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

+ W.P.(C) 15470/2024 & CM APPL. 64935/2024, CM APPL.
64936/2024

DR. MOHD ARSHAD AND ORSPetitioners
Through: Mr. Rajesh Mahajan and Ms. Jyoti
Baffar, Advocates.

versus

UNION OF INDIA AND ORSRespondents
Through: Mr. Ajay Jain, SPC with Mr. Krishna
Sharma, Mr. Manoj Gautam, Mr.
Harshit Batra and Mr. M. N. Mishra,
Advocates for R-1.
Ms. Meenakshi, GP for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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06.11.2024

1. The Petitioner has filed the present petition assailing order dated 10th March, 2022,¹ passed by Additional Rent Controller (South),² Saket Courts, Delhi in Execution Petition No. 331/2017, arising from Eviction Petition No. 6265/2016 (Old No. 40/2012). By the said order, the ARC has issued of warrants of possession against the Petitioners with respect to property bearing no. 111(Old) & 261(New) Basti Hazrat Nizamuddin, New Delhi.³
2. The factual background leading to the initiation of the present proceedings is as follows:
 - 2.1 The subject property was let out to the Petitioner as a tenant in the year 1953. The landlord/ Respondent No. 2 sought eviction on the grounds of *bona fide* requirements for himself and his family members.

¹ "impugned order"

² "ARC"

³ "subject property"



Consequently, he filed Eviction Petition No. 6265/ 2016 before the ARC, under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958.⁴

2.2 In the said proceedings, the Petitioner filed an application under Section 25B(4) and (5) of the DRC Act, seeking leave to defend. The ARC, by order dated 8th August, 2016, allowed the said application, granting the Petitioner unconditional leave to contest the petition.

2.3 Respondent No. 2 challenged the said order before this Court in Civil Misc. Main No. 1007/2016 before this Court, which was allowed in his favour through order dated 14th February, 2017 and accordingly, the ARC's order granting leave to defend was set aside. Consequently, Respondent No. 2 successfully secured an eviction order, directing the Petitioner to vacate the subject property.

2.4 Aggrieved, by the eviction order, the Petitioner preferred a Special Leave to Appeal (C) No. 15776/2017 against the aforesaid order, which was dismissed *vide* order dated 4th July, 2017.

2.5 Thereafter, Respondent No. 2 initiated proceedings execution proceedings for the eviction order by filing Execution Petition No. 331/2017. In the said proceedings, the Petitioner filed two applications in the execution proceedings, contending that the area in which the subject property is situated, falls outside the purview of the DRC Act, rendering the eviction order without jurisdiction and thus, a nullity. Relying on the notification issued under Section 1(2) of the DRC Act, which designates urbanized areas in Delhi, the Petitioner contended that Basti Hazrat Nizamuddin has not been urbanized, as there is no Gazette notification from the Government to that effect.

⁴ "DRC Act"



2.6 Respondent No. 2 contested the said applications on the ground that Basti Hazrat Nizamuddin was an urban area as all the areas of Delhi, *vide* notification under Section 507 Delhi Municipal Corporation Act, 1957,⁵ had been declared as urban areas, barring a few pockets which remained rural.

2.7 The ARC, through order dated 26th April, 2019, framed the issues in the aforesaid proceedings, and ultimately, dismissed the applications filed by the Petitioner *vide* impugned order dated 10th March, 2022.

2.8 Aggrieved by the said order, the Petitioner preferred an appeal under Section 38 of the DRC Act before the Rent Control Tribunal.⁶ Although the RCT stayed the operation of the impugned order on 26th April, 2022, eventually the stay order was vacated by order dated 01st July, 2022, and the appeal was dismissed on the grounds of maintainability.

2.9 The Petitioner then preferred a petition before this Court under Article 227 of the Constitution of India [CM (M) No. 661/2022]. This petition also dismissed by order dated 15th October, 2024, with the Court observing that the right to appeal was not available to the Petitioner as per the proviso to Section 25B (8) of the DRC Act.

2.10 Undeterred, the Petitioner, preferred a Rent Revision Petition under proviso to Section 25B(8) of the DRC Act challenging the impugned order. The Petitioner contends that this Court expressed reservations regarding the maintainability of the said petition, and by order dated 29th October, 2024, dismissed as withdrawn, granting liberty to the Petitioner to pursue appropriate remedies in accordance with law.

3. In the above background, the Petitioner has now invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking setting aside of the impugned order dated 10th March, 2022.

⁵ “DMC Act”



4. Mr. Rajesh Mahajan, Counsel for the Petitioner, argues that the jurisdictional objection, raised by Petitioner in the applications filed in the Execution Petition, has not been addressed by any of the Courts. He submits that each decision referenced above dismissed the Petitioner's case on grounds of non-maintainability, effectively precluding him from having his case heard on its merits. Against this backdrop, Mr. Mahajan contends that the Petitioner's right to hearing on the merits of his claims cannot be denied. He therefore urges the Court to exercise its jurisdiction under Article 226 to review and examine the issues raised by the Petitioner.

5. Mr. Mahajan further argues that the jurisdictional objections can be raised at any stage of the proceedings, including execution proceedings. He further emphasises that both the ARC and the RCT found merit in the jurisdictional objection raised by the Petitioner, as evidenced by the framing of issues by the ARC, and subsequent interim stay granted in appeal before the RCT. The aforesaid considerations of the Courts indicate that the Petitioner's jurisdictional objection is neither frivolous nor lacking in substance; rather, it has a sufficient legal basis and therefore warrants a full examination on merits.

6. Pointing to the repeated dismissals of the Petitioner's appeals and petitions on grounds of non-maintainability, Mr. Mahajan contends that the Petitioner should not be left without recourse simply due to procedural technicalities. He argues that legal remedies must exist to protect the Petitioner's right to a hearing and that the procedural limitations of the DRC Act should not become a barrier to substantive justice. Mr. Mahajan submits that some legal remedy must be afforded to the Petitioner, and he cannot be non-suited solely on account of the inapplicability of the provisions of the

⁶ "RCT"



DRC Act.

7. The Court has considered the aforementioned contentions, but remains unpersuaded. The Petitioner has invoked this Court's jurisdiction under Article 226 of the Constitution, seeking a remedy that, in the opinion of the Court, is untenable in light of procedural history and circumstances surrounding the case. The record reveals that the Petitioner had ample opportunities to raise the jurisdictional objection at various stages, beginning with the eviction proceedings ARC. The Petitioner actively participated in these proceedings by filing an application for leave to defend and subsequently pursued civil miscellaneous main petitions, including a Special Leave Petition before the Supreme Court. The Petitioner chose not to assert the jurisdictional objection either in the initial application for leave to defend or at subsequent stages when the matter was being examined by higher courts, including this Court and the Supreme Court. This sequence of events suggests that the Petitioner did not consider the jurisdictional issue significant enough to raise at the relevant times and is now attempting to bring it forth at a late stage.

8. While the failure to raise the jurisdictional objection at the appropriate time may be attributed to improper legal guidance or mere oversight, this does not imply that the Petitioner lacked a legal remedy. The record reflects that ample procedural avenues were available to the Petitioner, yet the objection was not raised when it was most relevant. In such circumstances, the Court finds that there must be finality to the matter. Although the issue of eviction was conclusively settled with the dismissal of SLP before the Supreme Court, the Petitioner has effectively denied Respondent No. 2, the opportunity to reap the benefits of the eviction order. Such repeated legal proceedings, has prevented Respondent No. 2 from realizing the outcome of



the eviction proceedings. However, having exhausted these avenues unsuccessfully, the Petitioner cannot now invoke Article 226 of the Constitution by framing this as a matter of violation of fundamental or his legal rights. Judicial review under Article 226 is an extraordinary remedy, intended to address genuine grievances involving substantial violations of rights, not as a means to reopen issues that have already been adjudicated and settled.

9. In view of the above, the Court declines to entertain the present petition.

10. Dismissed, along with pending applications.

SANJEEV NARULA, J

NOVEMBER 6, 2024

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