IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Rent Control Act, 1958

Reserved on : July 21, 2008

Pronounced on : 27.11.2008

CM(M) 2696/2005

M/S. PEAREY LAL WORKSHOP P. LTD. .....Petitioner
Through Mr. Valmiki Mehta, Sr. Advocate with
Mr. Ajit Dayal, Advocate

versus

RAGHUNANDAN SARAN ASHOK SARAN ..... Respondent
Through Respondent in person.

JUSTICE SHIV NARAYAN DHINGRA

JUDGMENT:

1. The petitioner is aggrieved by an order dated 1st September, 2005 passed by the learned Civil Judge dismissing an application of the petitioner under Order VII Rule 11 for rejection of the suit.

2. The respondent/plaintiff filed a suit for delivery of possession of premises No. 40-42, Janpath, New Delhi comprising of a Service Station, Store Office, Workshop Shed, Two open Areas, Two WCs on the ground floor which petitioner had taken on monthly rent of Rs.400/- some time in year 1956 and used as a vehicle service and repair workshop. The respondent in the suit contended that by effect/action/implication of law, the defendant lost the protection of provision of Delhi Rent Control Act, 1958 with regard to the suit premises because of rent recoverable and by virtue of the value of the consideration being received by the defendant in the suit premises.

Defendant had become ?tenant at sufferance?. The plaintiff served a notice dated 21st December, 2001 on the defendant asking the defendant to deliver the vacant peaceful possession of the premises. Since the peaceful possession of the premises had not been handed over despite notice, the plaintiff filed a suit for recovery of possession. The plaintiff valued the suit for the purpose of Court Fee at Rs. 4800/-. The plaintiff also claimed mesne profit and undertook to pay Court Fee on the mesne profit the Court may determine after evidence.

3. In the application under Order VII Rule 11 CPC petitioner/defendant took a stand that the agreed monthly rent payable by the petitioner was Rs. 400/- and provisions of Delhi Rent Control Act would, therefore, be applicable to the suit premises. The civil suit for recovery of possession filed by the respondent before the Civil Judge was not maintainable in view of Section 50 of the Delhi Rent Control Act. It was stated that the plaintiff/respondent earlier also filed eviction petitions which were dismissed right upto Supreme Court.

4. In view of the objection taken by the petitioner regarding maintainability of the suit, trial court framed a preliminary issue and passed the impugned order. The order is challenged on the ground that the trial court failed to exercise jurisdiction vested in it by not dismissing the suit though the rent payable by the petitioner was Rs. 400/- per month. It is submitted that the Civil Court has jurisdiction only if the rent was more than Rs. 3500/-. The petitioner continues to be a protected tenant under Delhi Rent Control Act and only eviction petition under Delhi Rent Control Act would lie. It is also submitted that the respondent plaintiff had not pleaded material facts in the plaint and the trial court did mention about it but still not dismissed the suit on this ground. There was no cause of action disclosed in the plaint and the order of the trial court was bad in law.

5. During arguments, it was contended by the counsel for the petitioner that in case the petitioner was not considered as a tenant and was considered as a trespasser and recovery of the premises was sought from the petitioner as a trespasser, the respondent/plaintiff was supposed to value the suit at the market value of the premises. However, the respondent had valued the suit at value of Rs. 4800/- which only shows that the property has been valued at annual rent being paid by petitioner. The suit was therefore, liable to be dismissed since it was covered under the Delhi Rent Control Act.

6. It is evident that the premises was let out to the petitioner at monthly rent of Rs. 400/- sometime in year 1956. The respondent herein had earlier challenged the virus of the provisions of Delhi Rent Control Act regarding fixing of standard rent. This court in Raghunandan Saran Ashok Saran vs. UOI 2002 RLR 149 allowed the petition and Section 4,6 and 9 of the Delhi Rent Control Act were struck down being violative of Articles 14, 19(1) g and 21 of the Constitution of India. The question which arises is whether a suit for recovery of a premises before Civil Judge would be maintainable where the rent was fixed at Rs. 400/- per month about 50 years back. The respondent argued his matter in person and submitted that the petitioner was tenant at sufferance. The petitioner was let out the premises at Rs. 400/- in 1956. This Rs. 400/- per month fixed in 1956 stood frozen in time only because of Sections 4,6 and 9 of the Delhi Rent Control Act. Since these provisions of Delhi Rent Control Act have been struck down being violative of Constitution of India, the value of Rs. 400/- in 1956 has to be considered after taking into account the inflation, fall in value of rupees and change in the whole sale price index since 1956 till date and if the value of this Rs. 400/- is considered in this context, then this amount would not be less than Rs. 9,500/- in the year 2002 in terms of Government of India published figures of whole sale price index. It is submitted that under no circumstance, the value of Rs. 400/- which was fixed as rent 1956 can be considered as Rs. 400/- in 2002 when the suit was filed and the premises would be outside the purview of the Delhi Rent Control Act. Since by a notice the petitioner had demanded peaceful vacant possession of the premises giving adequate time to the petitioner as per law, the petitioner was within its right to file a civil suit. It is also submitted that though the petitioner had taken the premises on rent in 1956 at Rs. 400/- per month, but it had further sub-let the premises to Compact Motors Ltd. at market rent in a camouflage manner in order to evade the statutory provisions of Delhi Rent Control Act as well as the NDMC Act 1954 relating to levy of property tax. He submitted that the petitioner suppressed the factum of sub-letting to Compact Motors Limited and because of sub-letting the premises went out of provisions of Delhi Rent Control Act. Regarding non-mentioning of these facts in the plaint respondent submitted that he was not supposed to give evidence in the pleadings. He was only supposed to give the fact of the premises being outside the purview of Delhi Rent Control Act. How it went out of purview of DRC Act was decided was a subject matter of evidence and law and he would prove the same.

7. In a recent case Satyawati Sharma (Dead) by LRs. Vs. Union of India and Anr., (2008) 5 SCC 287, the Supreme Court had occasion to devolve upon the provisions of Delhi Rent Control Act and observed as under: ?12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s' to early 1990s' would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant # Mohinder Kumar and Others vs. State of Haryana and Another [1985 (4) SCC 221], Prabhakaran Nair and Others vs. State of Tamil Nadu and Others (supra), D.C. Bhatia and Others vs. Union of India and Another [1995 (1) SCC 104] and C.N. Rudramurthy vs. K. Barkathulla Khan [1998 (8) SCC 275]. In these and others case, the Court consistently held that the paramount object of every Rent Control Legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the latter judgments. 13. In Malpe Vishwanath Acharya and Others vs. State of Maharashtra and Another (supra), this Court considered the question whether determination and fixation of rent under the Bombay Rents, Hotel and Lodging Houses, Rates Control Act, 1947, by freezing or pegging down of rent as on 1.9.1940 or as on the date of first letting was arbitrary, unreasonable and violative of Article 14 of the Constitution. The three-Judge Bench answered the question in affirmative but declined to strike down the concerned provisions on the ground that the same were to lapse on 31.3.1998. Some of the observations made in that judgment are worth noticing. These are: ``Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the government does not take remedial measures to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent # the

increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context.'' ``When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others.'' 14. In Joginder Pal vs. Naval Kishore Behal [2002 (5) SCC 397], the Court after noticing several judicial precedents on the subject observed as under: ``The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble. Xxx xxx xxx 32. ????..It is trite to say that a legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.?

8. The learned Civil Judge in this case had observed that whether the premises would fall within the purview of Delhi Rent Control Act or outside the purview of Delhi Rent Control Act cannot be adjudicated merely on the ground that the rent was Rs. 400/- or merely because of the plaintiff has valued the suit at Rs. 4800/- and this question had to be decided after evidence since it is a mixed question of law and fact. I consider that the learned Civil Judge was right in making this observation. In 1956 the premises at a prime location like Janpath near Connaught Place was let out at Rs. 400/- since it would have been the market rent of the premises prevalent at that time. The Gold used to cost Rs. 40/- per 10 gram in 1956. The rate of Sugar was two anna per K.G. and Wheat used to sell at Rs.4 or 5 per Mand (approx. 37 kg.). The value of the land in Connaught Place and surrounding areas may be at Rs.10 or so per square yard. Value of none of the items has stood frozen in time. Neither the Gold is available today at Rs. 40 per Tola (11 grams), neither the other articles essential for life are available at the rate which was prevalent in 1956 nor the salaries of the persons stand frozen in time. The salary of a Clerk during those days used to be Rs. 15-20 per month. Today the Gold is available at more than Rs. 11,000/- per 10 grams. The value of land in Connaught Place is few lakhs per square yards, the value of one square feet constructed area may be in the range of Rs. 20,000/-, the salary of Clerk has risen to Rs. 15,000/- to 20,000/- p.m. Thus, the value of Rs. 400/- in 1956 has to be looked today from the eyes of 2008 and it has to be seen as to what would have been the effective value of this Rs. 400/- fixed as rent in 1956, in order to determine the real intent of legislature. The legislature in 1988 amended provisions of DRC Act and a property with rental value above Rs. 3500/- per month went outside the purview of the Delhi Rent Control Act.

9. With the passage of time, the law has changed in many spheres. However, in the sphere of Delhi Rent Control Act it still lies frozen because of the vested interests and lobbing by different groups. The political Will to implement the legislation enacted by the Parliament in 1995 has been absent. However, many other laws and regulations have kept march with time. MCD few years back implemented unit area system of property tax. The situation has arisen in certain areas where the property tax payable by the landlord in respect of the premises is Rs. 5000/- per month and the rent being realized by the landlord is Rs. 1000/- per month. No exemption has been given by MCD Act to those landlords whose premises are on lower rent to give tax on rent basis. I consider that time has come when the Court must take into account the real value of the rent for the premises which was fixed decades

ago to determine the jurisdiction of the Rent Controller. Not one but many premises in areas of Connaught Place, Karol Bagh, Chandani Chowk etc. are not being used by the original tenants and the tenants have entered into camouflage agreements like partnership agreement, franchisee agreement, agency agreement, licence agreement to device ways to keep the premises within purview of DRC Act while actually they sub let the premises. The tenants are realizing rents at the rate of lakhs of rupees per month and the landlord is being paid in such cases Rs. 400/- or Rs. 500/- per month. This is highly unjust situation and this can be redeemed only by taking the present value of the rent per month as the value for jurisdiction, taking into account the corresponding whole sale price index inflation and other factors which have affected the value of real estate. Thus, it would be a question of law and fact both whether the premises would be covered by Delhi Rent Control Act or a suit before the Civil Court can be filed. A landlord, whose property worth several crores of rupees is in occupation of the tenant who is running business there, and may be earning lakhs of rupees per month, has a right to establish before the Court by bringing out facts and law that the Court must consider the real value of the rent fixed in 1956 as the rental value of the property in order to determine the jurisdiction.

10. As far as the valuation of the suit is concerned, since the property is giving a return to the landlord only of Rs. 4800/- per month, and it is not known to the landlord what would be the amount of mesne profit which the Court may fix, the landlord who has already been deprived of rightful benefits of the property cannot be burdened with Court Fee on the basis of market value of property. If the Court cannot tell a tenant to pay rent at the present day market value of the property or taking into account the present value of rent of Rs. 400/- fixed in 1956, the Court cannot tell the landlord to pay the Court Fee on the present day market value in order to get the premises vacated. The valuation has been done on the basis of annual rent being received and in my opinion this is a correct valuation for the suit.

11. I find no merits in this petition. The petition is hereby dismissed.

Sd/-
SHIV NARAYAN DHINGRA,J