ram Saran. It is also manifest that there



are other tenants also in the suit premises, which is bearing *khasra* No. 1066. Now, there could be no quarrel with the proposition of law that a mere denial by the respondent/tenant as to existence of relationship of landlord and tenant between the parties is not decisive since the occupier or the tenant has to show as to how he or his predecessor-in-interest came into possession of the premises and how or in what manner they are occupying the premises.

15. At this stage, it would be expedient to invite reference to decision by the Apex Court in the case of **Inderjeet Kaur v. Nirpal Singh**⁹ wherein after a detailed analysis as to the factors that should weigh in the mind of the Rent Controller while deciding an application for leave to defend under Section 25-B(4) and (5) of the DRC Act, it was observed as follows:

“11. As is evident from Sections 25-B(4) and (5) of the Act, **burden placed on a tenant is light and limited** in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in b clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

12. A landlord, who bona fide requires a premises for his residence and occupation should not suffer for long, waiting for eviction of a tenant. At the same time a tenant cannot be thrown out from a premises summarily, even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. **Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter III-A** and in particular having regard to the clear terms and language of Section 25-B(5).

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a

⁹ (2001) 1 SCC 706



case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. **It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5).** A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. **It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination.** It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25-B(6) states that where leave is



granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25-B(7) speaks of the procedure to be followed in such cases. Section 25 B(8) bars the appeals against an order of recovery of possession except provision of revision to the High Court. Thus a combined effect of Section 25-B(6), (7) and (8) would lead to expeditious disposal of eviction petition so that a landlord need not wait and suffer for a long time. On the other hand when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.”
{bold letters emphasized}

16. Learned ARC had thus rightly found that there are patent contradictions with regard to actual number of the premises as also the rate of rent, and there is no clear averment as to who was inducted as tenant by the petitioners. Evidently, the petitioners have filed eviction petitions against other tenants in the same property, which matters are *sub judice*, and it is not clear as to what is the stage or outcome of such eviction petition. Be that as it may, what is also borne out from the record is that the learned ARC did not care to give any finding as to whether or not the petitioners are able to show that they bonafidely require additional accommodation for their personal necessity. On said count, there is nothing spelled out by the petitioners as to extent of accommodation available with him and his family members in the eviction petition.

17. In view of the foregoing discussion, this Court finds that the petitioners are prosecuting the eviction petition in a half-hearted manner and certain ‘triable issues’ do arise, which could only be appreciated after recording evidence of the parties.



18. Hence, the present Revision is dismissed. Accordingly, the matter goes back to the learned ARC to proceed with the trial as per the law. As more than five years have elapsed since the passing of the impugned order inclusive of the disturbing Covid-19 pandemic period for about two years, the respondent is directed to file its written statement, if not filed already, within 30 days from today, failing which, right to file written statement shall be forfeited.

19. The parties shall appear before the learned ARC for further proceedings as per law on 12 January 2024. Nothing expressed herein shall tantamount to an expression of opinion on the merits of the case.

20. The pending application also stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 29, 2023

Sadique