

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

C.R.P. 431/2000 & CM No.14903/2008

Reserved on: March 04, 2009

Date of Decision: March 19, 2009

SATNAM KAUR & ORS.

Through

..... Petitioner

Mr. Suresh C. Gupta, Advocate
Mr. Balvinder Ralhan, Advocate

Versus

M/S. ASHLAR STORES P. LTD.

Through

..... Respondent

Mr. Sunil Malhotra, Advocate

MANMOHAN,J

1. Present revision petition has been filed under Section 25-B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act'), seeking to set aside judgment and order dated 17th January, 2000 whereby petitioners-tenants leave to defend application was dismissed by Additional Rent Controller on the ground that it did not disclose any triable issue and an eviction order was passed under Section 14(1)(e) read with Section 25-B of DRC Act in favour of respondent-landlord.

2. Mr. Suresh C. Gupta, learned Counsel for petitioners, submitted that a company cannot file an eviction petition on the ground of bona fide need under Section 14(1)(e) read with Section 25-B of DRC Act. He submitted that a company can only file an eviction petition under Section 22 of DRC Act for recovery of possession of premises. According to him, present eviction petition was not maintainable as respondent-company had no locus standi or authority to file the same. Mr. Gupta, further submitted that a bare reading of Section 14(1)(e) makes it clear that the said provision for eviction is available only to a natural person.

3. Section 14(1)(e) and Section 22 of DRC Act are reproduced hereinbelow for read reference:
"14. Protection of tenant against eviction. -

xxx

xxx

xxx

(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is

the owner thereof , or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.

22. Special provision for recovery of possession in certain cases. –

Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance activities, then, notwithstanding anything contained in section 14 or any other law, the Controller may, on an application made to him in his behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied -

- (a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or
- (b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or
- (c) that any other person is in unauthorised occupation of such premises; or
- (d) that the premises are required bona fide by the public institution for the furtherance of its activities.

4. Mr. Gupta, also referred to a judgment in case of M/s Madan Mohan Lal, Sri Ram Pvt. Ltd. v. P. Tandon reported in 1981 (2) RCR 516 wherein according to him it has been held that provisions of Section 14(1)(e) are not applicable/available to a company, when the premises are required for its employees. Mr. Gupta also referred to a judgment in case of K.M. Basheer v. Loha Chackola 2003 reported in Company Cases 127 (Kerala) wherein it has been held:

“..... Here Chakolas Habitat Pvt. Ltd. the company wants to have an office and since the respondent landlord is a director of the company it cannot be stated that it is his need or requirement of “own” occupation. In the eviction petition, the need of the company in which the landlord is the director is projected as his own need. We are unable to agree with the above. Unlike a partnership firm, a company is a different entity and need of the company in which landlord is a director cannot be said to be the need of the landlord for his “own” occupation and therefore the landlord cannot file a petition under Section 11(3) for the occupation of the building owned personally by him for the functioning of the company merely because he is a director of the company.”

5. Mr. Gupta further submitted that since in the present case there was a composite tenancy for both the residential and commercial shop, proceedings under Section 14(1)(e) were not maintainable. He acknowledged that Hon’ble Supreme Court of India in Satyawati Sharma v. Union of India reported in (2008) 5 SCC 287 has held Section 14(1)(e) of DRC Act to be violative of Article 14 of the Constitution to the extent that it discriminates between premises let out

for residential and non-residential purposes. He, however, submitted that the said judgment of Hon’ble Supreme Court was prospective in nature and it did not apply to the present eviction proceedings which had been filed in the year 1997 as the law at that time stipulated that eviction proceedings under Section 14(1)(e) were maintainable only if the premises had been let out for residential purpose and not for a commercial purpose.

6. He further submitted that impugned order was a perverse one and there was no genuine need of respondent company. He submitted that Additional Rent Controller had committed an error by treating Director A.K. Jain's requirement as that of respondent company's requirement.

7. On a perusal of file, I find that petitioners had filed their application for leave to defend only on three grounds, firstly, that the respondent company was not the owner of tenanted premises, secondly, that the premises had been let out for residential-cum-commercial purpose and, thirdly, that the respondent's requirement was not bona fide as the same was not required for use of its employee and the respondent's intention was only to dispose of the property as the rates of said property in the vicinity ran into crores. The plea that a company cannot file an eviction petition under Section 14(1)(e) was never urged before Additional Rent Controller. But as this is a jurisdictional and legal plea, I allow petitioners to raise such a plea.

8. However, in my view, the petitioners' submission that a company is not entitled to file an eviction petition under Section 14(1)(e) is untenable in law. In fact, this issue is no longer res integra. In Madan Mohan Lal's case (supra), this Court has held as under:

"There can be no dispute that the word "person" would ordinarily include a jurisdic entity. The submission on behalf of the respondent, however, is that section 22 is a specific section which deals with the right of a company to get back the premises for the use of its employees. It is contended by Shri Gupta that section 14 (1)(e) and section 22 operate in the same sphere but as section 22 is confined only to specific categories of landlords the said section must prevail. Sections 14(1) and 22 of the Act came up for consideration before a single Bench of this Court in Shri Chuni Lal v. University of Delhi, 1970 RCR 742. V.S. Deshpande, J (as the then was) held that the grounds which are available to corporate bodies and public institutions under section 22 are in addition to the grounds available to them under Section 14 of the Act. In that case the learned Judge was concerned with the eviction of the tenant under the provisions of Section 14(1)(c), (d) and (h). The occasion to consider the applicability of section 14(1)(e) did not specifically arise therein. It is true that a company can obtain premises for use by its employees and this would be regarded as the company obtaining premises for its own use. The question which arises in the present case is, however, slightly different. What is to be seen is, does section 22 overrides section 14(1)(e) or not, in so far as companies, body corporate or local authorities of public institutions are concerned when they require the premises for use of their employee. To my mind, whenever any such type of landlord requires the premises for use of its employees, it is section 22 alone which would be applicable and not section 14(1)(e). This does not mean that the other provisions of section 14 cannot be invoked by such a landlord. As held in Chuni Lal's case (supra), the grounds under section 14 are addition to the grounds under Section 22. This is because section 22 is concerned only with specific type of cases namely, where premises are required by a company for use of its employees. Section 22 is not concerned with the other grounds which are available under section 14. It may be that some circumstances may exist where a company may require premises, not for its employees, but still for its residence. In such a case section 14(1)(e) can also be invoked. One such case can be where the premises are required for residence of the company's Chairman, who may not be regarded as an employee of the company. In such a case the company would be entitled to invoke the provisions of section 14(1)(e). Where, however, as already observed, the company requires the premises for its employees only the provisions of section 22, which have been specifically enacted for such a purpose, would be attracted. Just a section 25-B is a special category which has been carved out which provides for special procedure for eviction to landlords

who require the premises for their personal necessity, as held by the Supreme Court in *M/s Jain Ink Mfg. Co. v. L.I.C. of India* and another, 1980(2) RCJ 459, similarly section 22 is a special category which has been carved out of section 14 of the Act.

7. It will be seen that under section 14(1)(e) a landlord has to, inter alia, prove that the premises are bona fide required by him for residence for himself or for members of his family and he has no other reasonably suitable residential accommodation. Under section 22, on the other hand, the landlord has to prove that the premises are required for use of its employee and in addition thereto, the Controller must be satisfied about the existence of any of the four contingencies contemplated by clauses (a) to (d) of Section 22.”

(emphasis supplied)

9. This Court in the case of *Chunni Lal v. University of Delhi* reported in 1970 RCR page 742 drew a distinction between Sections 14 and 22 of DRC Act in the following terms:

“...The relationship of sections 14 and 22, therefore, is that all landlords are able to apply under section 14 but only the landlords who are corporate bodies or public Institution are entitled to apply under section 22. This necessarily means that such corporate and public institution landlords have been given the ordinary grounds under section 14 and additional grounds under Section 22. This accords with their position of being primarily similar to natural persons and sometimes being different from them. I therefore, find that the corporate and public institution landlords are entitled to the ordinary grounds of eviction under Section 14 like other landlords and also to the special grounds of eviction under Section 22 which are peculiar to the corporate and public institution landlords and that section 22 does not deprive the corporate and the public institution landlords from the benefit of section 14.”

(emphasis supplied)

10. Consequently, in my view, an eviction petition can be filed by a Private Limited Company under Section 14(1)(e) of DRC Act for residence of its Chairman and Directors.

11. Since in the present case, Mr. A.K. Jain, is a Director of the respondent-company, therefore, respondent company has a right to file an eviction petition under Section 14 (1) (e) for residence of Mr. A.K. Jain.

12. As far as petitioners' submissions that judgment of Hon'ble Supreme Court in *Satyawati Sharma's* case referred to hereinabove, is prospective in nature, I am of the view that it would be relevant to quote the observations of Apex Court in the said judgment for ready reference:

“41. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

42. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

“that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

While adopting this course, we have kept in view well-recognised rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible – R.M.D. Chamarbaugwalla v. Union of India and Lt. Col. Sawai Bhawani Singh v. State of Rajasthan.

43. As a sequel of the above, the Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.

13. In my view, the Hon'ble Supreme Court has nowhere stipulated that its judgment is prospective in nature. In fact, it is settled law that Courts only declare and not make law. Consequently, declaration of law can never be prospective. The only exception is that the Supreme Court in exercise of its powers under Article 142 of Constitution may prospectively either over rule its own judgment or give effect to its own judgment. In the present instance, the Hon'ble Supreme Court has not stated that its interpretation of Section 14(1)(e) will apply prospectively. Consequently, this submission of petitioners is also untenable in law.

14. On a perusal of impugned order as well as the eviction petition and leave to defend application, I am of the view that eviction order in the present case does not suffer from any perversity. Not only had the respondent company produced documents to establish its ownership but also it had placed on record Form 32 to show that Mr. A.K. Jain was a Director and further that an eviction petition had been filed against Mr. A.K. Jain's father with regard to property bearing No.22-D, DDA Flats, Masjid Moad, New Delhi where Mr. A.K. Jain was residing. The respondent-landlord had also clearly mentioned in its eviction petition that the tenancy of the first floor was for residential purpose while a separate tenancy for the ground floor had been executed for a commercial shop. The respondent/landlord had clearly averred in its petition that there were two tenancies with two separate rent receipts. In fact, a separate eviction petition with regard to the shop is admittedly still pending. In my opinion, the petitioners plea that the premises was let out for a composite purpose is frivolous, contrary to facts and in any event irrelevant.

15. Consequently, present petition and pending application being devoid of merits, are dismissed, but with no order as to costs.

Sd./-
MANMOHAN, J

MARCH 19, 2009