

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

**SUBJECT : CODE OF CIVIL PROCEDURE, 1908**

**RFA No.523/2001**

**DATE OF DECISION : 7th March, 2011**

**SHRI HARISH CHANDER NARULA & ANR. .... Appellants**  
**Through: Mr. Ashish Mohan with Mr. Rohit Gandhi,**  
**& Mr. Rohan Ahuja, Advocates.**

**VERSUS**

**SHRI PURSHOTAM LAL GUPTA .... Respondent**  
**Through: Mr. Sudhir Sukhija, Advocate.**

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 21st December, 1999 whereby the suit of the appellants/plaintiffs for possession, mesne profits, recovery of money and mandatory injunction was dismissed by holding that the respondent/defendant was a tenant of a plot with built up portion and therefore the respondent/defendant being a tenant of a premises/building, had protection of the Delhi Rent Control Act, 1958 against eviction. I may note that the original respondent Sh. Purshotam Lal Gupta has expired and his legal heirs have been brought on record. The reference in this judgment to the respondent/defendant would imply a reference to the original respondent/defendant or his legal heirs as per the context.

2. The only issue argued before the Trial Court, and which was also argued before this Court, was whether what was let out to the respondent/defendant was only a plot or at the very best a plot with a temporary structure/shed/Khoka so as to be or not to be a "premises" within the meaning of the expression under Section 2(i) of the Delhi Rent Control

Act, 1958. The respondent/defendant had contended that the structure which exists amounts to a building and was therefore premises within the meaning of the expression under Section 2(i) and therefore the respondent/defendant was a tenant under the Delhi Rent Control Act, 1958(hereinafter referred to as DRC Act). The property in question has an area of 900 sq. feet forming part of an open plot of land of 412 sq. yds. at the Main Road of II-F, Block Corner, opposite Dua Travels, Rampur Market, Lajpat Nagar II, New Delhi.

3. There is an admitted document in the Trial Court record being the partnership deed entered into between the parties dated 30.4.1975, Ex.PW1/2. The contention of the respondent/defendant before the Trial Court was that this was a deed of partnership only in name, and in reality, through this document a relationship of landlord and tenant was created. A reference to this admitted document shows that what was let out to the respondent/defendant was only a plot of land. This has been very clearly mentioned in this document at page 4. Learned counsel for the respondent/defendant contended that there was an earlier document also between the parties of the year 1974 when the tenancy commenced and therefore this document cannot be looked into. I have failed to understand this argument because the respondent/defendant has admitted this document and argued that through this document, the parties did enter into a contractual relationship, which however was not of partnership, but only of a landlord and tenant. Once the document, Ex.PW1/2, is looked into, it becomes clear that what was let out to the respondent/defendant was only a plot of land. If what was let out to the respondent/defendant is only a plot of land, the same would not fall within the expression "premises" under Section 2(i) of the DRC Act, 1958. The Trial Court has committed a grave illegality and perversity in ignoring this admitted document between the parties.

4. Further, the case of the respondent/defendant at the very best was that there was a tin shed/Khoka in the premises when the tenancy commenced in April, 1974. For this purpose, the respondent/defendant filed in the Trial Court and relied upon the House Tax Record of the Municipal Corporation of Delhi dated 1st June, 1974 to show that there existed one temporary Khoka with tin shed in front. This document has been exhibited as Ex.DP1 in the Trial Court. This document, being a survey report of the Municipal Corporation of Delhi, shows that the respondent/defendant namely Sh. Purshotam Lal was a tenant in the premises for commercial purpose and the only construction was a tin shed. The Survey report also

mentions that there was building material lying for use on the plot. The tenancy in this case commenced in April, 1974 and this document of June/July 1974 shows that as of June/July, 1974 there was only one temporary Khoka/tin shed with the respondent/defendant and building material was only lying at the spot in open space which was meant for being used. Therefore, the document of the respondent/defendant itself, that too an unquestionable document from a public authority, shows that there did not exist any permanent building at the site in June/July, 1974 after commencement of the tenancy in April, 1974. If therefore assuming that what was let out to the respondent/defendant was not only an open plot of land, but there was also some structure on the same, the structure is at best only a temporary Khoka/tin shed which cannot be said to be a permanent building as envisaged under Section 2(i) of the DRC Act in view of the findings given hereinafter.

5. Learned counsel for the appellant/plaintiff has filed before this Court a compilation of judgments to argue the legal position that a temporary structure would not be included within the definition of premises within the meaning of expression under Section 2(i) of the DRC Act, 1958. I need not cite all the judgments and a reference to a few of them would suffice.

The Division Bench judgment of this Court in the case of Surinder Kumar Jhamb vs. Om Prakash Shokeen 82 (1999) DLT 569 has held that if what is let out is only land or land with a temporary structure, the property would not be a building and hence not premises within the meaning of the expression under Section 2(i) of the DRC Act. In para 10 of this judgment, at page 577 of the reporter, it is specifically held that a built up area being a temporary structure cannot be called premises nor also the vacant plot adjacent to this temporary structure. It was held that such land with temporary structure or land itself, would not be premises as per Section 2(i) of the DRC Act. Another relevant judgment in this regard is the judgment of the Supreme Court in the case of Kamla Devi vs. Laxmi Devi (2000) 5 SCC 646. This judgment under the Delhi Rent Control Act clearly specifies that a mere plot of land would not be premises so as to get protection of the DRC Act and which is also so held by the the Supreme Court in the case of Prabhat Manufacturing Industrial Cooperative Society vs. Banwari Lal 1989 (2) SCC 69. I may note that this judgment also dealt with a case under the Delhi Rent Control Act. In fact in this judgment, the Supreme Court relied upon the survey report of the Assistant Custodian

Industrial of the Municipal Corporation of Delhi, a report similar to a Survey Report of MCD as found in the present case.

There are then judgments of learned Single Judges of this Court. One such judgment is the decision in the case of Ajit Singh vs Ram Saroop Devi (1994) 55 DLT 759 and in which it has been held that a tin shed would not fall within the expression “premises” under Section 2(i) of the DRC Act, 1958. I need not further multiply judgments. It is therefore held that since at best there was only a temporary structure at the very best, the respondent/defendant cannot be said to be a tenant of a building/premises so as to get protection of the DRC Act.

6. By the impugned judgment and decree, the Trial Court has held that the temporary Khoka is a structure and therefore it has protection under the DRC Act, 1958. This finding and conclusion of the Trial Court, in view of the judgments quoted above, is quite clearly illegal and deserves to be quashed. I may, at this stage, refer to some of the relevant portions of the impugned judgment and decree which hold the respondent/defendant to be a tenant of a premises under the DRC Act, 1958, and which finding has been arrived at in spite of the documents being the partnership deed, Ex.PW1/2 and the survey report, Ex.DP1. These portions read as under:-

“As per the afore discussed pleadings of the parties, plaintiff’s case is that they are the owners and landlords of the suit premises. The defendant’s case, as per written statement, is that as the plaintiffs have failed and neglected to produce any document to show that there was relation-ship of landlord and tenant in between the parties in respect of the suit premises; that as, on the other hand, he was in occupation of the plot as well as built up portion ever since 1965 in his own right, hence, there was no privity of contract in between the parties. I would like to mention here that at the time of hearing arguments, Sh.N.N.Aggarwal, counsel for plaintiff, stated that as the defendant had admitted himself to be a tenant of the plaintiffs, therefore, he is stopped from denying the relation-ship of landlord and tenant in between the parties. In support of his arguments, Id. Counsel for the plaintiff took me through the notice Ex.PW1/3, as well as the reply of the said notice sent by defendant which is Ex.PW1/9. Plaintiff counsel stated that in the said reply, defendant clearly admitted that he was tenant under Somnath Narula and Harish Chand @ Rs.300/- per month. In support of his further arguments that the defendant had admitted himself to be the tenant of Somnath Narula, plaintiff counsel also took me through the document Ex.PW4/1 i.e. suit filed by defendant here-in against MCD as well as document Ex.PW4/2 i.e. statement of the defendant in the said suit. In the

said plaint was well as statement, plaintiff counsel stated, defendant had clearly admitted that he was tenant under Somnath Narula @ Rs.300/- per month. Not only this, plaintiff counsel also took me through inspection report of the house tax department of the MCD Ex.DP1 where-in it is shown that on the inspection carried on 1.6.74, defendant was found to be tenant in respect of one temporary Khokha, tin-shed and an open portion. Not only this plaintiff counsel also took me through the pleadings of the parties i.e. plain and written statement. He submitted that no-where in the written statement defendant specifically denied that he was not the tenant of the suit premises. He, therefore, submitted that in terms of Order VIII rule 5 CPC, it should be deemed to have been admitted by the defendant that he was tenant under the plaintiffs.”

.....

“Defendant counsel, on the other hand, submitted that in fact plot along with built up portion was let out to the defendant. He submitted that theory of unbuilt plot and date of letting was introduced later-on by the plaintiff. In support of his contentions, defendant counsel took me through the notice Ex.PW1/3 dated 11.7.88. He stated that in the said notice it is only mentioned that defendant was tenant in respect of plot He further stated that in the said notice, neither the date of letting out, nor the fact that tenancy was only in respect of the open plot is mentioned. Thereafter, counsel for defendant took me through the reply of the said notice which is Ex.PW1/4. He stated that in the said reply, defendant clearly stated that he was tenant in respect of the plot and built-up portion under Somnath Narula only; that in the said reply, defendant also informed that Sh.Somnath Narula and Harish Chand Narula let out the property but instead of rent-deed benami partnership deed was written in the year 1974; that the tenancy continued in the aforesaid way till round-about April, 1978 and thereafter, there was no partnership deed, but, the defendant continued as tenant of Somnath Narula at monthly rent of Rs.300/-.”

.....

“In support of his further arguments that plot alongwith built up portion was let out to the defendant, defendant counsel took me through document Ex.PW4/1 i.e. copy of the plaint of the suit of Permanent Injunction filed by the defendant against MCD in 1985, took me through document Ex.PW4/2 i.e. statement of defendant in the aforesaid case and document Ex.DP1 i.e. copy of the survey report of the House tax department of the MCD. He submitted that in the said plaint Ex.PW4/1, defendant had clearly stated that he was tenant in respect of office and open plot; that in the statement Ex.PW4/2, defendant had taken the same stand; that the aforesaid stand duly

stands corroborated by the inspection report of MCD Ex.DP1 wherein it is clearly mentioned that on 1.6.1974, defendant was found to be tenant in respect of “One temporary Khokha, tin-shed as well as open plot”. Defendant counsel further submitted that vide the said document Ex.DP1. It is further proved that on 1.6.74, property was already constructed because vide the said notice house tax was proposed to be increased from Rs.430/- per month to Rs.640/- per month.”

.....

“The other very important document leading to the inference that plot alongwith built up portion was let out to the defendant is document Ex.DP1.

The importance of this document lies in the fact that it relate to a point of time interior to the commencement of litigation between the parties. Vide this document, on the basis of inspection carried out on 1.6.74, by the officials of house tax department of MCD the house tax was proposed to be increased from Rs.430/- per annum to Rs.640/- per month. As per the inspection report on 1.6.74, the whole of the plot was found in possession of three persons namely Mr.Purshottam Lal, Mr. Gupta and Somnath Narula. As per the said report, Purshottam Lal (defendant) was found in occupation of one temporary Khokha, Tin-shed and open plot in front of tine shed, as a tenant @ Rs.300/- per month. Mr. Gupta was found in occupation of temporary Tin Shed meant for chowkida and open plot and Somnath Narula was in occupation of tin-shed and open portion. In means that at that time, there was one Khokha and three tin-sheds besides open portion on the whole of plot. Now taking into consideration that the said plot was already assessed to house tax even before 1974, therefore, the only conclusion that follows is that construction already existed upon the said plot even prior to 1974. It, therefore, leads to the only inference that when plaintiff let out property to the defendant, it was in the shape of plot and built-up portion.

I would like to mention here that even in the suit filed by the defendant against the MCD in 1985, his stand was that he was tenant in respect of Office and open plot. The aforesaid suit was also filed by defendant before the commencement of litigation between parties. Thus, all through, it has been the consistent stand of the defendant that he was tenant of plot as well as built up portion. Plaintiffs, on the other hand, in view of the aforesaid discussions, changed their stand. The oral evidence of PW1 regarding the tenancy of open plot, in view of the aforesaid documentary evidence and lacunas in the case of plaintiff, is not credible. So far as the partnership deed Ex.PW1/2 is concerned, after carefully going through the same, by no stretch of imagination, it can be said that it was in the shape of rent deed. Hence, plaintiffs’ evidence on the aforesaid point is unbelievable.

In view of the aforesaid discussions, I have no hesitation to hold that at the time of letting defendant was inducted as a tenant in respect of the plot and built up portion. Therefore, court has no jurisdiction to try this suit as the same is barred U/s. 50 of the Delhi Rent Control Act. The aforesaid issue is accordingly disposed of.” (Underlining added)

7. The aforesaid finding and conclusion is therefore quite clearly unsustainable because at best what has been proved to exist at the site is only land or land with temporary structure such as Khoka/tin shed and therefore, what has been let out to the respondent/defendant would not be a building or premises as per the meaning of the expression as found in Section 2(i) of the DRC Act, 1958.

8. Learned counsel for the respondent/defendant very vehemently argued that when, the appellants/plaintiffs sent a notice dated 11.7.1988, Ex.PW1/3, the respondent/defendant replied to the same vide reply dated 27.7.1988, Ex. PW1/9, and no rejoinder was given to the reply dated 27.7.1988 and therefore it must be held that the respondent/defendant was a tenant of a super structure along with the land and not only land or land with temporary structure. Counsel for the respondent/defendant relies upon para 1 of this notice and which reads as under:-

“1. Para 1 of your notice, as stated, is not admitted and is wrong and denied. It is admitted that my client is tenant of Shri Som Nath Narual only with respect to plot as well as built up portion. It is incorrect that rate of rent is Rs.700/- p.m. The rate of rent is Rs.300/- p.m.. It is incorrect that my client is in occupation of 900 sq.ft. of open plot only. The total area in occupation of my client is 2100 sq.ft. Shri Som Nath and Harish Chande let out the property but instead of rent benami partnership deed was written in the year 1974 inspite of the fact that your client and his son were not working. The tenancy continued in the abovesaid way till April, 1978. But the profit was Rs.300/- p.m. Thereafter there was no partnership. My client continued by the business as tenant of Somnath Narual at monthly rent of Rs.300/-.”

In my opinion, no support can be derived from the aforesaid para 1 of Ex.PW1/9 inasmuch as this letter in fact only talks of a built up portion without specifying the nature of the built up portion. A ‘built up portion’ can also be a temporary structure. It is not specified in this reply dated 27.7.1988, Ex.PW1/9, that there was a building or a permanent super structure on the plot. I, thus, fail to understand therefore how para 1 of Ex. PW1/9 supports the respondent/defendant. Assuming that it supports the respondent/defendant, merely by not sending a rejoinder to a reply to a legal

notice cannot mean that other evidences in the case must be ignored. Every evidence in a case is looked in totality with other oral and documentary evidence which is led in the case so as to decide the civil case on a balance of probabilities. In my opinion, the documents being a partnership deed, Ex.PW1/2 and the survey report, Ex.DP1 clinches the issue that what has been let out to the respondent/defendant was not a building or premises.

9. Learned counsel for the respondent further sought to place reliance upon the notice dated 16.12.1993, Ex.PW1/11. The notice dated 16.12.1993 was sent on behalf of the appellants/plaintiffs which talks of an unbuilt open plot. Reliance was placed by learned counsel for the respondent/defendant on Ex.PW1/11 to argue that this notice was sent only after the death of original landlord and therefore the appellants/plaintiffs who were the successor in interest, cannot set up a new case. I do not think there is a new case which is set up by the appellants/plaintiffs at any point of time because the original landlord being the father of the appellants, never admitted the respondent/defendant to be a tenant in a building/super structure being premises within the DRC Act. On the contrary, Ex.PW1/2, the partnership deed very clearly states that what was let out was only the plot. There is therefore no question of the appellants/plaintiffs improving their case to the case set up by their father, Somnath Narula that the respondent/defendant was not the tenant of a building or permanent super structure.

10. In view of the above, the impugned judgment and decree is therefore set aside in that it holds that there existed a premises and respondent/defendant had protection of the Delhi Rent Control Act, 1958. It is held that respondent/plaintiff was not a tenant of any building or premises so as to get protection of the Delhi Rent Control Act, 1958.

11. The next issue is with regard to the mesne profits to be awarded. The appellants had claimed mesne profits at Rs.800/- per month till vacant physical possession is delivered by the respondent/defendant to the appellants. The area in question is 900 square feet. I do not find that a sum of Rs.800/- per month can in any manner said to be exorbitant with respect to area of 900 square feet which is in possession of the respondent/defendant. The respondent/defendant will therefore be liable to pay mesne profits at Rs.800/- per month pendente lite and future till the appellants receive the vacant physical possession of the suit premises.



12. In view of the above, the appeal is accepted. The impugned judgment and decree dated 21st December, 1999 is set aside. The decree of possession is passed in favour of the appellants/plaintiffs and against the respondent/defendant with respect to the premises being a plot of land admeasuring 900 square feet situated on Main Road of II-F, Block Corner, Opposite Dua Travels, Rampur Market, Lajpat Nagar-II, New Delhi shown as red in site plan as Ex.PW1/1. The respondent/defendant may remove any structure which it claims to have made on the plot of land at its own costs. The appellant/plaintiff will also be entitled to mesne profits per month pendente lite and future @ Rs.800/- per month till receiving of the vacant physical possession of the suit premises from the respondent/defendant. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

Sd/-  
VALMIKI J. MEHTA, J.