IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

Date of Judgment: 19.03.2013

W.P.(C) 1801/2013 & CM N. 3437/2013

OLIVE MARQUES AND ANR ..... Petitioners
Through Mr. E.R. Kumar & Mr. Faisal Sherwani, Advs.

versus

UNION OF INDIA AND ORS ..... Respondents
Through Mr Asish Nischal, Adv for R-1/UOI.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioners have filed the present writ petition under Article 226 of the Constitution of India laying a challenge to Chapter III-A of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'said Act') inasmuch as it provides a summary procedure which procedure has been made applicable to tenants, both of residential premises as also non-residential premises; submission being that Section 25-A to Section 25-C which are contained in Chapter III-A of the said Act are unconstitutional and violative of Articles 14, 19 (1) (g) and 21 of the Constitution of India. A second prayer has been made to quash the proceedings pending before the Additional Rent Controller (ARC) as this summary procedure which has been adopted by the ARC is ultra vires and is liable to be struck down.

2 Record shows that an eviction petition under Section 14 (1)(e) read with Section 25-B of the said Act has been filed by the landlord Mohd. Haroon Japanwala (respondent No. 4) seeking eviction of his tenants/petitioners from shop No. G-14, Marina Arcade, Connaught Circus, New Delhi (hereinafter referred to as the 'said premises'). The original tenant was Mr. Salazar Luis Anthony Marques and petitioners No. 1 & 2 are his widow and daughter. The tenancy was commercial. The business being

run in the said premises was under the name and style of ‘M/s. Marques & Company’.

3 Summons were served upon the petitioners on 12.05.2008 which were received through their employee. On 18.08.2008, an application seeking leave to defend was filed by the petitioners under Section 25-B (4) and (5) seeking leave to contest the eviction petition. Respondent No. 4 filed his reply to the said application taking an objection that the affidavit filed by the tenants was unattested. On merits also, the stand set up by the petitioners was disputed. Meanwhile since the original tenant (S.L.A. Marques) had expired on 10.04.2009, an application seeking substitution of his legal heirs was filed which was followed by another additional application. On 14.01.2010, the petitioners filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘said Code’) seeking permission to amend their affidavit to the extent that it was not attested or in the alternate to file a fresh affidavit in support of their application seeking leave to defend. A reply was filed by respondent No. 4 objecting to the same to which a rejoinder was filed. Written submissions were thereafter filed by the petitioners.

4 On the last date of hearing before the ARC which was 02.03.2013 since the Presiding Officer was on leave, the matter was adjourned to 27.04.2013. Submission of the petitioners is that in this interregnum period they were legally advised to file the present writ petition challenging the constitutional validity of Chapter III-A of the said Act and since the vires could only be challenged before a writ Court, the present petition was accordingly filed.

5 At the outset, a question has been posed to the learned counsel for the petitioners making him aware of the position that the provisions of Chapter III-A of the said Act already stood challenged in an earlier proceeding and the Supreme Court in Kewal Singh Vs. Smt. Lajwanti AIR 1980 SCC 290 had negatived the said challenge. Thereafter in a subsequent judgment of the Supreme Court in Prithipal Singh Vs. Satpal Singh (D) through Legal heirs 2010 (2) SCC 15 while dealing with the specific plea set up by the tenant as to whether the ARC had the power to condone the delay of 15 days in seeking leave to defend, the Court had concluded as under:-

“As noted herein earlier, Section 25B(1) clearly says that any application filed by a landlord for recovery of possession of any premises, inter alia, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt

with in accordance with the procedure specified in Section 25B of the Rent Act. Therefore, Sub-section (1) of Section 25B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure indicated in Section 25Bhas to be followed and Section 25B(1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section.
22. Apart from that, as we have noted herein earlier, Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act. Therefore, after insertion of Section 25B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25B and question of relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied.

6 This legal position has been brought to the notice of learned counsel for the petitioners at the very inception of his arguments and in fact learned counsel for the petitioners fairly concedes that both these judgments stare him in his face and it is difficult for him to cross the hurdle of those two judgments which are the law of the land as on date, yet he still insists upon the Court to hear his arguments which have been addressed before us for a considerable length of time. Submission of the learned counsel for the petitioners being that he should not be permitted to be gone unheard and he would like to draw a distinction from the line of arguments which had been propounded in the case of Kewal Singh (supra).

7 Learned counsel for the petitioners has drawn attention of the Court to the provisions of Section 25-B (4) which provision reads herein as under:-
25. B Special procedure for the disposal of applications for eviction on the ground of bona fide requirement. –
....
(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files and affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the

application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

8 The elaborate submission of the learned counsel for the petitioners on this score being that the last four lines in the said sub-clause are the offending lines. This envisages a situation where if the tenant does not file his defence within the stipulated period, the statement made by the landlord in his eviction petition shall be deemed to be admitted by the tenant and the landlord would straightway be entitled to a decree of eviction; this impinges upon the power of judicial review which the Courts have; there could be cases where the landlord has filed an eviction petition which is based purely on a fraud and merely because of an inadvertent mistake or error on the part of the tenant in not being able to file his application for leave to defend within the time frame as contained in Section 25-B (4), such a landlord would also be entitled to a decree straightway which could not have been the intention of the legislature. This principle is in fact opposed to the principles of natural justice; it denies a right to be heard to the tenant. Submission being that this so called summary procedure is in fact a flagrant abuse of right of equality before the law and equal protection which is guaranteed under Article 14 of the Constitution; such a legislation can in no manner be sustained. The vehement submission of learned counsel for the petitioners being that Section 4 of the Evidence Act contains a rebuttable presumption giving a right to the opposing party to rebut such a presumption but the language of Section 25-B (4) has gone beyond that point; it has embodied within itself a conclusive proof which is draconian in character and is liable to be struck down. Learned counsel for the petitioners has taken us through Article 31-C of the Constitution of India; submission being that last three lines of the said Article "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" had been declared as invalid by the Supreme Court in Keshavananda Bharati Vs. The State of Kerala (1973) Supp SCR 1. Learned counsel for the petitioners by relying upon this Article seeks to draw a parallel with his submission that the last four lines contained in Section 25-B (4) also need to be invalidated.

9 The second alternate submission of the petitioner being that nowhere in any other Statute such a summary procedure is contained; even the provisions of Order XXXVII of the Code enables the Court to extend the period within which the defendant may file his leave to defend. To support his submission, learned counsel for the petitioners has relied upon a

judgment of Calcutta High Court reported in Ambalal Purusottamdas and Co. Jawarlal Purusottam Dave & Others AIR 1953 Cal 758. Submission being that there being no such provision contained in Chapter III-A of the said Act, it cannot but be concluded that this provision is extremely harsh in nature which cannot be sustained. Attention has been drawn to the judgment of the Supreme Court in Gian Devi Anand Vs. Jeevan Kumar and Others (1985) 2 SCC 683; submission being that the Court has recognized the concept of two classes of landlords i.e. both residential and non-residential; this constitutional judgment of the Supreme Court had noted these two classes of tenants to be different and distinct.

10 Learned counsel for the petitioners has addressed the Court for more than one and a half hours. He seeks to delve into detailed facts to which it has been pointed out that the same are not relevant. It has again been brought to the notice of the learned counsel for the petitioners that the twin challenge which has been laid before this Court to the provisions of the said Act has already been set at rest by the Supreme Court. Further undisputed position being that the application seeking leave to defend of the petitioners was ripe for final arguments and the matter had been posted for 27.04.2013 as on the last adjourned date the Presiding Officer was on leave. It has also been brought to the notice of the learned counsel for the petitioners that till the filing of this writ petition (18.03.2013) the petitioners have all along submitted themselves to the jurisdiction of the ARC and have taken all procedures in accordance with the provisions of Chapter III-A.

11 On advance notice, learned counsel for respondent No. 1 has put in appearance.

12 In Gian Devi Anand (supra) which was decided by the Supreme Court in 1985 the moot question before the Apex Court was whether a commercial tenancy is liable to be inherited; the question was answered in the positive; tenancy rights even in commercial premises do not come to an end with the death of the tenant but they devolve upon their legal heirs and legal representatives. The law has evolved since then. In Kewal Singh (1980-supra) the classification on the class of landlords under Section 14 (1)(e) and the procedure applicable and as contained in Section 25-B of the said Act had been questioned; submission was that the classification is not in consonance with the object sought to be achieved by the said Act. The Supreme Court had answered this question in the following words:-

"We would, therefore confine ourselves to the validity of Section 14(1)(e) and the procedure prescribed to give relief mentioned in the aforesaid Section in Section 25B. Before discussing the relevant provisions of the Act it may be necessary to observe that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the determination of the tenancy by efflux of time or for default in payment of rent or other grounds after giving notice under the Transfer of Property Act. This broad right has been curtailed by the Rent Control Legislation with a view to give protection to the tenants having regard to their genuine and dire needs. While the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bonafide personal necessity. The concept of bonafide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical."

13 After quoting the provisions of Section 25-B, the Court returned the following finding:-

"We have already pointed out that the classification made by Section 25B is a reasonable classification and cannot be said to be in any way discriminatory or arbitrary. Even though a summary procedure has been evolved the tenant has been afforded full opportunity to defend the application provided he can disclose good grounds for negativing the case of the landlord. No litigant has a right to protract the legal proceedings by taking frivolous, irrelevant, irrational or uncalled for pleas. This is what the Section seeks to prevent."

14 The law has traversed and progressed since then. In Satyawati Sharma (Dead) By LRs. Vs. Union of India (UOI) & Anr. AIR 2008 SC 3148 decided in 2008 the distinction between a premises let out for a residential purpose and those let out for commercial purpose an eviction petition filed under Section 14 (1)(e) of the said Act had been abrogated. The resultant effect being that not only those tenancies which had been created for residential purposes, but even those created for a commercial purpose, such

a landlord had the right to seek eviction of his tenant under Section 14 (1)(e) of the said Act.

15 Chapter III A of the said Act consisting of Sections 25-A to 25-C was inserted by the Act of 1976 i.e. w.e.f. 01.02.1975. This special provision introduced by the Legislature for summary trial of certain applications filed under the said Act is applicable to proceedings under Section 14 (1)(e) of the said Act.

16 Thus the settled legal position being as under:-

(i) The concept of a distinction between premises let out for a residential purpose and those let out for a commercial purpose had been brought to an end by Satyawati Sharma (supra).

(ii) The provision of Chapter III-A of the said Act is applicable to eviction petitions filed under Section 14 (1)(e) of the said Act.

(iii) The challenge to the provision of Chapter III-A of the said Act has withstood the test in the case of Kewal Singh (supra).

(iv) On both counts, the challenges laid in the present petition have already been set to rest by the aforenoted pronouncements of the Supreme Court which are the law of land.

17 This petition is nothing but an abuse of the process of the Court. The petitioners have used all dilatory tactics available at their command to forestall the hearing which is fixed for 27.04.2013 on his application seeking leave to defend. These tactics can be described as nothing short of an abuse of the process of the Court and wastage of its precious time.

18 This writ petition is accordingly dismissed with costs of Rs.50,000/- out of which Rs.25,000/- to be paid to Delhi High Court Legal Services Committee and Rs.25,000/- to be paid to respondent No. 1. At this stage, learned counsel for respondent No. 1 states that the entire cost be put to some useful purpose and, thus, Rs. 25,000/- be deposited with Delhi High Court Mediation and Conciliation Centre in UCO Bank Account no. 48852. The costs be deposited within 15 days. Ordered accordingly. Writ petition as also the stay application stands disposed of.

Sd/-

INDERMEET KAUR, J.

Sd/-
SANJAY KISHAN KAUL, J.

MARCH 19, 2013