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

+ **RSA 21/2023 and CM APPL. 3392/2023**

Date of Decision: 14.11.2024

MOHD. SAJID

S/O SHRI WASIUDDIN

PROP. OF M/S SAJID ELECTRIC WORKS

ADD-AT SHOP AT GROUND FLOOR

H.NO.C-81-82, NEAR MASJID BILAL

STREET NO.11, CHAUHAN HANGAR

DELHI-110053

.....APPELLANT

(Through: Mr. Anees Ahmad Khan, Adv.)

Versus

1. SALEEM AHMAD

2 FAHEEM AHMAD

3 NASEEM AHMAD

ALL S/O LATE QASEEM AHMAD

R/O H.NO.C-81, STREET NO.11

CHAUHAN HANGAR, DELHI-110053

4. SMT. REHAN FATIMA

W/O SHRI FAHEEMUDDIN

R/O H.NO.C-81, STREET NO.11

CHAUHAN HANGAR, DELHI-110053

5. SMT. RIZWAN FATIMA

W/O RAHAWT ALI

R/O H.NO.C-55/24, STREET NO.11/7

CHAUHAN HANGAR, DELHI-110053

6. SMT. ASMA KHATOON

Signature Not Verified

Digitally Signed
By:MAANAS JAJORIA
Signing Date:19.11.2024
16:30:06

Signature Not Verified

Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV

W/O MOHD. QASIM
R/O H.NO.12-A/63, STREET NO.3
VIJAY MOHALLA MAUJPUR
DELHI-110053

7. SMT. AZRA KHATOON

W/O OF MOHD. SHADAB
R/O H.NO.16 9, MOHALLAH ANSARIYAN
GT ROAD, SIKANDRABAD
DISTT. BULANDSHAHR, U.P.

.... RESPONDENTS

*(Through: Mr. Rahul Kumar and Mr.
Mantosh Kumar, Advs.)*

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This appeal has arisen out of judgment and decree dated 26.07.2022, passed by Additional District Judge (NE) -01, Karkardooma Courts, Delhi, dismissing the appeal preferred by the appellant/defendant against the judgement and decree dated 01.04.2019, passed by Administrative Judge, North East Karkardooma Courts, Delhi, in Civil Suit No.348/17 whereby, the suit filed by the respondents/plaintiffs for possession, recovery of rent and damages against the appellant/defendant was decreed.

2. The suit of the respondents/plaintiffs was that they owned the property bearing no. C-81-82, Near Masjid Bilai, Street No.11, Chauhan Bangar, Seelampur, Delhi – 110053 (*hereinafter referred to as suit property*). The parents of the respondents/plaintiffs were the erstwhile owners who had let out a shop measuring 6 x 11 ft. situated on the ground floor of the suit property to the appellant/defendant on rent at the rate of Rs.200/- per month for 30 years.

3. During the tenancy period, with the mutual consent of both the parties, the rent was increased from time to time. Thereafter, the aforesaid shop was repaired and hence, the rent was revised with mutual consent of both the parties at the rate of Rs.3000/- per month. However, it is the case of the respondents/plaintiffs that the appellant/defendant did not pay the rent since 01.05.2013, compelling the mother of the respondents/plaintiffs, namely, *Ms.Saeeda Khatoon*, to issue a legal notice on 18.04.2011 to the appellant/plaintiff demanding arrears of rent and termination of tenancy which was replied by the appellant/defendant on 26.04.2011.

4. The parents of respondents/plaintiffs namely, *Mr.Qaseem Ahmed* and *Ms. Saeeda Khatoon* expired on 09.12.2006 and on 10.07.2016, respectively. The respondents/plaintiffs being the legal heirs, became the subsequent owners of the suit property. Additionally, two more legal notices dated 10.02.2017 and 20.03.2017, were issued by the respondents/plaintiffs to the appellant/defendant. Hence, the tenancy of the appellant/defendant stood terminated with effect from 10.02.2017 *vide* the legal notices as well as expressly in oral terms.

5. The respondents/plaintiffs alleged that after receiving the notice on March 20, 2017, the appellant/defendant sent a money order in the month of April, 2017, addressed to late *Ms. Saeeda Khatoon*, for an incomplete payment of arrears and rent. This money order could not be received because *Ms. Khatoon* had passed away by that time. They further alleged that the appellant/defendant was a habitual defaulter in paying rent.

6. The respondents/plaintiffs submitted that the suit property is located in the village Ghonda, Chauhan Bangar, which is a separate revenue estate and is not notified under Section 1(2) of the Delhi Rent

Control Act, 1958 ("DRC Act"). Consequently, the provisions of the DRC Act do not apply to this property.

7. The relief clause of the civil suit reads as below:-

Relief

34. *As the outcome of relief of possession was , made dependent upon the issue' no.1 and 2, the same is granted ip favour of plaintiffs. Accordingly, the suit of the plaintiffs is decreed for relief of possession. Parties to bear their own cost, decree sheet be prepared accordingly. File be consigned to the i record room.*

8. The aforesaid civil suit was contested by the appellant/defendant by filing a written statement, wherein, amongst other objections,, an objection with respect to Section 50 of the DRC Act was raised. It was stated that the area where the suit property is situated i.e. village Ghonda, Chauhan Bangar does not form a separate estate and is thereby, notified making the provisions of DRC Act applicable to the suit property. Therefore, the maintainability of the suit stands challenged.

9. Upon completion of the pleadings, the Trial Court framed the following issues *vide* order dated 07.11.2017.

i) Whether the suit property is situated in the area where provisions of DRC Act does not apply?

OPP(preliminary issue)

ii) Whether the rate of rent is Rs.3000/- as is alleged in the plaint or Rs.313.33/- as alleged in the WS? onus on the parties.

iii) Whrther the plaintiffs are entitled for arrears of rent as prayed for? OPP.

iv) Whether the plaintiffs are entitled for damages as prayed for? OPP.

v) Relief?

10. The Trial Court *vide* its judgment and decree decided issue no.1 as the preliminary issue. Whereas, issue no. 2, 3 and 4 were deleted

vide order dated 08.03.2019, as the respondents/plaintiffs withdrew the prayer seeking relief of arrears of rent and damages etc.

11. On 08.05.2018, an additional issue was framed :-

“Whether the suit was barred by Section 50 of the DRC ACT, 1958?”

12. Since the issue no.2, 3 and 4 were deleted *vide* order dated 08.03.2019, therefore, issue no. 1 and 5 as framed were treated as issue no.1 and 3 and additional issue was treated as issue no.2.

13. The Trial Court after recording the evidence and appreciating the material available on record decreed the suit for possession, while holding that the provisions of DRC Act are not applicable to the tenanted premises. The appellant/defendant preferred an appeal before the first Appellate Court, however, *vide* impugned judgment and decree dated 28.07.2022, the findings rendered by the Trial Court were affirmed and therefore, the appellant/defendant has preferred this second appeal before this Court.

14. Learned counsel appearing on behalf of the appellant/defendant raises singular issue with respect to applicability of Section 50 of the DRC Act and he submits that the area Chauhan Bangar where the suit property is situated is urbanized and therefore, DRC Act is applicable, rendering the suit filed by the respondents/plaintiffs as not maintainable.

15. I have considered the aforesaid submissions and have also given thoughtful consideration to the same.

16. The Trial Court in paragraph no.22 has dealt with the issue of location of the suit property in an area where DRC Act is not applicable and has held as under:-

22. The onus to prove issue no.1 has been placed on the plaintiffs, whereas the onus to prove issue no.2 has been placed on defendant. The relief of possession of suit property from defendant has been filed by the plaintiffs in the capacity of they being

landlord. In order to evict a tenant from a premises under Section 106 of the Transfer of Property Act, the landlord is required to be prove that there exists relationship of landlord and tenant relationship. Secondly, the provision of DRC Act are not applicable over the tenanted premises. Thirdly, the tenancy has been terminated by serving a legal notice, In the present case, there is no dispute between the parties that the plaintiffs are landlord and defendant is the tenant. It is also settled proposition of law that service of summons of suit for eviction of tenant, is equivalent to service of legal notice for termination of tenancy under Section 106 of the Transfer of Property Act. Even otherwise, service of legal notice of termination of tenancy is admitted in the WS. Therefore, if plaintiffs are able to prove that provision of DRC Act are not applicable in the area, where the suit property is situated, then, they would be entitle to relief of possession of suit property.

17. The aspect, which according to Trial Court, was required to be proved by the respondents/plaintiffs was the non-applicability of Section 50 of the DRC Act. The Trial Court also noted that the aspect of termination of tenancy by serving a legal notice was also incumbent upon the respondents/plaintiffs and it was found that the tenant-landlord relationship remained undisputed and the termination of tenancy had also taken place by service of summons of the suit for eviction of tenant as the same is equivalent to service of legal notice for termination of tenancy under Section 106 of the Transfer of Property Act, 1882.

18. With respect to application of the provisions of the DRC Act, the Court has unequivocally held that the provisions of DRC Act, had no application in absence of a notification extending the applicability of the DRC Act to the area of Ghonda, Chauhan Bangar and accordingly, issue no.1 and 2 were decided in favour of the respondents/plaintiffs.

19. In paragraph no. 26 to 33 following pertinent findings have been arrived at, by the Trial Court:-

"26. Now, in order to prove that the village i.e Ghonda Chauhan Bangar, where the suit property is situated does not form part of

term Ghonda and has not been notified DRC Act, the plaintiffs has examined six witnesses. PW-1 produced the gazette notification of 28.05.1966 and 25.03.1979. In these notification, village Ghonda Chauhan Bangar is not mentioned.

27. PW-2 during his testimony stated that there is no revenue estate with the name of Ghonda only. He stated that there are four revenue estates starting with the name of the Ghonda and all are separate villages and separate revenue estates. This witness stated all the four villages starting with the name of Ghonda has separate basta, jamabandi and khatoni. PW-4 Sh. Sachin Goel, Assistant Town Planning stated that there are separate layout plan for village Ghonda and village Chauhan Bangar.

28. The testimony of PW2 prove that there is no village with the name of Ghonda only. His testimony further proves that there are four villages in Delhi starting with the name of Ghonda and all villages are separate revenue estate. The testimony of PW-1 prove that there is no separate notification in respect of Ghonda Chauhan Bangar. During cross examination of any witness examined by plaintiffs, respondent could bring on record that the term Ghonda as mentioned in notification dated 28.05.1966 and notification dated 25.03.1979 includes all villages starting with Name of Ghonda, therefore, now the onus was upon the defendant to prove by leading evidence to show that the term includes all the villages starting with the name of Ghonda and Ghorida Chauhan Bangar is notified under DRC Act. In order to prove the same, defendant examined four witnesses. During evidence, DW-2 stated that there is no village with the name of Ghonda and Chauhan. Bangar and there is one village with the name of Ghonda Chauhan Bangar and the said village is urbanized, however, during his cross-examination, this witness stated that he does not have information regarding any notification whereby Ghonda Chauhan Bangar has been been urbanized. This witness stated that he prepared his report on the basis of report prepared by earlier Patwari. This witness categorical stated that there is no revenue estate with the name of Ghonda only. This witness stated that term Ghonda is not mentioned in any of the record maintained by SDM office. This witness further stated that he could not find any record that the term Ghonda includes all the villages starting with the name of Ghonda. This witness further stated that record pertaining to Ghonda Chauhan Bangar is being maintained by the SDM. This witness further stated that as per rule, records of all the urbanized villages are being sent to MCD. This witness stated that in the office of SDM, KhasraGirdwari, Khatoni, sizra, field book is being

maintained and in all such records, no where it is mentioned that Ghonda Chauhan Bangar is urbanized

29. Although DW2 Sh. S. K. Verma was examined by the defendant to prove that area of Ghonda Chauhan Bangar is urbanized, but this witness categorically stated that there is no village with the name of Ghonda and there is no notification of urbanizing the village Ghonda Chauhan Bangar available in the office of SDM. The testimony of this witness that the record pertaining to Ghonda Chauhan Bangar is being maintained at SDM and the record pertaining to such villages which are urbanized is being maintained by MCD shows that area of Ghonda Chauhan Bangar is not urbanized.

30. No other evidence has been placed on record by the defendant on record to show that term Ghonda includes all the four villages starting with the name of Ghonda. No other evidence has been placed on record to show that Ghonda Chauhan Bangar has been urbanized. The copy of gazette notification dated 28.05.1966 nowhere shows that the term Ghonda include all the four villages starting with the name of Ghonda Chauhan Bangar, there is no other evidence on record to show that Ghonda includes all villages starting with the name of Ghonda. There is no other notification placed on record to show that village Ghonda Chauhan Bangar has been urbanized and notified under DRC Act.

31. Hon'ble Delhi High Court in case titled as Sayada Begum vs Qaisar Dad Khan, RSA No. 56/2017 observed that Kotification of 1966 and 1979 cannot be read as notification of urbanization of area of Ghonda, Chauhan Bangar because, parties could not produce any information under 507 of DMC Act or any record or notification extending applicability of Delhi Rent Control to the said village. In the present case despite leading evidence, Id. Counsel for the defendant failed to produce any notification, whereby the provision of 507 of DMC Act or provision of DRC Act has been extended over the village Ghonda, Chauhan Banger. As noted above, he only produced the notification dated 28.05.1966 bearing no. F.9(2)/66/Law/Corporation and notification dated 25.03.1976.

32. Hon'ble Delhi High Court while considering the notification No. F.9(2)/66/Law/Corporation dated 28.05.1966 and notification dated 25.03.1979 held that these notifications does not pertain to apropos village Ghonda, Chauhan Bangar.

33. In such circumstances, this Court is of the view that the provision of DRC Act have not been extended to the area of

Ghonda, Chauhan Banger. Accordingly, Issue no.1 and 2 are decided in favour of plaintiffs and against the defendant."

20. On an appeal, the First Appellate Court, in paragraph no.22 has noted as under:-

"22. In view of the above discussions, this court is of the view that there is no infirmity in the judgment & decree dated 01.04.2019 passed by the Ld. Trial Court and in the absence of required notification and the view judgments cited above, evidence produced on arguments addressed on behalf of defendant can't be accepted ^ or this reason the grounds of appeal are not being discussed and are rejected straightaway. The appeal of appellant is found without any merit and deserves to be dismissed."

21. It is held by the first Appellate Court, that it is a well settled position, that if any area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to section 1 (2) of the DRC Act and unless the area is so specified in the schedule by a notification, the provisions of the DRC Act do not apply.

22. In view of the aforesaid, the Courts below have arrived at an unequivocal concurrent findings of fact that no separate notification under the relevant provisions of DRC Act was issued qua village Chauhan Bangar, after the notification was issued under the Delhi Municipal Corporation Act, 1957 urbanising the rural areas falling under village Chauhan Banger. It is a settled position that an urban area falling under DRC Act, as per the first schedule automatically does not cover all the urban areas under the DRC Act without being specifically notified. Hence, the DRC Act has no application over the facts of the present case.

23. Since the decisions by the Courts below are devoid of any material perversity and have been arrived at with due scrutiny of facts and evidence, there does not seem to be any substantial question of

law that has arisen before this Court in the second appeal. The instant appeal fails and is thereby, dismissed alongwith pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 14, 2024
MJ/DP