**Raj Rani Vs. Lekh Raj**

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**SooperKanoon Citation** : sooperkanoon.com/716620

**Court** : Delhi

**Decided On :** Jul-20-2006

**Reported in** : 2006(90)DRJ728

**Judge** : Sanjay Kishan Kaul, J.

**Acts** : Constitution of India - Article 227; Delhi and Ajmer Rent Control Act; Delhi Municipal Corporation Act 66 of 1957 - Sections 116 and 116(2); Delhi Rent Control Act, 1958 - Sections 2, 3(1), 6, 7, 9(4), 14(1)(a), 14(2), 15(1), 38, 43 and 9 to 50; Evidence Act - Sections 35; Punjab Municipal Act

**Appeal No.** : CM(M) No. 755 of 2003 and CM No. 1591 of 2003

**Appellant** : Raj Rani

**Respondent** : Lekh Raj

**Advocate for Def.** : M.K. Srivastava, Adv.

**Advocate for Pet/Ap.** : V. Shukla, Adv

**Judgement** :

**Sanjay Kishan Kaul, J.**

1. Admit.

2. At the request of the learned Counsel for the parties, the petition is taken up for final disposal.

3. The petitioner had filed an eviction petition against the respondent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the said Act). The respondent is stated to have been inducted as a tenant in the year 1979 in respect of two rooms, verandah, kitchen, latrine and bathroom in respect of property at Bihari Colony. Shahdara, Delhi for the purpose of residence at a monthly rent of Rs. 325/-, which is stated to have been enhanced to Rs. 700/- per month. In the month of December 1991, the respondent is stated to have surrendered a part of the tenanted premises and only retained one room, which was converted into a shop as per mutual agreement between the parties and the rent was fixed @ Rs. 400/- per month, excluding electricity and water charges. The rent is stated to have been enhanced to Rs. 500/- per month w.e.f. January 1995.

4. The defence of the respondent is that he took one shop for commercial purposes in the year 1979 at a monthly rent of Rs. 40/- and one room, verandah, kitchen, latrine and bathroom on the ground floor at a monthly rent of Rs. 60/-for residential purposes. The surrender of the residential premises is not disputed and the rent for the shop is stated to have been fixed at Rs. 80/-excluding electricity and water charges. The respondent allege that the petitioner stopped taking rent after November 1997 and thereafter the amount was sent through money order, which was refused by the petitioner.

5. The dispute between the parties related to the fact is that as to what was the agreed rent for the one room, which was being used as a shop. The Court of the Additional Rent Controller considered the testimony of the witnesses. The petitioner appeared in the witness box as PW-1 while one Shri Ram Saran appeared as PW-2. Shri Ram Saran was earlier a tenant of the petitioner in respect of another property. The respondent appeared as RW-1 being the sole witness.

6. The Additional Rent Controller found that on the date of the oral testimony of both the parties, there have been no written agreement, the rate of rent was fixed at Rs. 500/- per month and thus passed an order under Section 14(1)(a) of the

said Act, but this being the first default the protection of Section 14(2) of the said Act was available to the respondent/tenant. An order was thus passed under Section 15(1) of the said Act directing the respondent to deposit the arrears of rent w.e.f. May 1997 @ Rs. 500/- per month within one month from the date of the order.

7. The respondent aggrieved by the same filed an appeal before the Rent Control Tribunal and the Tribunal allowed the appeal in terms of the order dated 24.7.2003, which is now sought to be assailed by the petitioner under Article 227 of the Constitution of India.

8. It may be noticed at this stage that the jurisdiction of the Tribunal is restricted only to the question of law and in this behalf, the relevant provision of Section 38 is reproduced herein;

38. Appeal to the Tribunal. -- (1) An appeal shall lie from every order of the Controller made under this Act [only on questions of law] to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette.

9. The limited controversy which arises from the order of the Tribunal is in respect of the document executed as PW-l/XA, which is stated to be a survey report of the Municipal Corporation of Delhi. This document was relied upon by the respondent to show the prevalent rent. The Additional Rent Controller considered this survey report for the year 1984, which records that the respondent is a tenant in respect of one shop measuring 8 X 8 at a monthly rent of Rs. 80/- per month and in respect of one room, kitchen, latrine and bathroom at a monthly rent of Rs. 120/-. The Trial Court found that the contents of this report are totally in contradiction with the pleas taken by the respondent in the written statement, wherein it is stated that in respect of residential premises, the monthly rent was Rs. 60/- and it was never stated that the same was enhanced to' Rs. 120/-. The document was not found to be a reliable piece of evidence. It is this finding which has been interfered with by the Tribunal. The Tribunal has taken note of the fact that this document was cogent piece of evidence and should have been relied upon.

10. Learned Counsel for the petitioner points out that this document was not produced by the respondent at the stage of leading of evidence of the respondent nor was the author or the record keeper of this document produced as a witness. The document was produced only at the stage of cross-examination of the petitioner. Learned Counsel has referred to the cross-examination to point out that the only statement made in this behalf is as under:.I am paying house tax. Ex. PW1/XA seems to be inspected form in respect of premises in dispute but I do not have any personal knowledge about the same...

11. The aforesaid testimony shows that the petitioner had denied any knowledge of this document.

12. In my considered view, the respondent led no evidence to prove this document for the same to be relied upon. A perusal of the document further shows that the same has not been signed either by the landlord or by the tenant. Not only this the rent of Mr. Ram Sharan PW-2, who was then the tenant has been mentioned at Rs. 70/- per month while the testimony of PW-2, itself shows that the rent was Rs. 200/- per month, which was subsequently increased to Rs. 400/- per month. This is one other aspect which casts a doubt on this document.

13. Learned Counsel for the petitioner has also referred to the judgment of the learned single Judge of this Court in SAO No. 379/1968 tilted B.R. Narang v. Municipal Corporation of Delhi decided on 2.4.1973. This judgment has been considered by the Trial Court but has been ignored by the Tribunal without any discussion. A reading of this judgment shows that certain aspects germane to the present controversy have been discussed in the same. Since this is an unreported judgment, I consider it appropriate to reproduce an extenso discussion on this aspect..As a matter of law, I agree with the Tribunal below that the record of the house-tax assessment is not relevant for purposes of determining the standard rent under the Rent Act. Firstly under Sections 9 to 50 of the Act, the Controller has exclusive jurisdiction to determine the standard rent and his orders, by the force of Section 43 of the Act are final. The Controller has to exercise his jurisdiction in accordance with' the provisions of the Rent Act and neither the agreement of the parties nor the decision of any other authority binds the

Controller in the matter. The Rent Act contains detailed provisions as to how the standard rent should be determined. It is defined in Section 2(k) of the Act as meaning the standard rent referred to in Section 6 or the standard rent increased under Section 7. Section 6 read with Clause (a) of Section 2 and the Second Schedule or the Act broadly prescribe that the rent at which the premises were let on 1st November, 1939 or if they were first let out subsequently but before 2nd June, 1944, the rent as on the said date will constitute the original rent. The basic rent and the standard rent are arrived at by making certain calculations and additions to the original rent in accordance with the provisions detailed in the Act. In cases where the original rent cannot be determined, the law permits the standard rent to be fixed on the basis of market value of the land and the cost of construction and yielding a prescribed percentage as the standard rent. Failing this, the rent is to be determined under sub-section (4) of Section 9 of the Act.

The Punjab Municipal Act by Section 3(1) defines the annual value as the gross annual rent at which it may reasonably be expected to be let from year to year. Section 116 of the Delhi Municipal Corporation Act 66 of 1957 which has superseded the Punjab Municipal Act in the Union Territory of Delhi (except New Delhi) prescribes the rateable value of land or building as the annual rent at which such land or building might reasonably be expected to be let from year to year. There is a provision for certain deductions to be made and then the second proviso to Section 116 provides that in respect of any land or building, the standard rent of which has been fixed under the Delhi and Ajmer Rent Control Act of 1952, the rateable value thereof shall not exceed the annual amount of the standard rent so fixed. Section 116(2) makes provision for rateable value of land which is not built upon but is capable of being built upon and of any land on which a building is in process or erection shall be fixed at fix per cent of the estimated capital value of such land. It is, therefore, obvious that the Municipal Acts do not deal with the question of determining the agreed or original rent between the landlord and tenant on the date prescribed under the Rent Act. The house tax is assessed by the Corporation in accordance with the municipal law and the information is collected for purposes of the levy of house tax. The legal requirement is that the municipal assessment will not exceed the standard rent fixed, but there is neither any provision of law nor would it be a legitimate inference

to draw that the Controller is bound to accept the assessment of house-tax by the Corporation as a finding with regard to the agreed rate of rent between the landlord and tenant. Before the municipal authorities, there is no lis arising between the landlord and tenant. The tenant is seldom a party to the said proceeding and the landlord, in his desire to save tax, may not disclose the whole truth, The -finding of the local authority with regard to the letting value of the property, therefore, cannot constitute any basis or evidence for purposes of determining the standard rent by the Controller under the Rent Act. May be that the evidence produced before the Assessing Officer of the Corporation or the enquiries made by the Inspectors of the Committee or any admission made by the tenant or the landlord before it may, if admissible, constitute local evidence for use before the Controller like any other oral or documentary evidence, but no value can be attached to the said assessment on the ground that it is a part of the official record of the public authorities. Section 35 of the Evidence makes an entry in a public or other official book, register or record, relevant, if it is made by a public servant in the discharge of his official duty and it states a fact in issue or a relevant fact. In proceedings for fixation of standard rent, the fact in issue is the standard rent calculated according to the provisions of the Rent Act and the relevant fact is the agreed rent, if any, between the landlord and tenant on a prescribed date. But neither of these facts arise for determination before the Municipal Corporation, nor is there any lis between the landlord and tenant which the local authority enquiries and determines. The tenant is not even a party to the said proceedings and the findings of the local authority will not bind him or the landlord in their disputes interse. The enquiry is made by the Municipal Corporation and its officers for its own purpose of assessing the rateable value and determining the house-tax in accordance with the provisions of the Municipal Act and so, in my opinion, they are not relevant in the proceedings under the Rent Act....

14. Learned Judge also considered the judgment of the Full Bench of this Court in Dewan Daulat Rai Kapoor v. NDMC 1973 RCR 93 and observed in respect of the same as under:.This authority lays down how the local authority should determine the rateable value, but it does not lay down that the value so determined by the Corporation would bind the Controller or would be a good piece of evidence before him...

15. The conclusion arrived at by the learned Judge is as under:.I hold that the record of assessment of house-tax Exhibits A.W.4/1 to A. W.4/4 was not relevant, nor did it bind the parties in the proceedings under the Rent Control Act before the Controller....

16. The extensive discussion aforesaid shows the purpose for which the entries are made which are in respect of municipal surveys. The methodology prescribed for calculation of the property tax, though it relies upon the principles of standard rent, cannot form the basis of the determination of the rent being paid by a tenant to a landlord. The entry could not thus be relied upon apart from the fact that the document leaves much to be desired in view of the factual aspect discussed in respect of the document aforesaid.

17. I am thus of the considered view that the Tribunal fell into a patent error and erroneously exercised jurisdiction while seeking to rely upon Ex.PW-1/XA, which was rightly ignored by the Trial Court. The jurisdiction of the Tribunal is limited to the question of law. The impugned order of the Additional Rent Control Tribunal dated 24.7.2003 is consequently set aside and the order of the Additional Rent Controller dated 7.9.2001 is restored.

18. In view thereof, the respondent is granted 30 days time to deposit the arrears as directed by the Additional Rent Controller now up to date @ Rs. 500/- per month.

19. The petition is accordingly allowed leaving the parties to bear their own costs.

20. The parties to appear before the Additional Rent Controller on 31.8.2006 for compliance of the order passed under Section 15(1) of the said Act.

21. No further directions are called for in this application and the same is disposed of.