

Chander Singh Vs. Krishna Hari Gupta (Deceased) Thr. Lrs.

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Court : Delhi

Decided On : Sep-17-2004

Reported in : 114(2004)DLT424; 2004(77)DRJ202

Judge : R.S. Sodhi, J.

Acts : Delhi Rent Control Act - Sections 1(2), 14(1) and 14(6); Code of Civil Procedure (CPC) - Sections 10; [Punjab Municipal Act 1911](#) - Sections 4(6)

Appeal No. : SAO 225/1984 and CM 2935/2004

Appellant : Chander Singh

Respondent : Krishna Hari Gupta (Deceased) Thr. Lrs.

Advocate for Def. : Shyam Kishore, Adv. and ; J.S. Chauhan, Adv. for R-2

Advocate for Pet/Ap. : Sunil Malhotra, Adv

Judgement :

R.S. Sodhi, J.

1. SAO 225/1984 is directed against the judgment dated 22nd May, 1984 of the Rent Control Tribunal in RCA No. 106/1983, whereby the learned Tribunal while adjudicating on an appeal against the order dated 29th January, 1983 of the Additional Rent Controller has allowed the appeal holding that the Additional Rent

Controller had no jurisdiction to entertain the appeal in relation to the premises in question since its jurisdiction did not extend to the territories where the premises were situated.

2. The brief facts of the case, as has been noted by the Rent Control Tribunal, are as under :

"Briefly stating the facts giving rise to the present appeal are that respondent No. 1 Chander Singh filed a petition for eviction against the appellant and Kishan Hari Gupta with respect to the property in dispute detailed in the petition for eviction. The grounds of eviction taken up were under clause (a) and (b) of the proviso to sub-section 1 to Section 14 of the Act. It was contended that Kishan Hari Gupta is the tenant in the suit premises at a monthly rent of Rs. 200/- and is in arrears of rent from 1.6.1974 at the rate of Rs. 200/- P.M. which the tenant has failed to pay despite the service of the notice of demand. It was further pleaded that the said tenant has sublet, assigned or otherwise parted with the possession of the property to the appellant without the consent in writing of respondent landlord and further that the appellant is in unauthorised occupation of the property.

3. In the written statement filed by Krishan Hari Gupta the averments regarding the relationship of landlord and tenant were admitted. He pleaded that the property was sublet with the consent of the respondent landlord and before that he himself was running a sweet meat shop in the suit premises. The arrears of rent were admitted to be due and it was admitted that the service of the notice had been effected.

4. The appellant filed a separate written statement mainly contested the application for eviction. He contended that Kishan Hari Gupta is not a necessary party because it is appellant who is the sole tenant with respect to the property in dispute and Kishan Hari has nothing to do with the property in question. The eviction application was asserted to have been filed with the view to extract the money and further it was contended that the petition is barred under Section 10 of the Civil Procedure Code because the appellant has filed a suit for declaration and injunction praying that he should be declared to be the tenant in property. Another plea raised was that the property is situated in village Khanpur

which is not governed by the provisions of the Delhi Rent Control Act therefore the court has no jurisdiction to entertain the petition."

3. The question that was raised before the Additional Rent Controller as also the Tribunal was that whether the premises in question fell within the jurisdiction of the Delhi Rent Control Act or not. The learned Additional Rent Controller while noticing the objection that "...the premises in question is situated in village Khanpur and it is not governed by the provisions of Delhi Rent Control Act and this court has no jurisdiction to entertain and try the case" went on to hold that it had jurisdiction of the ground that the respondent has not proved on record that the premises in dispute is situated in Khanpur (Part) which was already urbanised prior to the year 1966 or that it falls under the remaining area of Khan Pur which was proposed to be urbanised vide notification dated 28th May, 1966. He further held that even assuming that the Delhi Rent Control Act became applicable only on March, 1979 and the petition was filed in 1978, still the Rent Court has jurisdiction. For this, he relies upon a judgment of the Allahabad High court in Irfan Ahmad Vs . Abdul Wahid and Ors. : AIR1966 All166 .

4. The learned Tribunal while dealing with this question formulated it thus :

"So far as the proposed evidence now to be produced is concerned keeping in view the question involved as to whether the court at the time of institution of the petition had the jurisdiction or in other words the provisions of the Delhi Rent Control Act were applicable to the suit premises the same should be taken note of."

The Tribunal has held that the premises in question did not fall within the jurisdiction of the Rent Court as the Act was not applicable thereto in which event there was no question of entertaining the petition for eviction in the first instance. The Tribunal has relied upon a judgment of the Bombay High Court in Shiv Bhagwan Moti Ram Saroji Vs . Onkarmal Ishar Dass and Ors. : AIR1952 Bom365 , wherein the Court has held that the suit in which cause of action does not arise on the day when the court has jurisdiction to entertain the petition, the same cannot be maintained merely because subsequently the jurisdiction has been conferred on the court.

5. Having heard counsel for the parties and having carefully gone through the judgments under challenge, I am of the view that in the present case where the notification issued on 27th March, 1979 is prospective in nature, it cannot apply to areas which were not covered by it prior thereto. The jurisdiction of the Additional Rent Controller to entertain a petition to which the Act was not applicable is wanting and therefore, such a petition cannot be entertained when filed as the cause of action that arose was prior to the court having jurisdiction to entertain the same. Sub-Section (2) to Section 1 of the Delhi Rent Control Act clearly indicates that the provisions of the Act would apply to particular areas within the Union Territory of Delhi. In other words, it emphasizes that no petition for eviction can be instituted/entertained in respect of the areas to which the Act does not apply. The suit which was bad from its very inception would not become good by subsequent events. Sub-section (6) to Section 14 the Delhi Rent Control Act may also be read which bars a suit for eviction for five years from the acquisition of the property. It cannot be said that a suit if filed before the expiry of the five years can be maintained since during the pendency of the suit the five years would have expired. The Delhi Rent Control Act being a special Act, its provisions cannot be compared with those under the Code of Criminal Procedure and must necessarily be construed in their own arrangement. Applicability of this Act and conferment of jurisdiction is one such facet. Reference may be had to the Division Bench decision of the Patna High Court in *Firm Laduram Sagarmal v. Jamuna Prashad Chaudhari* AIR 1932 Pat 239. In the facts of this case, Sub-section (1) of the Delhi Rent Control Act provides the limits to the areas to which the Act would extend in the first instance. The first Schedule appended to the Act gives the area of the Municipal Corporation of Delhi and it relates primarily to small areas in and around the walled city. It also extends the provisions of the Act to the areas governed by South Delhi Municipal Committee. Vide notification No. F.11(40)/53-LSG (i) dated 4th March, 1954 the area of the South Municipal Committee was defined and it reads as under :

"In exercise of the powers conferred by sub-section (6) of Section 4 of the [Punjab Municipal Act 1911](#) and with reference to his notification No. F.11(40)/53-LSG dated the 5th August 1953 the Chief Commissioner Delhi is pleased to declare with immediate effect the area the boundaries of which are specified in the

schedule below to be a municipality of the 2nd class under the said Act.

SCHEDULE

North : Southern Boundary of New Delhi

Municipal Committee.

East : River Yamuna

South: Southern boundaries of village Okhla and Bahapur thence along and including the boundary of the Qila Rai Pithaura up to tri-junction pillar of village Adhchani, Lado Sarai and Khathwaria Sarai thence Along with the southern boundaries of village Jialarai Hauz Khas, Munirka and Basant Nagar where it joins the Delhi Cantonment Boundary.

West : Delhi Cantonment."

A perusal of the aforesaid shows that Khan Pur and Mehrauli, which are much to the South, were not included within the areas to which the Delhi Rent Control Act applies. By virtue of sub-Section (2) to Section 1 of the Delhi Rent Control Act, the Central Government has extended the provisions of the Act to different urban areas of the Union Territory of Delhi and different notifications were issued. It was only by notification No. SAO 1236 dated 27th March, 1979 published in Gazette of India Para II dated 14th April, 1979 that the Act was made applicable to certain other areas and as far as Khanpur is concerned the notification is as under :

"S. No. Name of Zone Name of the Particulars of Revenue State the area proposed to be urbanised.

38. South Delhi Khanpur (Part) The entire remaining area of the said revenuees. which has not so far been urbanised."

This notification came into being after the petition had been filed. Hence it can safely be said that on the date when the petition for eviction was filed. the provisions of the Delhi Rent Control Act did not apply to the property in question.

6. In view of the discussion above, I hold that the petition when filed under the Delhi Rent Control Act was not maintainable since the Act was not applicable to the property in question at that time. Consequently, the order dated 22nd May, 1984 of the Rent Control Tribunal is upheld. SAO 225/1984 is dismissed. CM 2935/2004 stands disposed of.

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