

Meena Devi and Ors. Vs. Shiv Prasad

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Court : Delhi

Decided On : Jan-16-2015

Judge : Mukta Gupta

Appellant : Meena Devi and Ors.

Respondent : Shiv Prasad

Advocate for Pet/Ap. : Mr. Manu Sishodia, Mr. Mahendra K. Bairwa

Judgement :

32# \$ * IN THE HIGH COURT OF DELHI AT NEW DELHI + RC.REV. 32/2015
Decided on:

16. h January, 2015 % MEENA DEVI & ORS. Through: Petitioners Mr. Manu Sishodia and Mr. Mahendra K. Bairwa, Advocates. versus SHIV PRASAD Respondent Through: None. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J (ORAL) CM No.818/2015 (Exemption) Allowed, subject to all just exceptions. RC.REV. 32/2015 and CM No.817/2015 (Stay) 1. The Petitioner is aggrieved by the order dated 17th July, 2014 passed by the learned ARC allowing the eviction petition filed by the Respondent and held that the Respondent was entitled to recovery the possession of the tenanted premises, that is, one room and shared kitchen, bathroom cum-toilet and balcony at House No.42, NDMC Quarters, Devi Prasad Sadan, Hailey Lane, New Delhi shown in red in the site plan.

2. The only issue raised before this Court by the learned counsel for the Petitioner is that there was no landlord-tenant relationship and the same having not been established no eviction order could have been passed.

3. A brief exposition of the facts is that the father of the Respondent late Munna Lal let out the premises to Shri Bal Raj Kumar husband of petitioner No.1 and father of petitioner Nos.2 to 6 on 12th December, 1989 for residential use at the monthly rent of Rs.300/-. Since there were disputes between the parties late Bal Raj Kumar filed a suit for permanent injunction against late Munna Lal which was decreed in favour of LRs of Bal Raj Kumar vide judgment dated 15th November, 1997 as Bal Raj expired on 17th January, 1996. Thereafter Munna Lal filed a suit for recovery of possession against the LRs of late Bal Raj Kumar which was dismissed on 9th April, 2001. On 1st February, 2007 Munna Lal expired leaving behind his daughter Basanti, who is married and living in the matrimonial home. The respondent son of Munna Lal is aged 30 years old and his family consists of his wife, two daughters and they have only one room and a shared kitchen, bathroom cum toilet and balcony for them. His both daughters are minor and studying and thus require a separate room for studies. Even the Respondent and his wife need privacy and separate room, as their daughters are growing. Since no suitable sufficient accommodation was available they filed the eviction petition of the tenanted premises for the bona fide requirement of the Respondent.

4. The Petitioners were duly served when they filed an application for leave to defend along with an affidavit which was allowed vide order dated 13th February, 2013. The Petitioner filed written statement denying the contents of the eviction petition and alleged that the Respondent was neither the owner of the premises nor had any locus standi to file the eviction petition. There was no relationship of landlord-tenant between the Respondent and the Petitioners. The father of the Respondent was allotted the tenanted premises by NDMC on license basis and even now license fee/damages were being paid to NDMC. The premises were let out to the husband of Petitioner No.1 and father of Petitioner Nos. 2 to 6 by the father of the Respondent on 12th December, 1989, who had taken a sum of Rs.10,000/- from Bal Raj Kumar as security deposit.

5. The Respondent in support of his contention examined himself as PW1 and tendered his evidence by way of affidavit as Ex.PW-1/1 relying upon copy of the amended memo of civil suit bearing No.127/1993 as mark A; Copy of judgment in suit bearing No.131/1996 as mark B; Copy of ration card as Ex.PW-1/A; Copy of driving license as Ex.PW-1/B; Copy of school I card of class IV and I of his daughter Mehak and Dipti is Ex.PW1/D and copy of NDMC bill for the month of May 2013 for license fee as Ex.PW1/E.

6. The Petitioners examined Petitioner No.5 Surya Gaurav Kumar as DW-1 who tendered his evidence by way of affidavit as Ex.RW-1/A. No other documents was filed or tendered by the Petitioners. Even RW-1 in his affidavit Ex.RW-1/A has stated that father of the Respondent was allotted the said premises by NDMC on license basis and still the license fee/damages are being paid to NDMC.

7. The only point pressed before this Court is the relationship of landlord-tenant.

8. Undisputed facts between the parties are that the premises belong to NDMC and the entire premises were allotted in the name of father of the Respondent and till date the said license/allotment has not been cancelled by NDMC. The Respondent is the legal heir of late Shri Munna Lal in whose name the premises was allotted by NDMC and is still in possession of the premises and that the premises were let out to late Bal Raj Kumar by later Shri Munna Lal. The Respondent in his evidence by way of affidavit has stated that his father was allotted premises No.42, NDMC Quarters, Devi Prasad Sadan, Hailey Lane, in lieu of his Jhuggi near Dhobi Ghat at Rakab Ganj which was removed by NDMC and in this regard copy of the bill of NDMC of the license fee for the month of May, 2013 was exhibited as Ex.PW-1/E. It is thus contended by the Petitioners that since the Respondents father was the licensee and respondent is unauthorized occupant of the premises and is not the owner thus there cannot be any landlord-tenant relationship and an unauthorized occupant cannot claim eviction from another unauthorized occupant.

9. It is trite law that while deciding the eviction petition the learned ARC does not go into the issue of title and decide regarding the ownership of the premises. The landlord has to show that he is in occupation of the premises and has a better

preference than the tenant.

10. The Honble Supreme Court in *Shanti Sharma and others vs. Ved Prabha and others*, 1987 (4) SCC193 while dealing with the interpretation of the word owner under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 approved the decision of this Court in *T.C. Rekhi vs. Usha Gujral*, 1971 RCJ322 and held that the meaning of the word owner in Clause (e) is influenced and controlled by its context and does not postulate the absolute ownership in the sense that the landlord has an absolute unrestricted right to deal with the property as he likes. It was held:

11. Section 14(1)(e) of the Delhi Rent Control Act reads as under:

14(1)*** Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely: (a) to (d)*** (e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. Explanation.-For the purposes of this clause, premises let for residential purposes include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes; The phrase used in this provision is if he is the owner thereof and it is on the basis of these words that the present controversy has been raised and it appears to be the only point on the basis of which the learned Counsel for the appellant had argued this appeal.

12. As regards the first contention that the word owner thereof indicates absolute ownership and where property stands on a plot of land taken on long lease from the DDA, it could not be said that he is the owner thereof and therefore the eviction on the ground of bona fide requirement under Section 14(1)(e) could not be granted.

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.

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. 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 RCJ322 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 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. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject matter and object and the occasion on which the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from the context (see Halsbury's Laws of England, Third Edn., Vol. 36 para 893 p. 394). The meaning of the word owner in clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision.

11. Moreover, in the suit for possession filed by the father of the Respondent against the Petitioners while dismissing the suit vide judgment dated 9th April, 2011, the learned Civil Judge decided the issue of relationship of landlord and tenant between the parties and held that late Bal Raj Kumar was the tenant in the premises on the monthly rent of Rs.300/-. The said judgment has become final. Thus there is already a finding with regard to the status of the Petitioners as tenant in the tenanted premises by the competent civil court. Further, once a person is inducted as tenant, he is estopped from denying the status of the person inducting as landlord.

12. The issue of bona fide requirement and alternative accommodation having not been urged before this Court and the relationship of landlordtenant as noted above being held in favour of the Respondent, I find no ground to interfere with the impugned judgment.

13. Petition and application are dismissed. (MUKTA GUPTA) JUDGE
JANUARY16 2015 vn

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