

A. Babu Vs. State

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Court : Delhi

Decided On : Mar-30-1970

Reported in : ILR1970Delhi801

Judge : Hardayal Hardy and; Om Parkash, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164; [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 55 of 1969

Appellant : A. Babu

Respondent : State

Advocate for Def. : Shri. Partap Kishan

Advocate for Pet/Ap. : Shri. Bikramjit Nayyar

Judgement :

Tatachari, J.

(1) This judgment will dispose of the six Second Appeals, S.A.O. Nos. 315 to 320 of 1969. These Second Appeals have arisen out of six petitions filed by different tenants, for fixation of standard rent in respect of their respective premises which are all in building No. 112-A, Krishan Nagar, New Delhi, in the Court of Shri D. C.

Aggarwal, Rent Controller, Delhi. The said petitions were numbered as suits Nos. 26 and 27 of 1968, and lii, 112, 113 and 114 of 1967. The premises are used as shops, and each petitioner (hereinafter called the tenant) has one shop in his possession. The rent was originally Rs. 105.00 per month, but was subsequently increased to Rs. 125.00 per month. The tenants contended that the rent was excessive, and that the standard rent for each shop would not exceed Rs. 10.00 per month. The landlord, Chander Bhan, who was the respondent in all the petitions and who is the appellant in all the Second Appeals, contended, inter alia, that the Rent Controller had no jurisdiction to entertain the petitions (suits) on the ground that the Delhi Rent Control Act was not extended to the locality in which the premises were situate. This question was taken up for consideration in the first instance by the Rent Controller, and by his judgment, dated 20th February, 1969, he held that the Delhi Rent Control Act, 1958, did not apply to the area in which the suit premises were situate, and the petitions (suits) were not, therefore, maintainable. He, therefore, dismissed the said petitions (suits).

(2) Against that judgment. Rent Control Appeals Nos. 348 to 353 of 1969, were preferred by the tenants to the Rent Control Tribunal. Delhi. By an order, dated 25th August, 1969, the Rent Control Tribunal held that the provisions of the Delhi Rent Control Act apply to the premises in dispute. The Tribunal accordingly allowed the appeals, set aside the judgment and orders of the Rent Controller, and remanded the cases to the Court of the Rent Controller for deciding the same on merits after giving the parties opportunity to adduce their evidence on the pleas raised by them. It is against the said orders of remand that the present Second Appeals have been filed by the landlord, Chander Bhan.

(3) The contention of the appellant-landlord is that the petitions of the tenants for determination of standard rent are not maintainable under the provisions of the Delhi Rent Control Act, 1958, as, according to him, the said Act is not applicable to the area in which the suit premises is situate. The said contention is based on the provision in sub-section (2) of section 1 of the Delhi Rent Control Act, which runs as follows :-

'(2).It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule : Provided that the Central Government may, by notification in the Official 768/769 Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.'

(4) The First Schedule to the Act contains the following provision :-

'FIRSTSCHEDULE' [See Section 1(2)] The urban areas within the limits of the Municipal Corporation of Delhi to which the Act extends- The areas which, immediately before the 7th April, 1958, were included in- 1. The Municipality of New Delhi excluding the area specified in the First Schedule to the Delhi Municipal Corporation Act, 1957 (66 of 1957); 2. the Municipal Committee, Delhi; 3. the Notified Area Committee Civil Station, Delhi; 4. the Municipal Committee, Delhi-Shahdara; 5. the Notified Area Committee, Red Fort; 6. the Municipal Committee, West Delhi; 7. the South Delhi Municipal Committee; 8. the Notified Area Committee, Meharauli.'

(5) The suit premises are situate in Krishan Nagar, New Delhi. It appears from the record that Krishan Nagar was originally called Humayunpur village. It is common ground that the area in question is not included within the limits of the New Delhi Municipal Committee or the Delhi Cantonment Board. The case of the appellant is (1) that it is also not included within the limits of the Municipal Corporation of Delhi, and (2) that even if it is included within the limits of the Municipal Corporation of Delhi, it is in the rural area and not in the urban area within the limits of the Municipal Corporation of Delhi.

(6) For a proper appreciation of the contentions of the appellant, few more facts have to be stated. It was not disputed before me that Krishan Nagar (Humayunpur village) was originally included within the limits of the South Delhi Municipal Committee, which was established under the Punjab Municipal Act. In 1957, the Municipal Corporation of Delhi was established under the Delhi Municipal Corporation Act, No. 66 of 1957, and came into being with effect from 2nd

January, 1958. On the establishment of the Corporation, the functions of 13 bodies and Local Authorities, enumerated in the Second Schedule to the Delhi Municipal Corporation Act, were taken over by the Corporation. The South Delhi Municipal Committee is one of the bodies mentioned in the Second Schedule. Thus, it is clear that the functions of the South Delhi Municipal Committee in respect of Krishan Nagar (Humayunpur village) were taken over by the Municipal Corporation of Delhi, and Krishan Nagar came to be included within the limits of the Municipal Corporation of Delhi.

(7) Prior to 30th December 1957, there used to be two bodies, the Delhi Development (Provisional) Authority for a certain area and Delhi Improvement Trust for another area. The two bodies were a malgamated into the Delhi Development Authority on 30th December 1957, by virtue of the provisions in the Delhi Development Act, No. 61 of 1957. On 29th November 1958, by a notification in the Gazette, the Central Government declared Krishan Nagar (Humayunpur village) to be 'development area' for the purposes of the Delhi Development Act. On 9th February 1959, the Delhi Rent Control Act, No. 59 of 1958, came into force. The respondents-tenants applied for fixation of standard rent, as already stated, in 1967.

(8) Shri Bikramjit Nayyar, learned counsel for the appellant, contended firstly that on 29th November 1958, Krishan Nagar (Humayunpur Village) was transferred to the Delhi Development Authority, and the Municipal Corporation of Delhi had not longer any jurisdiction over the same, and, consequently the Delhi Rent Control Act which came into force on 9th February 1959, cannot be regarded as applicable to Krishan Nagar (Humayunpur village). There is no force in this contention. As already stated, it is common ground that Krishan Nagar (Humayunpur village) was within the limits of the South Delhi Municipal Committee during the period 1954-57. The evidence adduced by the parties also shows the same. Shri Shashi Mohan, A.W.I, Upper Division Clerk, Municipal Corporation of Delhi, deposed, by reference to the official records brought by him, that Krishan Nagar (Humayunpur village) was within the jurisdiction of the South Delhi Municipal Committee during the period 1954-57. Exhibits A1 to A5, dated 3-12-1957, 14-3-1957, 10-12-1957, 13-9-1956 and 24-10-1957, which were proved by Shashi Mohan, are notices

issued by the South Delhi Municipal Committee demanding house-tax in respect of a house in Krishan Nagar (Humayunpur village). It is thus clear that till 1957, Krishan Nagar (Humayunpur village) was under the jurisdiction of the South Delhi Municipal Committee. Exhibits A6 to A 10, which were also proved by Shashi Mohan, are house-tax bills issued by the Municipal Corporation of Delhi for periods subsequent to 1958. Thus, Krishan Nagar (Humayunpur village) was under the jurisdiction of the Municipal Corporation of Delhi since 1958. It was no doubt declared as development area for the purposes of the Delhi Development Act on 29-11-1958, and Exhibits R1 to R4, A, B and C filed by the landlord show that the Delhi Development Authority issued notices for the demolition of unauthorised buildings in Krishan Nagar (Humayunpur Village). Exhibit R-1 is a letter, dated 22-3-1968, written by the Deputy Commissioner (S) of the Municipal Corporation of Delhi to one Surinder Kumar Karir, General Secretary, House owners Association, Krishan Nagar (Humayunpur village). It appears that the House owners wrote to the Corporation that it was collecting house-tax and was, therefore, bound to maintain the services and provide civic amenities. The Deputy Commissioner replied by the aforesaid letter intimating Surinder Kumar that Krishan Nagar was an unauthorised Colony which fell in the development area of the .Delhi Development Authority, that the Municipal Corporation of Delhi had not considered the approval of the lay out plan of the colony, and that the Corporation would maintain the services and provide civic amenities in the colony only after the area had been developed by the Delhi Development Authority. Exhibit R-2 is a notice sent by the Delhi Development Provisional Authority to one Chander Singh, resident of Krishan Nagar. requiring him to show cause as to why an order for demolition should not be made. Exhibit R3, dated 7th May 1965, is an order of the Delhi Development Authority directing Chander Singh to demolish the erection unauthorisedly raised by him. Exhibit R-4, dated 10th June 1964, and Exhibit A, dated 5th May 1966, are also notices sent by the Delhi Development Authority to Chander Singh. Similarly. Exhibit B is an order to a builder/owner of an unauthorised building in Krishan Nagar to demolish the building. Exhibit C is a report of an officer of the Delhi Development Provisional Authority in which Chande' Bhan was mentioned as one of the unauthorised builders. All these documents show that subsequent to 29-11-1958, the Delhi Development Authority

was dealing with buildings erected unauthorisedly in Krishan Nagar.

(9) The question for consideration is as to whether the declaration of Krishan Nagar as development area for the purposes of the Delhi Development Act on 29-11-1958 had the effect of divesting the jurisdiction which the Municipal Corporation of Delhi had over Krishan Nagar, Shri Nayyar referred to the various provisions in the Delhi Development Act, No. 61 of 1957. But, a perusal of the said provisions shows that the function of the Delhi Development Authority under the said Act, No. 61 of 1957, is entirely 'to promote and secure the development of Delhi according to plan', and for that purpose it has been given 'the power to acquire, hold, manage' and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto', as stated particularly in section 6 of the Act. It is quite clear from the provisions of the Act that the Delhi Development Authority is concerned entirely with the development of area declared as development area, and it is empowered to do everything necessary or expedient for purposes of such development and for purposes incidental thereto. Shri Nayyar relied in particular upon sections 12, 13, 15, 21, 30, 31, 36, 41, 42 and 43 of the Act. As already stated, the said sections contain provisions only as regards the development of the area by the Delhi Development Authority. Shri Nayyar laid emphasis on section 36 which confers power upon the Delhi Development Authority to require the local authority, within whose local limits the area developed by it is situate, to assume responsibility for the maintenance of the amenities which have been provided in the area by the Authority and for the provision of amenities which have not been provided by the Authority, but which, in its opinion, should be provided in the area. This section merely refers- to the maintenance of the amenities provided by the Authority in the course of development of the area by it, and to its power to require the local authority to provide other amenities. On the other hand. sections 42 and 43 of the Delhi Municipal Corporation Act enumerate the obligatory functions and the discretionary functions of the Corporation. It has to be noted that section 36 refers only to amenities provided by the Delhi Development Authority or to be provided in the future, but it does not refer to the maintenance of amenities, if any,

which might have already been provided before the area was given to the Authority for development. Further, there is no provision in the Act which empowers or requires the Development Authority to perform either the obligatory or the discretionary functions mentioned in sections 42 and 43 of the Delhi Municipal Corporation Act. It is thus clear that the entrustment, if any, of an area to the Delhi Development Authority is just for the purposes of 'development' as defined in the Act, and the Municipal Corporation of Delhi continues to be responsible for the performance of the obligatory and discretionary functions under sections 42 and 43 of the Corporation Act. In other words, the area, though entrusted to the Development Authority for the purposes of development, continues to be subject to the jurisdiction of the Municipal Corporation of Delhi. Admittedly, Krishan Nagar is also situate within the territorial limits of the Corporation. Thus, the case of the appellant-landlord that section 1(2) of the Delhi Rent Control Act is not attracted on the ground that the area is not within the limits of the Delhi Municipal Corporation of Delhi, cannot be accepted.

(10) Shri Nayyar next contended that even if the area in question is within the limits of the Municipal Corporation of Delhi, it is in the 'rural area' within the limits of the Corporation and not in the 'urban area' within the the limits of the Corporation, and, therefore, the provisions of the Delhi Rent Control Act are not attracted. There is no force in this contention also. The contention was not considered by the Rent Controller, presumably because he accepted the contention of the landlord that the area ceased to be within the jurisdiction of the Corporation by reason of its having been declared as development area under the Delhi Development Act. The contention was not dealt with by the Rent Control Tribunal also. The learned counsel for the appellant has filed an affidavit and has also taken a ground in the memorandum of Second Appeal (Ground No. 6) to the effect that this contention was advanced before the Tribunal. It has, therefore, to be considered in this Second Appeal. It is common ground that Krishan Nagar was originally described as Humayunpur village. Exhibits A1 to A5 refer to Krishan Nagar as Humayunpur village. So also the notification, dated 29-11-58, by which Krishan Nagar was declared as development area, refers to it as Humayunpur village. It is thus clear that Krishan Nagar originally bore the name Humayunpur village. Shri Nayyar relied on this description and argued that since Krishan Nagar

was a village, it cannot be regarded as 'urban area' within the meaning of section 1(2) of the Rent Control Act. On the other hand, Shri Partap Kishan, learned counsel for the respondent tenants in Second Appeal No. 315 to 319 of 1969 pointed out that the expressions 'urban area' and 'rural area' have been defined in the Municipal Corporation Act, and that in view of the said definitions Krishan Nagar has to be regarded as an 'urban area' and not as a 'rural area'.

(11) Section 2(61) defines 'urban areas' as meaning the areas of Delhi which are not rural areas. Section 2(52) defines 'rural areas' as meaning 'the areas of Delhi which immediately before the establishment of the Corporation are situate within the local limits of the District Board of Delhi established under the Punjab District Boards Act, 1883, but shall not include such portion thereof as may, by virtue of a notification under section 507, cease to be included in the rural areas as herein defined'. Section 1(2) of the Punjab District Boards Act, No. 20 of 1883, states that it extends to the States of Punjab and Delhi, Section 10 of the said Act deals with the establishment of District and Local Boards. There is a proviso to the section, according to which, 'a Board shall not have authority over any portion of a District which is for the time being included in a military cantonment, small town as defined in the Punjab Small Towns Act, 1921, or a Municipality'. Thus, the proviso to section 10 of the Punjab District Boards Act excludes any portion of a District which is included in a Municipality from the authority of a Board. thereforee, Shri Partap Kishan argued that the definition of 'rural areas' in section 2(52) of the Delhi Municipal Corporation Act read with the proviso to section 10 of the Punjab District Boards Act shows that Krishan Nagar (Humayunpur village) was not under the authority of the District Board of Delhi established under the Punjab District Boards Act, and, consequently, is not a 'rural area' within the meaning of the Delhi Municipal Corporation Act. If it is not 'rural area', it is 'urban area' by virtue of section 6(62) of the Corporation Act. Hence, the learned counsel argued that the area in question is an 'urban area within the limits of the Municipal Corporation Delhi' such as is mentioned in section 1(2) of the Delhi Rent Control Act, and the Rent Control Act, thereforee, applies to the area. This argument of Shri Partap Kishan is borne out by the provisions referred to above, and has to be accepted as correct.

(12) The question under consideration can also be considered from another angle. Section 1(2) of the Delhi Rent Control Act, 1958, states that the Act extends to 'such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule'. The heading of the First Schedule which has been extracted above shows that the areas mentioned in the First Schedule are 'the urban areas within the limits of the Municipal Corporation of Delhi to which the Act extends'. Admittedly, Krishan Nagar (Humayunpur village) is situated within the area of the South Delhi Municipal Committee which itself is within the limits of the Municipal Corporation of Delhi. The said Committee is Item 7 in the First Schedule, and, therefore, Krishan Nagar has to be held to be an urban area within the limits of the Corporation. In other words, even if Krishan Nagar (Humayunpur village) was originally a rural area, the Rent Control Act expressly treats the entire area under the authority of the South Delhi Municipal Committee, which includes Krishan Nagar (Humayunpur village), as an urban area within the limits of the Municipal Corporation of Delhi to which the Act extends i.e. for the purposes of the Rent Control Act. Thus, reading section 1(2) of the Act with the heading and the Item 7 of the First Schedule, it is clear that Krishan Nagar (Humayunpur village) is an urban area within the limits of the Municipal Corporation of Delhi, and it follows that the Rent Control Act extends to it.

(13) Shri Nayyar advanced another contention that there was a notification, dated 3rd September 1957, issued by the Central Government under section 4 of the Land Acquisition Act in which was included the area in question, and that since the land thus became the property of the Central Government, the applicability of the Delhi Rent Control Act to the suit premises in the said area is excluded by the provision in section 3 of the Delhi Rent Control Act. It is true that a notification No. F.15(84)/ 57-LSG, dated, 3rd September 1957, has been placed on record in the present cases which purports to have been issued by the Chief Commissioner of Delhi under section 4 of the Land Acquisition Act. It was stated in the said notification that the various items of land mentioned in the Schedule to the notification were likely to be required to be taken at the public expense for a public purpose, namely, for the execution of the interim general plan for Greater Delhi. Item 12 in the Schedule to the notification is Humayunpur village, Delhi Tehsil, Delhi District. It is not disputed by Shri Partap Kishan that the said notification

included Krishan Nagar (Humayunpur village). But, he submitted that no materials have been placed on record to show that the acquisition proceedings were continued and the area in question became the property of the Government. The contention of Shri Nayyar cannot be accepted, in my opinion, for three reasons. In the first place, this contention was not raised in the lower Court or in the Memorandum of Second Appeal. In the second place, the notification under section 4 was issued on 29th November 1958, and there is nothing on the record to show what happened after that notification and whether the land in question became the property of the Government. Thirdly, section 3 of the Delhi Rent Control Act provides that nothing in the Act shall apply to any 'premises' belonging to the Government. The term 'premises' is defined in section 2(i) of the Act as meaning 'any building or part of a building.....' In other words, section 3 applies only to buildings belonging to the Government. thereforee, even if the land in Krishan Nagar has become the property of the Central Government by acquisition under the Land Acquisition Act, the provisions in section 3 are not attracted, since the premises in question i.e. the building in which the shops of the various respondents-tenants are situate does not belong to the Government. It is a 'premises' belonging to the landlord and not to the Government. It cannot, thereforee, be said that the applicability of the Rent Control Act is excluded by the provision in section 3 of the said Act. In any case. the contention requires an investigation into the facts, and since it was not raised in the lower Courts, it cannot be allowed to be raised for the first time in this Second Appeal.

(14) For the above reasons, these Second Appeals fail and are dismissed. In the circumstances, I direct the parties to bear their own costs in these Second Appeals. The parties should appear before the Rent Controller, Delhi, on 3rd June 1970.