

Manohar Lal Vs. Narain Das and Delhi Development Authority

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Court : Delhi

Decided On : Oct-30-1981

Reported in : 21(1982)DLT121; 1982(3)DRJ33; ILR1982Delhi54; 1982RLR41

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14; [Constitution of India](#) - Article 227

Appeal No. : Civil Revision Appeal No. 180 of 1981

Appellant : Manohar Lal

Respondent : Narain Das and Delhi Development Authority

Advocate for Pet/Ap. : B.R. Malik,; R.L. Kohli,; Ajit Singh and;

Judgement :

Sultan Singh, J.

(1) Plot No. 12 Block No. 10, Dev Nagar, Karol Bagh, New Delhi was leased out to Ratan Lal in terms of a lease deed dated 24th July, 1953. Ratan Lal raised the structure. It was agreed that the lessee would not use the said land and buildings erected thereon for any other purpose than for the purpose of a residential house without the consent in writing of the Lesser ; provided the lease would become void if the land was used for any purpose other than that for which the lease was

granted not being a purpose subsequently approved by the Lesser. Ratan Lal let out a portion of the said property to Narain Dass, respondent on a monthly rent of Rs. 63.00 . The petitioner purchased the suit house bearing No 6778 on plot No. 12 Block No. 10 in 1961 and the respondent attorney to him as a tenant. The respondent has been carrying on the work of dairy in the premises in suit. The Delhi Development Authority objected to the use of the premises for a dairy as it was a commercial use and contrary to the terms of the lease. The petitioner served a notice requiring the respondent to stop the misuse and filed an eviction petition under Section 14(1)(k) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act'), which was dismissed for want of proper notice. The petitioner served a fresh notice dated 26th May, 1977 requiring the respondent to stop the use of the premises contrary to the terms of the lease. Finding no response, the petitioner on 4 June, 1977 filed a petition for eviction under Section 14(1)(k) of the Act. The Delhi Development Authority was also made a party. It filed a written statement requiring the misuse to be stopped otherwise the lease was liable to be cancelled. On 17th September 1979. the Controller held that the ground of eviction under Section 14(1)(k) of the Act stood proved. The Additional Controller therefore gave a notice under Section 14(11) of the Act to the Delhi Development Authority requiring it to explain whether the premises in dispute could be regularised temporarily or permanently and if so, on what terms and conditions. The Delhi Development Authority in its reply dated 6th October, 1980 stated that the question for permanent commercialisation of the premises in question did not arise till the zonal plan of the area was approved by the Central Government, that the premises in suit were residential as per terms of the lease deed and that if the same were used for any purpose other than the purpose of a residential house, the lease was liable to be cancelled. The Delhi Development Authority has stated that for use of the premises for commercial purposes, the application, if any, may be made by the landlord which would be considered under the rules. Such rules if any have not been brought to my notice by the counsel for the Delhi Development Authority. The respondent-tenant also raised various objections but by the impugned order dated 6th December, 1980 the Controller directed the respondent to deposit the estimated amount of Rs. 14,11 1.15 as compensation for past breaches within a month from the date of the order failing

which an eviction order would be deemed to have been passed against him. As regards future breaches the Controller directed the petitioner-landlord to approach the Delhi Development Authority for regularisation of the misuser. It was further ordered that the petitioner-landlord may get the proceedings revived, if necessary. The petitioner has challenged this order on the ground that the same is without jurisdiction, contrary to provisions of Section 14(l)(k) and 14(11) of the Act and that question of permanent regularisation does not arise as the Delhi Development Authority in its reply has refused to do so. Learned counsel submits that the impugned order is in two portions (1) payment of compensation for past breaches and (2) direction to the landlord to approach the Delhi Development Authority for regularisation with liberty for revival of proceedings. He submits that both portions of the order are not final, and that the second portion is without jurisdiction. To appreciate the contention of the petitioner, it is desirable to refer to Section 14(l)(k) and Section 14(11) of the Act, which read as under :

'S. 14(1) : Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant : 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 (j) (k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situated; S. 14(11) : No order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time' as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.'

(2) Under clause (k) if the tenant does not stop the user of the premises contrary to the conditions imposed on the landlord under the lease a right of action arises to the landlord to seek eviction of the tenant. In the present case the Controller has

already held that the ground of eviction under Section 14(l)(k) of the Act stood proved. The next state of the proceedings is under Section 14(11) of the Act. The Sub-section (II) is mandatory. It requires the Controller not to pass an order of eviction, if one of the alternatives is complied with by the tenant. The two alternatives are (1) to stop the misuse within the time to be specified by the Controller or (2) to pay to the concerned authorities by way of compensation such amount as may be determined by the Controller. This Sub-section intends that the Controller should determine these questions because in a case where the default can be remedied by payment of compensation, the amount of compensation payable by the tenant is to be determined. The direction of regularisation by the Delhi Development Authority at the instance of the landlord or the tenant is not authorised by Section 14(11) of the Act. Further compensation has to be determined for user of the premises contrary to the terms of the lease deed. The two questions under Section 14(11) of the Act are in the alternative. If the tenant agrees to stop the misuser, further question of determining the compensation would not arise. But if the tenant wants to continue the user of the premises contrary to the conditions imposed under the lease deed the Controller has to approach the authority concerned to find out if non-conforming user is to be permitted, if so on what terms. If the non-conforming user is not permitted by the authority the controller has no alternative but to pass the order of eviction. But if the authority is inclined to permit the non-conforming user, the Controller has to determine the compensation for non-conforming user. This determination shall be with respect to the past non conforming user as well as for the future. This question for determining the compensation or permission for non-conforming user is to be decided by the Controller after notice to the authority concerned. Neither the landlord nor the tenant can be directed to approach the authority for regularisation of the non-conforming user or for determination of the compensation. In the present case the Controller, instead of acting himself according to law as contained in Section 14(11) of the Act, has directed the petitioner-landlord to approach the Delhi Development Authority for regularisation. This is beyond the jurisdiction of the Controller. The order of the Controller directing the petitioner-landlord to approach the Delhi Development Authority for regularisation is, therefore, beyond the scope of Section 14(l)(k) read with

Section 14(11) of the Act. In other words, the said portion of the impugned order is without jurisdiction.

(3) Learned counsel submits that under Article 227 of the Constitution the said portion of the impugned order should be quashed. Counsel for the respondent on the other hand submits that this court should not exercise powers under Article 227 of the Constitution. His submission is that the impugned order is an order under the [Delhi Rent Control Act, 1958](#) affecting the rights of the parties and as such appealable under Section 38 of the Act. Learned counsel for the petitioner-landlord on the other hand submits that the order of the Controller directing the landlord to approach the Delhi Development Authority for future regularisation is not an order under the Act and is not appealable under Section 38 of the Act as it does not affect his right and that the second portion is only a procedural one.

(4) Under Article 227 of the Constitution the High Court has power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It is not disputed that the Rent Controller is a tribunal within the meaning of Article 227 of the Constitution. The general superintendence under Article 227 of this court is a duty to keep the Tribunals within the bounds of their authority to see that they do what their duty requires and that they do it in a legal manner. In *Satyanarayan Nathany and others v. Union of India*, : AIR1971 Cal167 it has been held that the powers under Article 227 of the Constitution can be exercised suo motu and do not require any application for the purpose. It has been further held that if grave or serious prejudice is caused to a party by non-exercise of the jurisdiction the High Court has power under Article 227 of the Constitution to direct the authority to exercise such power. In the instant case the Controller has failed to exercise the jurisdiction vested in him under Section 14(11) of the Act. The Controller ought to have determined the questions involved under that Section and ought not to have directed the landlord to approach the Delhi Development Authority for regularisation. The question however is whether the impugned portion of the order is appealable under Section 38 of the Act. In *The Central Bank of India v. Gokul Chand*, : [1967]1SCR310 dealing with a case under Section 38 of the Act the Supreme Court observed, 'the object of Section 38(1) is to give a right of appeal to a party aggrieved by some

order which affects his right or liability. In the context of Section 38(1), the words 'every order of the Controller made under this Act' though very wide do not include interlocutory orders, which are merely procedural, and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding ; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party'. Thus it has to be seen whether the impugned order affects some right or liability of the petitioner to make it appealable under Section 38 of the Act. The impugned portion of the order on the face of it does not affect any right of the petitioner. It is only a procedural matter directing the landlord to approach Delhi Development Authority. Thus it is held that the impugned order was not appealable under Section 38 of the Act as it did not affect the right of the petitioner. Moreover the order is not an order under the Act. No rights under the Act were determined or refused by the Controller when he directed the petitioner-landlord to approach the Delhi Development Authority. As the impugned order is only procedural it is not appealable. Further the impugned order is not final. The order on the eviction application becomes final when by means of a determination the application for eviction of a tenant is either accepted or dismissed. In the present case the application has neither been accepted nor dismissed. It is admitted at the bar that the respondent-tenant has deposited the

compensation for past breaches as ordered by the Controller. Had he not deposited the same it could have been said that an order of eviction would be deemed to have been passed. Moreover even if the tenant has deposited the compensation for past breaches, there is no determination regarding the future user of the premises by the tenant contrary to the terms of the lease, unless future user of the premises is permitted by the Delhi Development Authority. It cannot therefore be said that the eviction application was determined finally. Even if future non-conforming user is permitted by the Delhi Development Authority it has to be seen on what terms the said user would be permissible. Thus the impugned portion of the order dated 6th December, 1980 directing the petitioner-landlord to approach the Delhi Development Authority for regularisation of future non-conforming user is without jurisdiction and liable to be quashed. I accordingly quash the same under Article 227 of the Constitution. The petition is accepted to that extent and the matter is remanded to the Additional Controller for determining the two alternatives mentioned in Section 14(11) of the Act. The Delhi Development Authority is already a party to the proceedings. The reply has already been filed by the Delhi Development Authority. If the authority is willing to permit in future the user of the premises contrary to the terms of the lease, it should specify the terms before the Controller who is directed to decide the eviction petition in accordance with law. There will be no order as to costs. Parties are directed to appear before the Additional Controller on 2nd December, 1981.