

Ashok Kumar and ors. Vs. Usha Rani

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Court : Delhi

Decided On : Mar-12-1993

Reported in : 52(1993)DLT551; 1993RLR367

Judge : P.K. Bahri, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); Delhi Development Act, 1962 - Sections 14

Appeal No. : Second Appeal Nos. 91, 92, 93 and 94 of 1986

Appellant : Ashok Kumar and ors.

Respondent : Usha Rani

Advocate for Pet/Ap. : B.R. Narang,; D.D. Singh,; Y.K. Jain,;

Judgement :

P.K. Bahri, J.

(1) In all these cases same questions of fact and lawyer involved. Hence, they are being disposed of by this common judgment.

(2) The appellants are occupying different portions of property No. 1 SA/36, Western Extension Area, Karol Bagh, New Delhi, as tenants under the respondent. The eviction petitions were brought against these tenants by the

landlord on the ground of eviction covered by Section 14(l)(k) of the Delhi Rent Control Act ('the Act').

(3) The two Courts below have given findings that premises have been let out for commercial purposes. It is not in dispute that according to the terms of the lease under which the property is held by the respondent, the property could be used only for residential purposes. The ground of eviction covered by Clause (k) was upheld by both the Courts and there is no challenge to the said findings of the two Courts below. Clause (k) reads as follows:

'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 Govt. or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate.'

(4) The question in all these cases is the form in which the order should have been made keeping in view Section 14(11) of the Act which reads :

'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.'

(5) This particular clause has led to lot of litigation between the landlords and the tenants and up-to-date no solution could be found which could give effect to this particular clause in a proper manner. Before coming into force of the Drc Act and the Delhi Dev. Act, leases were being granted by the Land and Development Office and the authorities were perhaps more liberal in the matter of violation of the terms of the lease and the residential premises were being converted into commercial premises as the need of the population in Delhi grew. The Rent Control Act was enforced in Delhi for the first time in 1952 and thereafter in 1958. In order to check the haphazard growth of Delhi, the Delhi Dev. Act was brought into force in 1962 which contemplated preparation of the Master Plan which would

identify different parts of Delhi and prescribe user of those parts of Delhi for particular purposes. The Delhi Dev. Act also contemplated framing of Zonal Dev. Plans which were to indicate particularly the user of buildings and land in a particular Zone. The Legislature in its wisdom provided for Section 14 and Section 29 in the said Act to see that any violation of the Master Plan or Zonal Dev. Plan with regard to the user of the particular land or building should not go unpunished. It was made a penal offence to use any land or building for a purpose other than mentioned in the Master Plan or Zonal Dev. Plan. The Legislature could have easily omitted certain provisions of Section 14(11) so that if any tenant is found using a particular premises for a purpose in violation of the terms of the lease granted by the Govt. authorities then he should have either been made to face the eviction if he was not to stop user of such premises in conformity with the terms of the lease. But the Legislature did not. We provisions with regard to the payment of compensation as the Controller may direct which led the Courts to interpret this provision. When the authority was to agree to accept compensation, the Controller was required to determine the said amount of compensation and could also proportionately distribute the liability between the landlord and the tenant where the landlord initially had permitted the misuser.

(6) The question which remained subject-matter of. issue before the High Court in different judgments and even before the Supreme Court in some of the judgments was whether the tenants should be required to stop misuse of the building or not by certain date. If the Legislature in its wisdom had modified this particular provision of Section 14(11) when it framed the Delhi Dev. Act in 1962, the problem would not have remained if the words 'pays to that authority such amount by way of compensation as the Controller may direct' had been omitted from Section 14(11).

(7) The object of having an organized development of Delhi, which is now to be again given a shape by having another Master Plan, could have been easily achieved to some extent if this provision had been modified as suggested above, but unfortunately the Legislature although had issued ordinance making more drastic the provisions for dealing with the misuser of buildings and for illegal construction of the buildings yet has not thought it fit to modify this particular

provision of Section 14(11). If this provision had been omitted then the tenant, who take the premises on rent from the landlord may be for commercial purposes, who have been required to stop the misuse of face the eviction and there could not have been left any option to the Controller or to the authorities for passing any order for paying of any compensation.

(8) Coming to the facts of the present cases, the D.D.A. is the paramount Lesser and is to decide as whether it is to permit misuse of the premises, if so, for how long period and also show as to whether it would be interested in having any compensation. The A.R.C., in the present cases, had passed an order requiring that the tenant would stop the misuse if some target date is fixed by the D.D.A. by which the misuse of the properties are to be stopped and he directed that compensation would be determined and would be paid by the landlord and the tenant in equal proportion. The Tribunal on the other hand in appeals had required the tenants to stop the misuse and had left the question of payment of compensation to be determined by the Civil Courts.

(9) I am afraid that the Tribunal has not appreciated the provisions of Section 14(11) in proper perspective. The D.D.A. in the present cases, has filed affidavit, on notice being given to the D.D.A. which is at page 214 to Sao No. 92/86. This affidavit has been filed by the then Secretary of the D.D.A. in which it has been mentioned that as per the latest policy being followed by the D.D.A. the prosecution for misuse in W.E.A. has been suspended for the time being as per the orders of the former Lt. Governor as there is likelihood of permission being granted for commercialization of the area after charging certain dues in accordance with the provisions of Master Plan/Zonal Dev. Plan.

(10) Keeping in view this stand of the D.D.A. the question which arises for decision is as to what order should be made in these cases which should meet with the requirement of Section 14(11).

(11) The provisions of Section 14(11) of the DRC. Act came up for consideration in *Faqir Chand v. Ram Rattan*, : [1973]3SCR454 . The said case also pertained to a property located in Karol Bagh. The High Court had taken the view that the misuse was in violation of Zonal Dev. Plan and the same being a penal offence u/Secs. 14

&29 of the Delhi Dev. Act., the Controller has no option but to direct stoppage of the misuse by the tenant and in default to evict the tenant. The Supreme Court examined the facts of the said case and found that no Zonal Dev. Plan had been prepared and had also found that there was only violation of the term of the lease granted by the Improvement Trust and the Lesser had the option of condoning the misuse and the matter was remanded to the Controller to decide the question after giving notice to the D.D.A. which was the successor-in-interest of the Improvement Trust. The Supreme Court also found that there has not come into existence any Zonal Dev. Plan. It also found that under proviso to Section 14 of the Delhi Dev. Act, if there is any misuse in existence prior to coming into force of the Master Plan/Zonal Dev. Plan then the said misuse could be continued subject to such terms and conditions as may be prescribed by Regulations by the D.D.A. It is, hence, evident that if a Zonal Dev. Plan has come into existence and misuse takes place after coming into existence of Zonal Dev. Plan then in such a case the D.D.A. would perhaps have no power to allow continuance of misuse till either the Zonal Dev. Plan is modified or new Master Plan comes into existence providing for any different user of that particular building.

(12) In the present case, it is not the case of the respondent that this misuse was in violation of the Zonal Dev. Plan and had come into existence after the enforcement of any Zonal Dev. Plan.

(13) I may refer to the judgment of the Supreme Court given in Punjab National Bank v. Arjun Dev, : AIR 1987 SC148 where the Supreme Court directed the authorities to fix quantum of penalty after hearing Counsel for the parties and the D.D.A. The judgment has not dealt with the question as to whether any direction should be given for stopping the misuser.

(14) In Civil Appeal No. 2210/87, Narain Dos v. Manohar Lal, D/8-9-87, similar question again came up for consideration before the Supreme Court. The Supreme Court found that the Lt. Governor had stayed the action with regard to misuse and thus, the Supreme Court remanded the case back to the authorities for requiring the Controller to determine the quantum of compensation payable to the D.D.A. for the purpose of misuse of the property and the tenant will bear the

said penalty as may be determined. It was also, made clear that if the D.D.A. was to give fresh notice for cancellation of lease on the ground of breach of the terms of the lease, the landlord was free to take any action in accordance with law in future.

(15) In *Tilak Raj v. Surinder Kaur*, 1973 Rajdhani Law Reporter (Note) 62, the High Court while dealing with Sub-section (II) required that the Controller should issue notice to the D.D.A. to ascertain if it was prepared to accept compensation for the misuser.

(16) So, it appears that a direction regarding stoppage of misuse can be given by the Controller in a case where the D.D.A. takes a firm stand that such misuse must stop by a particular date. If the D.D.A. is dithering in the matter and is considering and re-considering the question as to whether misuse should be stopped in residential buildings, there is no option for the Court but to require the D.D.A. to determine at least the amount of compensation for the past misuse and get it realised from the tenant in order to save him from being evicted under the aforesaid ground.

(17) It is quite clear that if the D.D.A. at any point of time takes a policy decision that in future by some particular date the D.D.A. is to enforce strictly the conformity of the premises in accordance with the Master Plan and according to the terms of the lease and not to permit any sort of misuser, then the D.D.A. has to declare that policy publicly and give a particular future date by which the citizens could be made aware about its policy that from that date onward there would be granted no permission for misuse of any residential building. If the owners are misusing the premises in violation of the terms of the lease, D.D.A. can easily enforce the compliance with the terms of the lease by cancelling the lease and taking over the property. Where the tenant is misusing the property, the landlord has to take steps to get the tenant to conform with the provisions of the lease-deed and the authorities under the Rent Control Act could also require the tenant to stop the misuser. If the Legislature omits the clause regarding the payment of compensation then it would become very easy for the Rent Control Authorities to pass eviction orders if the tenants do not stop the misuser. But it is for the

Legislature to make up its mind and make necessary amendments in the Rent Control Act.

(18) Counsel for the appellants have also prayed by moving certain applications that the landlord may be required to move the D.D.A. for getting the freehold rights in the property in question as the same are now being permitted by the D.D.A. and the appellants are prepared to incur the necessary expenses. In law it is the option of the lessees of the D.D.A. to decide whether they would like to have leasehold rights converted into freehold rights. The Court cannot give any such direction to the lessees that they should take steps for converting the leasehold rights into freehold rights in the property. The appellants being the tenants only have no right to ask for conversion of leasehold rights into freehold rights.

(19) Keeping in view the above observations, I hold that the impugned order of eviction passed by the two authorities below cannot be sustained as they are not in compliance with Section 14(11) of the Act. The cases are remanded back to the Controller for deciding afresh the question of passing of the eviction order in conformity with Section 14(11) of the Act. The Controller shall before proceeding with the matter give fresh notice to the D.D.A. through its Secretary for appearance and for making its stand clear and the Controller in any case shall have to determine the compensation which may be required to be paid to the D.D.A. regarding the past misuse of the property and shall decide as to what extent the compensation is payable by the landlord for his having permitting the misuser. It is obvious that after the landlord had served the notice on the tenants requiring them to stop the misuse the compensation for misuse occurring after the service of such notices would be the whole liability of the tenant.