

(2014) 01 DEL CK 0064

Delhi High Court

Case No: Regular Second Appeal No. 48 of 2012

Shri Jagdish

APPELLANT

Vs

Smt. Krishna Kumari

RESPONDENT

Date of Decision: Jan. 21, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Delhi Municipal Corporation Act, 1957 - Section 507
- Delhi Rent Control Act, 1958 - Section 1
- Transfer of Property Act, 1882 - Section 106

Hon'ble Judges: Valmiki J Mehta, J**Bench:** Single Bench**Advocate:** Ashish Kapoor, for the Appellant; M.L. Sharma, Anil Sharma, for the Respondent**Final Decision:** Dismissed

Judgement

Valmiki J Mehta, J.

This second appeal filed u/s 100 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the appellate Court dated 28.1.2012 by which the appellate Court set aside the judgment of the trial Court dated 18.2.2011 which had dismissed the suit of the respondent-landlord herein (plaintiff in the trial Court) filed for possession, recovery of arrears of rent and future damages. Appellate Court by the impugned judgment has held that the suit property is situated in the area to which no notification has been issued under sub-Section (2) of Section 1 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") and therefore since the Act does not apply to the area in question, the suit before the civil court was maintainable and that it was wrongly held otherwise by the trial court.

2. Before me, counsel for the appellant/tenant/defendant sought to draw the attention of this Court to the notification dated 8.12.1954 to argue that by this

notification the property in question was urbanized and therefore the same falls within the scope of the Act. This very issue of whether area/property only on the same being urbanized would automatically be covered under the Delhi Rent Control Act has been subject matter of the decision of the Supreme Court in the case of [Mitter Sen Jain Vs. Shakuntala Devi](#), wherein the Supreme Court has held that by urbanizing the property/area by that itself alone it does not come within the scope of the Act and for bringing the property/area in scope of the Act it is necessary that a notification be specifically issued under sub-Section (2) of Section 1 of the Act. Since the judgment in the case of Mitter Sen Jain (supra) is a small judgment of five paras, I reproduce the same as under:-

1. The appellant herein is a tenant of the premises situated at Sagarpur in Delhi, whereas the respondent is the landlord. The landlord let out the premises to the appellant on a monthly rent of Rs. 400/- per month. Subsequently, the landlord terminated the tenancy by giving notice u/s 106 of the Transfer of Property Act. The landlord thereafter brought a suit for ejectment of the tenant as well as for recovery of arrears of rent and mesne profit. Before the Trial Court the tenant filed a written statement wherein one of the pleas taken was that the premises which was let out to him was covered by Delhi Rent Control Act, 1958 and as such the suit is not maintainable. The Trial Court held that the premises was not covered by the Delhi Rent Control Act, 1958. Consequently, the suit was decreed. First Appeal was preferred to the learned District Judge, which was dismissed. Thereafter the appellant filed a Second Appeal before the High Court and the same was also dismissed. It is in this way the appellant is before us in appeal.

2. The only argument raised on behalf of the appellant is that since the premises of which the appellant is a tenant is covered by Delhi Rent Control Act and therefore, the suit filed by the landlord in Civil Court was not maintainable and decree passed therein is void ab initio. In order to appreciate the argument, it is worthwhile to extract the relevant provisions of Delhi Municipal Corporation Act as well as Delhi Rent Control Act, which are as follows

Section 507 of Delhi Municipal Corporation Act:

507 (a) the Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;

Sub-section (2) of Section 1 of the Delhi Rent Control Act:

1. (2) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.

3. Subsequently, by a notification dated 24.10.1994 issued u/s 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur when the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.

4. No other point was pressed. The appeal fails and is dismissed accordingly. No costs.

5. However, the appellant shall not be evicted from the premises in dispute till 31st December, 2000 provided he files usual undertaking within four weeks. He shall deposit the arrears of rent within one month and continue to pay the rent/damages for the period he continues in possession of the premises, failing which the interim order shall stand vacated without further order of the Court.

(emphasis added)

3. Counsel for the respondent has also draws the attention of this Court to the judgment passed in RSA No. 119/2006 decided on 9.8.2007 by a Division Bench of this Court and which holds that area of Babarpur Road, West Gorakhpur, Shahdara, Delhi is not covered by means of a notification extending the application of the Act to such an area.

4. In view of the above, it is clear that the suit property is not situated in an area covered by the Delhi Rent Control Act.

5. So far as the other aspects of the appellant being a tenant is not disputed as also the fact that tenancy has been terminated by means of the legal notice dated 11.2.2010 u/s 106 of the Transfer of Property Act, 1882. The legal notice was in fact replied to by the appellant. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.