

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment:04.03.2013

W.P.(C) 1403/2013

RAM KISHAN & SONS

..... Petitioner

Through Mr. Anip Sachthey, Mr. Mohit Paul, Ms. Shagun Matta and Mr.Saakaar
Sardana, Advs.

Versus

UNION OF INDIA

..... Respondent

Through Mr. Saqib and Ms. Shipra Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

CM Nos.2650-51/2013 (Exemption)

1 Exemption allowed subject to all just exceptions.
W.P.(C) No. 1403/2013

2 This writ petition seeks to lay a challenge to Chapter III A of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'said Act'); submission being that the substantive provisions of the said Act do not provide any period for filing an application for leave to defend but the period of 15 days which has been prescribed in the IIIrd Schedule of the said Act is ultra vires; the provisions of the Schedule are inconsistent with the provisions of Section 25-B (4); they accordingly be declared ultra vires. This is the thrust of the argument addressed before us.

3 Record shows that an eviction petition had been filed by the respondent/landlord against the petitioner/tenant under Section 14 (1)(e) of the said Act on the ground of bonafide requirement for the premises bearing No. G-18, 19 & 24, Marina Arcade, Connaught Circus, New Delhi. This was in May, 2008. The petitioner is a tenant in the aforementioned premises since the year 1937. Pursuant to the amendments incorporated in the said Act from time to time, the petitioner exercised his right to get the respondent evicted on the ground of bonafide requirement. Summons were duly served upon the petitioner. He, however, chose not to file his leave to defend inspite of service; the whole controversy being agitated upon whether the service had been duly served upon the petitioner or not. The Additional Rent Controller (ARC) had returned a finding that

Rajender Prasad an employee of the petitioner had been duly served with the summons and the leave to defend not having been filed within the prescribed period of 15 days, a decree of eviction automatically followed in favour of the respondent/landlord.

4 Revision petition was filed before the High Court which, upholding the view of the ARC, dismissed the revision petition vide order dated 06.03.2012. Against the order of the single Bench of this Court, a Special Leave Petition was preferred before the Supreme Court which was dismissed on 04.04.2012. The said order reads as under:-

“After having heard learned senior counsel for the petitioner and after perusal of the record, we are of the opinion that no case for interference is made out against the impugned order passed by the High Court. The special leave petition is accordingly dismissed. However, looking to the facts and features of the case and keeping in mind that the petitioner has been carrying on business in the suit premises for a considerable time, it is granted one year's time from today to vacate and handover peaceful and vacant possession of the suit premises to the Respondent decree holder, subject to its filing usual undertaking in this Court within four weeks from today.”

One year extended period of time had been given to the petitioner to vacate the suit premises which period we have been informed would expire sometime in April, 2013.

5 Undisputedly, the petitioner has been ordered to be evicted from the suit premises by all forums and he has exercised his option to agitate his right, right up to the Supreme Court. Learned counsel for the petitioner however submits that his SLP was in fact dismissed in limine on 04.04.2012 and a review petition has been filed against the order dated 06.03.2012 which is permissible in view of the fact that the SLP had been dismissed in limine.

6 This submission may not be quite correct but without adverting to the scope of the review petition, the case of the petitioner must also otherwise fail.

7 Chapter III of the said Act deals with control of eviction of tenants. Section 14 protects a tenant from eviction. Section 14 (1)(e) states that where the premises had been let out for residential purpose are bonafide required by the landlord for occupation as a residence for himself or for any member in his family dependent on him or for any person for whose benefit the premises are held and the landlord or such person having no other reasonably suitable residential accommodation, may apply to the Rent Controller in the prescribed manner for recovery of possession. The distinction between a ‘residential premises’ and a ‘commercial premises’ has also been abrogated by a subsequent judgment of the Supreme Court in Satyawati Sharma (Dead) By LRs. Vs. Union of India (UOI) & Anr. AIR 2008 SC 3148.

8 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. By introduction of Chapter III A, a special provision was introduced by the Legislature for summary trial of certain applications filed under the said Act. Section 25-A clearly states that the provisions of Chapter III A

will have an overriding effect notwithstanding any inconsistency contained elsewhere in the said Act or any other law for the time being in force. Section 25-B is a special provision for disposal of applications for eviction on the ground of bonafide requirement filed at the instance of the landlord under Sections 14 or 14-A to 14-D.

9 Admittedly the provisions of Section 25-B of the said Act do not prescribe any time period during which an application for leave to defend has to be filed by the tenant after service upon him. Section 25-B(4) and the form specified in the IIIrd Schedule (highlighted by the learned counsel for the petitioner) read 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 an 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.

THE THIRD SCHEDULE

[See Section 25-B(2)]

Form of summons in a case where recovery of possession of premises is prayed for on the ground of bona fide requirement or under Section 14A

To

[Name, description and place of residence of the tenant]

Whereas Shri.....has filed an application a copy of which is annexed) for your eviction from (here insert the particulars of the premises) on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A;

You are hereby summoned to appear before the Controller within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises.

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of section 25B.

Given under my hand and seal

Thisday of.....19..Controller]

10 Section 25-B (4) enunciates that the tenant upon whom the summon is duly served (whether in the ordinary way or by registered post) in the form specified in the IIIrd Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating on which ground he seeks to contest the application for eviction and obtains a leave from the Controller as provided; 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 of eviction on the ground aforesaid.

The form specified in the IIIrd Schedule specifies a period of 15 days (from the date of service upon him) to appear and ask for leave to contest the eviction proceedings; in the absence of which an order for eviction in favour of the landlord will automatically follow.

11 From a perusal of Section 25-B (4) read with the IIIrd Schedule, the Legislature appears to have recited its intention in clear and unequivocal terms which is to the following effect. When the summons of the proceedings are received by the tenant, he has to appear and ask for leave to defend the eviction proceedings within a period of 15 days from the date of service upon him and on his failure to do so, an eviction order will automatically fall into the lap of the landlord.

12 The submission of the learned counsel for the petitioner on this score that Schedule of the Act is inconsistent with the statutory provision [Section 25-B (4)] is a misunderstood and a mis-reading of the aforementioned provisions. There is no doubt that Section 25-B contained in Chapter III A of the said Act does not prescribe the time period within which a tenant has to enter appearance and file his application seeking leave to defend, yet this period has been elaborated in the Schedule and Section 25-B (4) itself in fact clearly states that the tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the IIIrd Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating on which ground he seeks to contest the application for eviction. The provisions of the IIIrd Schedule which prescribe the 15 day period for filing leave to contest are incorporated in Section 25-B (4) itself. The IIIrd Schedule is also part of the Act itself. Thus this submission of the learned counsel for the petitioner that the provisions of the IIIrd Schedule are inconsistent with the provisions of the Act is a wholly misdirected submission and without any merit.

13 The submission of the learned counsel for the petitioner that the provisions of Maharashtra Rent Control Act, 1999, in the Act itself provide for a time limit within which the tenant will contest the prayer for eviction and the Schedule III attached to the said Act is in conformity with the main enactment which is not so in the said Act is a frivolous plea in view of the clear language of Section 25-B (4) which in itself has incorporated the form specified in the IIIrd Schedule (prescribing a period of 15 days) which has to be filed by the tenant who seeks leave to contest the eviction petition filed by that class of landlords.

14 The judgment relied upon by the learned counsel for the petitioner reported as M/s. Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others (1989) 4 SCC 378 does not in any manner help the case of the petitioner. There is no doubt to the settled legal position that the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the Schedule and the enactment, the enactment is to prevail; however this is not the situation in the present case. The other two

judgments relied upon by the learned counsel for the petitioner reported as Mukhtar Ahmed Vs. Mashal allah Begum (1977) ILR Delhi 641 and Gurditta Mal Vs. Bal Sarup AIR 1980 Delhi 216a also do not in any manner advance the case of the petitioner; they only lay down the procedure which has been prescribed in the newly inserted Chapter III A of the said Act.

15 The challenge had in fact been thrown to Section 25-B of the said Act in Kewal Singh Vs. Smt. Lajwanti AIR 1980 SCC 290 wherein a classification on the class of landlords as laid down in Section 25-B of the said Act had been questioned; the classification not been in consonance with the object sought to be achieved by the said Act. This very same question had arisen before the Supreme Court and it was answered in the following manner:-

“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.”

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 negating 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.”

16 The Supreme Court in a subsequent judgment 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 therein as to whether the Additional Rent Controller had the power to condone the delay of 15 days in applying for leave to defend, 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 25B has 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.

23. That apart, Rule 23 does not specifically confer any power on the Controller to follow the provisions of the Code in special classes of landlords. It is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these rules shall, as far as possible, be guided by the provisions contained in the Code.

24. In view of our discussions made hereinabove that Section 25B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.”

17 The scope of Rule 23 of the said Act (on the applicability of the Code of Civil Procedure to the said Act) had also been specifically excluded.

18 This petition is in fact a classic example of an abuse of the process of the Court; the petitioner has exercised his right, right up to the Apex Court and has lost at all stages; the vires of the statutory provisions of Section 25-B (4) also having withstood the test of reasonableness, the present petition, in these circumstances, can be nothing short of a gross abuse and a wastage of the precious time of the Court.

19 This writ petition stands dismissed with costs of Rs.25,000/-

Sd./-
INDERMEET KAUR, J.

Sd./-
SANJAY KISHAN KAUL, J.

MARCH , 2013