

**Subhash Chander Oberoi Vs. Shiv Ram**

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**Court :** Delhi

**Decided On :** Apr-21-1993

**Reported in :** 51(1993)DLT41; 1993RLR413

**Judge :** Usha Mehra, J.

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

**Appeal No. :** Second Appeal No. 62 of 1980

**Appellant :** Subhash Chander Oberoi

**Respondent :** Shiv Ram

**Advocate for Pet/Ap. :** Anil Kumar and ; Sanjeev Kalra, Advs

**Judgement :**

**Usha Mehra, J.**

(1) The short point involved in this appeal is whether the earlier petition under Section 14(l)(k) of the Delhi Rent Control Act (hereinafter called the D.R.C. Act) which was dismissed would operate as res Judicata to a second petition under Section 14(l)(k) of the D.R.C. Act, between the same parties.

(2) Admitted facts are that the appellant filed a petition for eviction under Section 14(l)(k) of the D.R.C. Act against the respondent alleging that the lease of the

respondent on which the premises is situated had been granted by the Delhi Development Authority (in short D.D.A.) for the purposes of constructing a residential house. The respondent notwithstanding the previous notice, has been using the premises in question for commercial purposes and is running cloth business in the garage room. Since the premises is being used by the respondent contrary to the conditions imposed on the appellant by the D.D.A. therefore, the eviction petition. Respondent raised the plea that the petition was barred by the principle of rest Judicata because earlier also the appellant had sought eviction of this premises on the same ground. That the said petition was dismissed on 10.6.70, therefore, bringing a fresh petition of eviction on the same cause of action was barred by rest judicata. By the impugned order the Rent Controller as well as the Rent Tribunal dismissed the eviction petition. Rent Tribunal relied on the decision of this Court in the case of Shyam Singh v. Om Prakash, S.A.O. No.355/86 decided on 21/05/1974, where it was observed that in view of the finality attached to the earlier decision dismissing the petition for eviction under Section 14(1)(k) of the D.R.C. Act, the second petition on the same cause of action was barred by the principle of rest judicata.

(3) I am afraid the Rent Tribunal neither appreciated the facts of this case nor the correct position of law. The lease deed of the D.D.A. has been exhibited as Ex. A-1. The terms of Ex. A-1 clearly indicate that the premises has to be used for residential purposes and not for commercial purposes. Earlier petition of the appellant was dismissed on 10.6.70. Subsequent thereto appellant received another notice from the D.D.A., which is Ex. A-2, dated 13.3.73, asking him to stop the misuse of the garage room in question. This notice was received by the appellant on 16.3.73. Thereafter, another notice was issued by the D.D.A. which is Ex. A-3 dated 23.4.73 asking the petitioner to stop the misuser. As the D.D.A. issued fresh notice after 10.6.70, therefore, fresh cause of action accrued in favor of the appellant. The earlier petition having been dismissed, to my mind, that will not operate as rest judicata because it was a continuous cause of action particularly when the D.D.A. served a second notice Ex. A-2 dated 13.7.73. The lease deed has been proved on record as Ex. A-1 and the respondent admitted using this premises for commercial purposes which is against the terms of the lease. D.D.A. filed the written statement in which it pleaded that it would not

condone the misuse by the landlord or histenant. thereforee, to my mind, the appellant made out the ground under Section 14(1)(k) of the D.R.C. Act.

(4) The Tribunal by the impugned judgment relied on the decision of Shyam Singh v. Om Prakash, Sao No. 335/86. A perusal of this judgment shows that the learned single judge did not notice the decision of the Supreme Court in Mathura Prasad Bajoo Jaswal v. Dossi Bai, reported in : [1970]3SCR830 , where it was held that the question relating to jurisdiction of a Court cannot be deemed to have been finally determined by the erroneous decision of that Court. If by erroneous interpretation of the statute the Court holds that it has no jurisdiction the decision would not operate as rest judtcata. The decision cannot operate as rest Judicata between the same parties whether the cause of action in the subsequent litigation is the same or otherwise because if those decisions are considered as conclusive it will assume the status of a special rule of law applicable to the partiesrelating to the jurisdiction of the Court in derogation of the rule declared by the legislature.

(5) The earlier eviction petition of the petitioner was dismissed on the ground that he himself let out the premises for commercial purposes contrary to the terms of the lease, and thereforee, estopped from claiming eviction under Section 14(1)(k) of the Act. The Rent Controller at that time relied on the decision of the Punjab High Court in the case of Smt. Uma Kumar v. Jaswant Singh, 1960 Plr 460 where it was held that if a landlord himself had rented out the premises for commercial purposes contrary to the terms of the lease deed then he cannot seek eviction under Section 14(1 )(k). However, this view of the law was over ruled by the Supreme Court in the case of Fakir Chand v. Ram Rattan, 1973 Sc 921, where it was held that a landlord who himself let out the premises in violation of the terms of the lease deed entered into with the President of India, was not stopped from claiming the eviction of his tenant under Section 14(l)(k) of the Act. Thus there was a change in law by the judicial pronouncement of the Supreme Court. thereforee, in view of Fakir Chand's judgment theTribunal's decision of 10.6.70 was no good law and could not have operated as a rest judicata to a subsequent petition filed by the appellant. There could not have been any estoppel against the appellant, although he himself had let out the premises for use as held in the earlier proceedings. His right to claim eviction under Section 14(l)(k) read with Section

14(11) of the D.R.C. Act was not determined by the Controller in the previous case and that the user contrary to the terms of the lease deed is a recurring cause of action.

(6) Sham Singh's case (supra) the learned Single Judge was dealing with a case where the earlier petition was dismissed and there was no subsequent notice received by the landlord from the D.D.A., therefore. Court came to the conclusion that the earlier judgment inter se the parties will operate as a *res judicata*. But that is not the case in hand. In the present case from the facts stated above it is clear that after earlier decision dated 10.6.70, the D.D.A. served two more notices on the appellant asking him to stop the misuse of the premises forthwith and further D.D.A. was not going to condone the misuser. therefore, the judgment of the Sham Singh's case (supra) had been wrongly applied by the Rent Tribunal in this case. In *Rajeshwar Dayal v. Nanak Chand & Anr.* case reported in : 21(1982)DLT45, this Court observed that even where the landlord himself let out the premises for commercial purposes against the terms of the lease of land granted by the D.D.A. such a landlord cannot be estopped from claiming eviction under Section 14(1)(k) of the Act on the ground of misuse of premises by the tenant. That eviction petition filed under Section 14(1)(k) after notice to stop misuse if dismissed on the ground that landlord had himself let out premises against the terms of the lease deed granted by the D.D.A., subsequently, the said landlord giving fresh notice to stop misuse if filed a fresh application for eviction under Section 14(1)(k), the subsequent petition was not barred by the principle of *res judicata* in view of the fresh cause of action by fresh notice under Section 14(1)(k) to stop the misuse and subsequent change of law by judicial pronouncement of Supreme Court.

(7) In view of what is stated above, it is clear that it was a fresh cause of action which had arisen in favor of the appellant and since the respondent did not stop the misuser, fresh cause of action arose to the appellant to proceed under Section 14(1)(k) of the Act. Under Sub-section (11) of Section 14 of the D.R.C. Act no order for recovery of possession under Clause (k) could be passed if the tenant stops the misuse within a time to be fixed by the Controller or pays the compensation determined by the Controller. In the present case the Rent Controller dismissed

the eviction petition on the ground that the same was barred by the principle of rest judicata. He had in fact not determined whether the respondent was willing to stop the misuse or pay the compensation that may be determined by the Controller. This is contrary to the law now well settled by this Court as well as by the Supreme Court in Fakir Chand's case.

(8) I accordingly hold that the cause of action in the present petition was different from the one in the earlier petition. That due to change in law on account of the interpretation given by the Supreme Court there was no estoppel against the appellant to claim eviction under Section 14(l)(k) of the Act. In this regard I am also supported by the decision of this Court in the case of Lila Wati Duti. v. Dda, reported in 20 (1981), Dlt 42.

(9) In view of my above discussion I hold that the ground of eviction under Section 14(l)(k) stand proved. The appeal is accordingly allowed. The judgment and the order of the Tribunal confirming the order of the Addl. Rent Controller, Delhi, dismissing the eviction application under Section 14(l)(k) of the Act are set aside. Since the Rent Controller had not taken the proceedings under Section 14(11) of the Act, which is a mandatory provision, therefore, the case is remanded back to the Additional Rent Controller for deciding the question under Sub-section (11) of Section 14 of the Act. He could exercise one or the other of the two alternatives i.e. whether no order for recovery of possession under Clause (k) could be passed if the tenants stop the misuse within a time to be fixed by him or pays the compensation determined by him. Since the Dda was not a party before this Court hence the Controller will ascertain from the Dda whether it can condone the misuse after charging any penalty. The Court below would afford an opportunity to the parties to determine the question arising under Section 14(11) of the D.R.C. Act. Parties are directed to appear before the Addl. Rent Controller on 10/05/1993. No order as to costs.