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

+ CM(M) 681/2022 & CM No.31182/2022, CM No.31183/2022

KUSHAL ANAND Petitioner

Through: Mr. Manu Sishodia, Adv.

versus

MANDHIR SACHDEVA Respondent

Through: Mr. N.P.Singh, Mr. Mohit
Singh Gulia and Mr. Shantanu Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

18.07.2022

1. Eviction Petition E-477598/2016 was preferred by the respondent Mandhir Sachdeva, seeking eviction of the petitioner Kushal Anand from the premises located at R-875, New Rajender Nagar Delhi (hereinafter “the tenanted premises”) invoking, for the said purpose, clauses (d) and (h) of the proviso to Section 14(1) of the Delhi Rent Control Act, 1958 (“the DRC Act”). For the sake of convenience, the provisions would be referred to, hereinafter, as Sections 14(1)(d) and 14(1)(h) respectively.

2. It is not in dispute that the tenanted premises were allotted to Jai Singh Sachdeva, the grandfather of the respondent, by the Ministry of Rehabilitation, *vide* letter dated 10th April, 1954 and that Jai Singh Sachdeva inducted Surinder Nath Anand, the now deceased husband of the petitioner Kushal Anand, as a tenant in the first floor of the

tenanted premises in 1960. The tenancy was for residential purposes at a monthly rent of ₹ 175, excluding water and electricity charges. The respondent contended, in his Eviction Petitions that, after Jai Singh Sachdeva expired on 27th December, 1968, his parental uncle Jagdish Singh, as one of the co-owners who had succeeded to the ownership of the tenanted premises as a legal heir of Jai Singh Sachdeva, terminated the tenancy of the petitioner *vide* notice dated 6th January, 1970, with effect from 31st January, 1970.

3. It was further contended that Surinder Nath Anand had acquired eight immovable properties, including three in Rajender Nagar. Of the eight immovable properties so acquired by Surinder Nath Anand, the respondent contended that Surinder Nath Anand shifted, in 1974, to one of the said properties, situated at A-42, Kailash Colony, New Delhi, which was acquired by him *vide* registered Sale Deed dated 5th August, 1972. After Surinder Nath Anand died, the petitioner, contended the respondent, further acquired premises located at K-228, Sainik Farms, New Delhi, where she was residing with her daughters.

4. Consequent to the death of Jai Singh Sachdeva, and the execution of relinquishment/release deeds in the respondent's favour by the remaining co-sharers who had succeeded to ownership of the tenanted premises, the respondent contended that he came into ownership of the said premises by way of Conveyance Deed dated 15th November, 2011 issued by the Land and Development Office ("the L&DO").

5. Alleging that (i) electricity to the tenanted premises stood disconnected with effect from 19th October, 2003, and (ii) the petitioner was, even otherwise, residing at K-228, Sainik Farms, New Delhi and had also succeeded to ownership of the immovable properties acquired by Surinder Nath Anand during his lifetime including the property situated at A-42, Kailash Colony, New Delhi, the respondent, *vide* the aforesaid Eviction Petition E-477598/2016, sought eviction of the petitioner under Section 14(1)(d) and Section 14(1)(h) of the DRC Act¹.

6. The eviction petition came to be allowed by the learned Additional Rent Controller (“the learned ARC”) under Section 14(1)(d) as well as Section 14(1)(h) of the DRC Act, *vide* judgment dated 18th June, 2020.

7. The petitioner appealed to the learned Rent Controller *vide* RCT 41/2020. The judgment dated 20th May, 2022, of the learned RCT, dismisses the said appeal.

¹ 14. **Protection of tenant against eviction.**

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;

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(h) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence:

8. Aggrieved, the petitioner has invoked the jurisdiction vested in this Court by Article 227 of the Constitution of India.

9. Mr. Sishodia submits, at the outset, that he is not raising the issue of existence or non-existence of a landlord-tenant relationship between the respondent and the petitioner, or disputing the ownership of the respondent over the tenanted premises, though these issues had been raised before the learned ARC and the learned RCT. He restricts his challenge to the impugned order to three contentions.

10. The first is that Eviction Petition E-477598/2016 was barred by time. For his purpose, Mr. Sishodia relies on ***Ganpat Ram Sharma v. Smt. Gayatri Devi***².

11. The second is that the alternate properties possessed by Surinder Nath Anand, on the basis of which Section 14(1)(h) of the DRC Act had been invoked by the respondent, had been acquired by him prior to the petitioner succeeding to his estate and could not, therefore, be regarded as a residence acquired by the petitioner on the basis of which an eviction petition under Section 14(1)(h)) could be maintained. Mr. Sishodia cites, in this context, ***Abdul Sattar v. Khutejabi***³.

12. The third, relatable to Section 14(1)(d) of the DRC Act, is that the learned RCT erred in holding that the petitioner had failed to prove that she had been residing in the tenanted premises for a period of six

² AIR 1987 SC 2016

months prior to the filing of the eviction petition.

13. Apropos the first submission, Mr. Sishodia's contention is that Article 67 of the Limitation Act applies in the present case, under where a suit by a landlord to recover possession from the tenant is required to be filed within twelve years of determination of the tenancy.

14. To a query from the Court as to whether the eviction petition filed by the respondent could be regarded as a suit by the respondent to recover possession from the petitioner, Mr. Sishodia relies on ***Ganpat Ram Sharma***².

15. The learned RCT has observed that, as against ***Ganpat Ram Sharma***², the Supreme Court has, in later decisions in ***Prakash H. Jain v Marie Fernandes***⁴ and ***Prithipal Singh v. Satpal Singh (dead) through LRs***⁵ held that the provisions of the Limitation Act would not apply to a proceeding before the Rent Controller, as the Rent Controller was not a civil court. Adverting to ***Ganpat Ram Sharma***², too, the learned RCT observes that, as the Eviction Petition was filed by the respondent on 14th March, 2014, soon after the respondent acquired ownership of the tenanted premises on 15th November, 2011, the Eviction Petition could not be said to be time barred.

16. In my opinion, the decision in ***Ganpat Ram Sharma***² itself defeats the contentions advanced by Mr. Sishodia.

³ 2003 5 SC 647

⁴ (2003) 8 SCC 431

17. Shorn of superfluities, in that case, the tenants acquired ownership of the alternate premises in 1958. Gayatri Devi, the respondent-landlady who instituted the proceedings under Section 14(1)(h) of the DRC Act, purchased the suit property on 9th April, 1973. As the suit property was situated in a slum area, she applied for clearance for permission to institute eviction proceedings, under Section 19 of the Slum Area (Improvement and Clearance) Act, 1956, on 28th September, 1973. Permission, as sought, was granted by the competent authority on 12th December, 1974. The eviction petition, under Section 14(1)(h) was instituted by Gayatri Devi on 16th April, 1975.

18. Computing the limitation from the date when Gayatri Devi acquired ownership of the tenanted premises i.e. 9th April, 1973, the Supreme Court held that no laches or delay could be attributed to her.

19. Applying the said principle to the present case, the respondent, admittedly, acquired ownership over the tenanted premises only on 15th November, 2011, *vide* Conveyance Deed executed by the L&DO. The eviction petition was instituted on 14th March, 2014. It cannot, therefore, be said that the eviction petition was barred by time. The decision of the learned RCT, to the said effect, therefore, does not call for any interference.

20. The second contention of Mr. Sishodia is that, as the alternate

⁵ (2010) 2 SCC 15

properties had been acquired by Surinder Nath Anand during his lifetime, *before* the petitioner succeeded to tenancy of the tenanted premises as a statutory tenant, the said properties could not constitute the basis of an eviction petition under Section 14(1)(h) of the DRC Act.

21. No such ground was ever urged either before the learned ARC or before the learned RCT.

22. The court, in the present case, is exercising jurisdiction under Article 227 of the Constitution of India, which Article 227 of the Constitution of India does not confer appellate jurisdiction. The court is only required to examine whether the authority which has passed the impugned order has, in doing so, exposed itself to supervisory correction. The power conferred on the High Court by Article 227 is a power of superintendence and not a power of judicial review. An implicit corollary is that the manner of exercise of its jurisdiction by the court or forum below cannot be gauged on the basis of submissions which were never advanced before it. In my considered opinion, therefore, a submission which was never advanced by the petitioner before the court or forum whose order is assailed under Article 227, cannot be raised before the High Court either.

23. Though, therefore, the petitioner cannot, in the present petition under Article 227 of the Constitution of India, be allowed to urge the second contention canvassed by Mr. Sishodia i.e. that, as the alternate properties had been acquired by Surinder Nath Anand prior to the

petitioner succeeding to tenancy of the tenanted premises, such acquisition could not constitute the basis of an eviction petition under Section 14(1)(h) of the DRC Act, the contention fails even on merits.

24. The impugned order has noted that, apart from the properties acquired by Surinder Nath Anand during his lifetime, the petitioner had herself acquired a property situated at K-228, Sainik Farms, New Delhi. Apropos this property, paras 15 and 17 of the impugned order dated 20th May, 2022 read thus:

“15. The acquisition of premises No. A-42, Kailash Colony. New Delhi by the original tenant Shri Surinder Nath Anand followed by sale thereof vide Sale Deed dated 26.04.2000 also stands established by way of evidence adduced on record. The said Sale Deed describes the address of the appellant as K-228, Sainik Farms, New Delhi. According to the present respondent, the said property in Sainik Farms was acquired by the appellant and she is residing there alongwith her daughters. Although according to the appellant, the Sainik Farms property is exclusively owned and possessed by her daughter Ms. Suparna Anand and she (the appellant) stays with her daughter on frequent visits for medical care, but no reliable evidence was adduced by the appellant to establish that she was residing in the tenanted premises at the relevant time.

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17. In her cross-examination as RWI, the appellant stated that she never acquired property no. K-228, Lane W-12, Sainik Farms, New Delhi but on being confronted with documents from original record produced by the record clerk of South Delhi Municipal Corporation reflecting her address as K-228, Sainik Farms, New Delhi, she stated that the same do not bear her signatures. The trial court marked copies of those documents as Mark X-2 and at that stage, at request of counsel for the present

respondent, the entire original file of South DMC was retained by the trial court. I have examined the said original record of South DMC and compared the signatures of the appellant on the memo of appeal with her purported signatures in the said original records and find the same completely similar to each other. The entire original South DMC record consisting of various notices, replies, written submissions and even documents reflect residential address of the appellant even in the year 2013 as K-228, Sainik Farms, New Delhi.”

25. The Sainik Farms property having been acquired by the petitioner *after* she had succeeded as a statutory tenant in respect of the tenanted premises, the prayer for eviction under Section 14(1)(h) of the DRC Act, at the instance of the respondent, was maintainable.

26. The third contention advanced by Mr. Sishodia relates to Section 14(1)(d) of the DRC Act.

27. Mr. Sishodia has drawn my attention to several communications between the petitioner and BSES Yamuna Power Ltd., in or around 2014, to contend that the petitioner was residing in the tenanted premises within a span of six months prior to the institution of the eviction petition and that, therefore, the finding, to the contrary, of the learned RCT, was incorrect.

28. On this aspect, the learned RCT has held, in paras 14 and 16 of the impugned order, thus:

“14. It is the admitted position that the tenanted premises fall in a residential area and Shri Surinder Nath Anand was inducted as a tenant therein for residential purpose only. It is

also not in dispute that electricity supply to the tenanted premises got disconnected sometime in the year 2003. According to the present respondent, the electricity supply got disconnected because nobody was residing in the tenanted premises, while according to the appellant, she was somehow managing the electricity requirement with the help of generator and inverter. But no reliable evidence was led by the appellant to corroborate her bald testimony as regards use of generator and/or inverter and I find it difficult to believe that the person of her financial status, owning large number of immovable properties, would have lived across so many years only on generator and/or inverter electricity supply. Apparently, since the year 2003, when the electricity supply got disconnected in the tenanted premises, the appellant has not been residing there.

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16. On the contrary, the certified copies of judicial proceedings Ex. RWIIX4 to Ex. RWIIX6 consisting of the proceedings earlier pending before the Hon'ble Delhi High Court repeatedly reflect residential address of the appellant in the applications as well as affidavits to be A-42, Kailash Colony, New Delhi. Even the certified copy of the registered Release Deed dated 21.04.1994 Ex. RW1/XI reflects the appellant's residential address as A-42, Kailash Colony, New Delhi. There is nothing on record to reflect that at any subsequent stage, the appellant shifted back to the tenanted premises.”

29. The learned RCT has, therefore, appreciating the evidence before him, arrived at a conclusion that there was no evidence that the petitioner was residing at A-42, Kailash Colony, New Delhi and there was no evidence to indicate that she had ever shifted to the tenanted premises.

30. Concurrent findings of facts having been returned by the learned ARC and learned RCT on this issue, no case for interference

therewith, under Article 227 of the Constitution of India, can be said to exist. One may refer, in this context, to the decisions in ***Roshanlal v. State of Rajasthan***⁶, ***State of Haryana v. Manoj Kumar***⁷ and ***K. Arjun Das v. Commissioner of Endowment, Orissa***⁸.

31. For the aforesaid reasons, I find no merit in this petition, which is, accordingly, dismissed in *limine*.

C. HARI SHANKAR, J.

JULY 18, 2022

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⁶ (2004) 13 SCC 559

⁷ (2010) 4 SCC 350

⁸ (2019) 10 SCC 355