

Surender Kumar vs.m Salim

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Court : Delhi

Decided On : Jan-25-2019

Appellant : Surender Kumar

Respondent : M Salim

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI % Reserved on:

15. h January, 2019 Pronounced on:

25. h January, 2019 + RC.REV. 56/2017 CM Appl. Nos.5069/2017, 23691/2017
SURENDER KUMAR

... Petitioner

Through : Mr.R.D.Chauhan and Mr.Arun K Chauhan, Advocates. M SALIM
Respondent versus Through : In person. CORAM: HON'BLE MR. JUSTICE
YOGESH KHANNA YOGESH KHANNA, J.

1. This revision challenges the impugned judgment dated 24.09.2016 passed by the learned Additional Rent Controller-02 (Central), Tis Hazari Courts (hereinafter Trial Court) in Eviction Petition E-80497/2016 in Mr.M.Salim vs Surender Kumar filed by the landlord/respondent herein against the tenant/petitioner herein under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act).

2. The learned Trial Court vide impugned order dismissed the leave to defend application of the petitioner and passed an eviction order in respect of shop No.2033, Rodgran, Lal Kuan, Delhi - 110006 (hereinafter tenanted shop).

3. Before coming to the legality of the impugned order, let me first find out the basis for filing of this eviction petition by the respondent. RC.REV. 56/2017 Page 1 of 7 The respondent has filed the eviction petition for bonafide need on following grounds:-

"a) That Sheikh Ahmed S/o H.H. Rehmat Elhai, was the sole and absolute owner of the suit premises by virtue of the Registered Deed dated 25.05.1930. During his life time he created a Waqf-UI- Aulad of his properties by virtue of a Registered Deed dated 23.09.1993 and became the Wakif and First Mutawali; b) That Sheikh Sultan Ahmed by virtue of the Registered Deed dated 19.11.1997 appointed the petitioner as the sole Mutawalli and beneficiary of the said Waqf-UI-Aulad; c) That Sheikh Sultan Ahmed died in Delhi on 22.02.2015 and thus the petitioner became the Mutawallil beneficiary/landlord and successor- in-interest, of the suit premises. Copy of Death Certificate is annexed herewith; d) That the respondent filed DR Petition No.68/2015 titled as uSurinder Kumar @ Kaloo Vs. Sheikh Sultan Ahmed 11 which is annexed herewith and by which the following stands proved:-

"i) Rate of Rent Rs. 300 p.m. (Rupees Three Hundred Only) ii) Relationship of landlord and tenant between the parties; e) That the suit premises is shown in "Red" colour in the site-plan which is annexed herewith; f) That the petitioner is a practicing Advocate and is the Mutawalli and beneficiary. The petitioner requires the suit premises bonafide to set up his professional office from the suit premises. g) That the petitioner is in possession and occupation of another office space bearing No.835, First Floor, Bazar Ballimarn, Delhi, which is a tenanted premises. The petitioner is presently sharing Chamber No.611, Western Wing, Tis Hazari Courts, Delhi, which is otherwise allotted in the name of Mr.Ashok Dev, Advocate. The petitioner is residing at 61, Anand Lok, August Kranti Marg, New Delhi-110049, from where is running a small office. h) That the petitioner is in possession and occupation of Farm House at 6 Arbindo Marg, New Delhi, which is an agricultural land and cannot be used for an

Advocate office. The petitioner intends to start his separate office from the suit premises of which he is the sole Muttawali and beneficiary. i) That the predecessor-in-interest of the petitioner got eviction orders in his favour which are even confirmed by the Hon'ble High Court of Delhi of shop bearing No.2034 adjacent to the suit property. However, the execution petition of the said eviction order could not be filed as the predecessor-in-interest of the petitioner fell ill. j) That the, tenant of shop bearing No.2032 surrendered his tenancy in favour of the predecessor-in-interest of the petitioner which is in possession and occupation of the petitioner. The petitioner requires the suit premises bonafidely so, that he can amalgamate all three shops into one and use the same for his professional office. k) That subject to the aforesaid the petitioner is not in possession or occupation of any other commercial property in Delhi, from where he can carry out his professional activities. The family of the petitioner consists of himself and his wife and his son, who is also pursuing law as a carrier from Symbiosis Law School and is in fourth year. RC.REV. 56/2017 Page 2 of 7 4. The petitioner has filed leave to defend application wherein primarily, he raised two objections viz. i) the petitioner is not an owner / landlord of the tenanted shop and it belonged to one Sheikh Ahmad, father of the petitioner who had converted his personal property into a Waqf property and had executed Deed of Appointment dated 19.11.1997 and ii) the Waqf property can be used only for the charitable purposes and not for any personal purpose of any Mutawali. Besides these two objections, no other issue on merits is raised before me.

5. Qua the ownership of the tenanted shop, the learned Trial Court has noted as follows:-

"8. In the present case, the respondent had sought leave to contest the application for eviction mainly two grounds i.e. 1). That the petitioner is not the owner/landlord of the suit premises and 2). That the petitioner is having sufficient accommodation available with him. In the affidavit annexed with the application, it is stated by the respondent that the petitioner is neither the owner of the suit premises nor has any right, title or interest in the suit shop. In the counter affidavit filed by the petitioner and in the petition itself, it is stated by the petitioner that Sheikh Ahmed was the sole and absolute owner of the suit premises, who during his lifetime created a

Waqf-ul-Aulad of his properties by virtue of a registered deed Dt. 23.09.1993 and became the Wakif and Mutawali on 22.02.2015. That the petitioner requires the suit premises bonafide to set up his professional office from the suit premises. That the petitioner is in possession and occupation of another office space bearing no.835, first floor, Bazar Ballimaran, Delhi, which is a tenanted premises. That the petitioner is presently sharing Chamber No.611, Western Wing, THC, Delhi, which is otherwise allotted in the name of Mr. Ashok Dev, Advocate. That the petitioner is in possession and occupation of a farmhouse at 6

Arbindo Marg, New Delhi, which is an agricultural land and cannot be used for an advocate office. Admittedly, the respondent is a tenant in the suit premises and he paid the last rent @ Rs.300/- p.m. It was held by the Hon'ble Apex Court in Rita Lai Vs. Raj Kumar Singh AIR 2002 SC3341 that the tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 Indian Evidence Act. It was further held that the plea raised in the RC.REV. 56/2017 Page 3 of 7 affidavit seeking leave to defend does not amount to raising a triable issue. It was held by the Hon'ble High Court of Delhi in Sri Ram Pasricha Vs. Jaganath & Ors. AIR 1976 SC2335 that in a suit for eviction-the tenant is estopped from questioning the title of the landlord. In Lado Vs. Nannu Ram 2015 (4) CLJ364Del. it was held by the Hon'ble High Court of Delhi that mere denial of ownership of the landlord does mean that every case must be sent for trial involving years. It was further held that mere denial of ownership is no denial at all and it has to be something more. It was held by the Hon'ble High Court of Delhi in Rajender Kumar & Ors. Vs Leela Wati & Ors 155 (2008) DELHI LAW TIMES383 that where the tenant denies the ownership of landlord, he is obliged to disclose who was the owner/landlord and further that the landlord is not supposed to prove absolute ownership as required under TPA. It was further held therein that the landlord is required to show only that he is more than tenant. It is contended by the petitioner that in a petition u/s 14 (l)(e) DRC Act, he is supposed to show prima-facie that he is the owner/landlord of the suit premises. Therefore, in the light of the pleadings of the parties and other material placed before this court, in so far as the purpose of clause (e) of sub-section (1) of section 14 of Act 59 of 1958 is concerned, it seems that the petitioner is the owner/landlord and there exists relationship of landlord

and tenant between the parties. 6. Thus the learned Trial Court in its impugned order has noted Mr. Sheikh Ahmad was a sole and absolute owner of the tenanted shop, who during his life time had created Waqf-ul-Aulad and became the first Wakif and Mutawali. After his death on 22.02.2015, the petitioner became the Mutawali/beneficiary/landlord and successor-in-interest of the suit premises.

7. In *Rajesh Jain & Others vs Qazi Shamim Ahmed and Others* 2015 (150) DRJ62 it was held :-

"19. In *Nisar Ahmed v. Agyapal Singh*, RC. REV. 377/2011, decided on 11.02.2015, relying upon other judgments of various High Courts [*Shujauddin Mohammed Kaiser v. Kolkata Municipal Corporation*, (2012) 1 Cal LT331 *Badagara Jumayath Palli Dharas Committee v. P. Ummesr Kutty Haji*, AIR2002 Ker 56; *A.S. Abdul Khader Waft for Deeni Talim v. Saber Miah*, AIR 2003 AP528] this Court held that a Mutawalli could sue for eviction of the tenant under Section 14(1)(e) of the Act. Relevant portions of the said judgment are reproduced as under: RC.REV. 56/2017 Page 4 of 7 From the aforesaid legal position, what emerges is that a Mutawalli can sue for eviction of a tenant in discharge of his obligations and right to administer and maintain a Wakf property under his/her charge. The Mutawalli can seek eviction of a tenant for himself as well as for other beneficiaries of the Wakf. All the more so, when the Mutawalli is a defined beneficiary under the terms of the Wakf. The Delhi Rent Control Act makes no difference between tenants of Wakf and non-Wakf properties. Under Section 14 (1) (e) of the DRC Act, for the purposes of ownership, all that has to be seen is that the landlord is more than the tenant. It is settled law that the landlord is not required to prove absolute title as required under the Transfer of Property Act. As aforesaid, the tenant has no right to question the use of the tenanted premises by the Mutawalli. A tenant would have no right to scrutinise or inquire into or suggest or direct as to how the Mutawalli should run the Wakf. Admittedly, the tenant has been paying rent to the landlord/petitioner. Once it is so admitted, then Section 116 of the Evidence Act would come into operation and the tenant/respondent would be estopped from challenging the title of the landlord/petitioner. By the creation of a Wakf, the property vests in the Almighty. The dedication is for any purpose recognised by Muslim Law as pious, religious or charitable and as per the

Wakf Amendment Act, 2013. A wakf- alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the wakf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law. The latter situation is yet to arrive in the present case. It is for the Mutawalli to determine the best user and optimum utilisation of the Wakf properties. The Wakf was created for the aulad (children/successors) of the Wakif/Settler. It was surely not created for the perpetual benefit of a tenant, who may be or had been inducted in the Wakf property. The Mutawalli is also a beneficiary under the Wakf and he surely can move an eviction petition. Although the property vests in the Almighty, it has to be managed so as to optimise the use and usufruct from the Wakf property for the benefit of the beneficiaries contemplated in the Wakf Deed. If the Mutawalli cannot sue for eviction of a tenant for the benefit of the Wakf or the beneficiaries of the Wakf, it would tantamount to a permanent tenancy being created in favour of the tenant by a deeming fiction that the property vests in the Almighty and nobody can seek eviction of the said tenant. Surely, this could not have been nor was it so contemplated by the Wakif who inducted the tenant in the tenanted premises. For temporal purposes, the Mutawalli has to exercise managerial and administrative rights in the Wakf property as has been held in Shuja Mohammed Kaiser (supra). Furthermore, the Wakf Deed in the present case stipulates that the Mutawalli can seek eviction of the tenant. RC.REV. 56/2017 Page 5 of 7 20. In the circumstances, this Court is of the view that the respondents are indeed, the owners of the tenanted premises. On a perusal of the Will dated 10.2.1979, this Court finds that respondent No.1 who is the Mutawalli, has been specifically empowered to sue and participate in legal proceedings for the benefit of the Wakf. For the tenant to contend that since the Wakf property vests in God Almighty, a Mutawalli cannot sue for eviction of a tenant from the Wakf property is both preposterous and untenable. Although it is true that the beneficiaries of the Wakf cannot claim any title in the Wakf property and cannot alienate the same except by due procedure, but the Wakf property is necessarily to be used for the benefit of the beneficiaries. For achieving this objective, the settlor of the Wakf-alal-aulad was conscious enough to appoint a Mutawalli to administer the Wakf property."

8. The decision in Agyapal Singh (supra) was challenged before the Supreme Court in SLP (C) No.13204/2015 but it was dismissed vide order dated 07.05.2015.

9. The above decision do show a Mutawali can very well file an eviction petition for evicting the tenant in his own name and for his own purpose. It is not necessary Waqf be made a party to the petition. In Plasticchemicals Company vs Ashit Chadha & Another 2004 VII AD (Delhi) 410 wherein Coordinate Bench of this Court noted:-

"4. I have heard counsel for the parties and carefully examined the judgment under challenge as also the material on record. As regards the contentions raised by counsel for the petitioner challenging the Will, the law has since been crystalised by the Supreme Court in Smt. Shanti Sharma vs. Smt. Ved Prabha AIR 1987 SC2028as also in Sheela and others vs. Firm Prahlad Rai Prem Prakash II(2002) SLT328= 2002(3) SCC375 Once the landlord has been able to show that there is a testament in his favor, the landlord is deemed to have discharged his burden of ownership, vis-a-vis, the Rent Control Act. In the present case, the landlord has been able to prove that a testament has been made in his favor by the previous owner which, at best, could be challenged by the heirs of Smt. Saroj Mohan and certainly not by the tenant. In this view of the matter I hold that the objection of the petitioner herein to the maintainability of the eviction petition by the landlord is frivolous. 10. Thus on reasoning above the tenant / petitioner cannot challenge the Wakf-Ul-Aulad as also the competency of its Mutawali. RC.REV. 56/2017 Page 6 of 7 11. Since the petitioner now requires the tenanted shop for his own benefit for setting up his professional office the tenant cannot question his intention to use his property in the way he genuinely desires to. It was urged by the petitioner that the respondent is having another office in premises bearing No.835, First Floor, Bazar Ballimaran, Delhi but the same is a tenanted premises. The contention the respondent is also sharing chamber No.611, Tis Hazari Courts, Delhi is also frivolous since the said chamber is allotted to one Mr.Ashok Dev, Advocate. Hence besides this tenanted premises, the petitioner has not been able to show if the respondent has any other suitable alternative accommodation to be used by him as his office.

12. A bare perusal of the impugned order do show the learned Trial Court has also considered the issues raised before me and the order needs no interference. Even otherwise in revision, the powers of this Court are limited and it is not open to revisit or relook the findings returned by the learned Trial Court.

13. In view of above, I find no illegality in the impugned order. The petition is thus dismissed, being devoid of merits. The pending application(s), if any, also stands disposed of. JANUARY25 2019 M YOGESH KHANNA, J.

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