

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 4th February, 2010
Date of Order: 26th March, 2010

CM(M) No. 249/2001

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26.03.2010

C.G.Khanna

... Petitioner

Through: Mr. Chetan Sharma, Sr. Advocate with
Mr. Sushil K.Pandey, Advocate

Versus

Rajinder Kumar

... Respondent

Through: Mr. Puneet Aggarwal, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

By the present petition, the petitioner has assailed an order dated 27.2.2001 of learned Additional Rent Control Tribunal, whereby the learned ARCT reversed the judgment of Additional Rent Controller and set aside the eviction order passed in favour of the petitioner/landlord under Section 14(1)(c) of the Delhi Rent Control Act.

2. The factual matrix is not in dispute. The respondent was tenant in respect of a shop (though situated in residential area) under the previous owner since 1971 and the premises was let out for commercial purpose. The respondent was initially running a bakery/general store in the shop then he started a printing press. The previous owner sold the entire premises to present petitioner who was another tenant in the premises. The present petitioner filed an eviction petition against respondent on the ground of change of user. He alleged that the premises was let out for residential purpose and was being used by respondent for running a printing press. The two Courts below had come to the conclusion that the premises was let out for commercial purpose where initially a bakery/general store was being run and

later on the tenant started using the premises for printing press. While learned ARC came to the conclusion that the printing press being run by the respondent was not a collateral purpose. Running of printing press amounted to an industrial activity and thus it was a change of user and the petitioner had proved that the tenant/respondent had changed the user of premises to the purpose other than for which it was let out, the learned ARCT observed that this change of user was effected by the tenant during the ownership of the previous owner as the tenant had started printing press sometime in the year 1981 and the premises was purchased by the present owner almost after 10 years so this ground was not available to the petitioner. He also observed that since the previous landlady never raised any objection against the respondent regarding his having changed his business activity from a confectionary shop to a printing press, the present landlord had no right to seek eviction on this ground. He also observed that the work of printing press was a commerce under term "commercial activity" and even if the work of printing press was not a commercial activity and amounted to change of user, the present petitioner would not benefit from this change of user because when he purchased the premises the tenant had already switched over to the work of printing press during the tenure of earlier landlady. The learned ARCT further observed that even if it was assumed that the appellant/respondent did convert to a new business activity or say an industry without consent of the landlord in writing – then also provisions of Section 14(1)(5) of Delhi Rent Control Act were needed to be seen as to how there was a public nuisance caused by the running of the printing press and this was not elaborated and proved. The changed activity had also to be shown to have caused damage to the suit premises and the landlord did not examine a qualified architect to testify that the cracks observed in the walls of the premises of respondent or the damage caused to the floor was due to the running of a printing press and was not on account of normal wear and tear. He therefore, set aside the order of the learned Additional Rent Controller.

3. It must be understood as to what are the rights of a subsequent purchaser vis-à-vis tenant. Once a person purchases property of another person, he purchases along with the property all rights and obligations

pertaining to the property in respect of tenants living in the property and the right to evict tenants on the grounds on which the previous owner would have been liable to evict the tenant do also pass-over to the new landlord except where law puts a prohibition. In case of ground of bona fide necessity under section 14(1)(e), the Act has put a ban on a subsequent purchaser from bringing a suit on the ground of bona fide necessity for a period of five years. Thus, legislature was conscious of the fact that property with tenants may be sold, but the legislature put a ban vide Section 14(6) on a landlord who acquired any premises by transfer for the recovery of possession only in respect of ground under section 14(1)(e) of the Act for a period of five years. Such a ban in respect of subsequent purchaser is not there in case of other grounds available under Section 14. Thus, if a right has accrued to the previous landlord of evicting a tenant either for sub-letting or for change of user or for violation of the conditions imposed on the landlord by the government, the subsequent purchaser has the same right as the previous owner had. Therefore, the purchaser is not at a disadvantage vis-à-vis the previous owner, in case an eviction is sought against the tenant merely because he was a subsequent purchaser or for the reason that the previous owner had not brought an action for eviction despite a right having been accrued to him. I, therefore consider that if the respondent was using the premises for printing press and the previous owner had not filed eviction petition despite a right having accrued to him that would not take away the right of the subsequent purchaser. The mere fact that the petitioner was aware at the time of purchasing the premises that the shop in question was being not put to the same user for which it was let out, would not disentitle him from bringing an eviction action.

4. The tenant in this case has relied on a lease deed, though unregistered, to show that the shop was let out to him for commercial purpose. It is undisputed that the shop was being used by the tenant initially for commercial purpose only i.e. for running a confectionary shop/general store. It is also undisputed that he later on changed his business from confectionary shop/general store to printing press. There is no dispute about the fact that no consent in writing was obtained as required under Section

14(1)(c) of DRC Act whereunder it is necessary that a consent in writing should be obtained. Law is well settled that consent by acquiescence does not serve the purpose. The Act itself makes a distinction between consent in writing and consent without writing. Section 14(1)(c)(i) provides that in those cases where premises was let out on or after 9th June, 1952, consent in writing was a must but in those case where premises had been let out before the said date, the consent may not be in writing. This legal position is well settled in cases of sub-letting and in cases of change of user that if the Act prescribes consent in writing that only means consent in writing and not consent by behavior or acquiescence. If the consent in writing is not obtained before change of user a right under Section 14(1)(c) accrues to the landlord and this right gets transferred on purchase of property to the subsequent purchaser. Thus, non-obtaining of consent from the landlord in writing is an important factor for considering change of user and the learned ARCT went wrong in observing that since the landlord/petitioner knew that the premises was being used for printing press, he had no right to file eviction petition.

5. The only issue which remains to be seen is whether running a printing press amounted to change of user or not and whether it was a commercial activity or an industrial activity. This issue was considered in *Telu Ram v. Om Parkash Garg* 1971 ARCJ 1 wherein Punjab & Haryana High Court observed that business of printing was an industrial activity, while sale of books was a commercial activity. In *Ram Saroop v. M/s Jankidass Jai Kumar & Anr.* 1976 RCR 567 this Court held that there was a distinction between commercial and industrial purpose. While commercial purpose involves an element of buying and selling, the latter involves an element of manufacture and whether a particular activity was commercial in nature or industrial in nature has to be decided by considering the nature of activity. This Court had observed that business of food grains and grocery shop was commercial but business of flour mill was partly industrial in nature and was partly commercial and if the premises had been let out for commercial purpose of business in food grains and the tenant runs a business of flour mill, then that would amount to the purpose other than for which it was let out. In

Ram Gopal v. Jai Narain & Ors. 1995 Supp.(4) SSC 648, the Supreme Court held that where the premises was let out for running a shop installation of *atta chakki* and oil *kolhu* amounted to change of user and eviction order was upheld the Supreme Court also held that the liability to eviction on the ground of change of user would not be obliterated in any way merely on account of purchasing a portion of the demised premises.

6. I also consider that the learned Additional Rent Control Tribunal could not have brushed aside the evidence led before the learned Additional Rent Controller regarding damage to the property because of change in user on the ground that expert was not called. This Court in Shakuntala Devi (Smt.) v. Shri Ram Lal 2006 VII AD(Delhi) 68 observed that learned ARCT must remain conscious that a finding of fact arrived at by the trial Court based on the evidence must weigh with the Appellate Court more so when the finding of fact is based on oral evidence recorded by the trial Court and unless and until the appraisal of the evidence by the trial Court suffered from a material irregularity or was based on inadmissible evidence or conjectures, it should not be interfered with.

7. I, therefore consider that the order passed by the learned ARCT reversing the judgment of learned ARC is not tenable and being contrary to the established law and is therefore liable to be set aside.

8. The order dated 27.2.2001 of the learned ARCT is set aside and order dated 26.10.90 of learned ARC is restored.

March 26, 2010
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SHIV NARAYAN DHINGRA, J.