

(2007) 05 DEL CK 0318

Delhi High Court

Case No: Regular First Appeal No. 594 of 2004

Municipal Corporation of Delhi

APPELLANT

Vs

Ashok Kumar Mishra and
Another

RESPONDENT

Date of Decision: May 3, 2007

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1), 20
- Transfer of Property Act, 1882 - Section 106, 111

Citation: AIR 2007 Delhi 257 : (2007) 141 DLT 347 : (2007) 2 ILR Delhi 255

Hon'ble Judges: Hima Kohli, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Geeta Mehrotra, for the Appellant; Munsh Tyagi, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, J.

The appellant is the Municipal Corporation of Delhi which had taken on rent the suit premises namely property bearing No. 63-64 and 69 to 72 of Katra Barian, Fateh Puri, Delhi from one M/s. Hazi Mohd. Yunus and Co. at monthly rent of Rs. 73.75 ps. The MCD was running a municipal school over this property. The MCD was running a municipal school over this property which was a single property, though different numbers were assigned. The said school was in existence till 1970. The MCD itself declared this property as dangerous property and demolished the same in the year 1970. The school was also shifted to some other place. The erstwhile owner have sold this property to the respondents herein in 1996.

2. According to the respondents, after the demolition of this property by the MCD in the year 1970, the MCD had surrendered the tenancy. New structure was constructed thereon. Possession whereof was being enjoyed by the then owner and after the purchase of the said property vide sale deed dated 15.2.1996, the

respondents started residing in this property. However, the MCD wanted to interfere in the said possession and grab the possession illegally on the purported ground that it was still the tenant in this property. Therefore, the respondents were constrained to file the suit No. 319/2003 for declaration and perpetual injunction.

3. This suit has been decreed by the learned trial court vide judgment and decree dated 8.6.2004. Feeling aggrieved, the present appeal is filed by the appellant/MCD. We had summoned the record and have gone through the same.

4. The MCD in the written statement had taken the plea that it continued to be the tenant in the property in question. It was denied by the respondents stating that after the property was demolished and vacated by the MCD, the MCD ceased to be the tenant. Covering this dispute, issue No. 1 was framed which reads as under:

1. Whether the defendant ceased to be the tenant under the plaintiff and there is no relationship of landlord and tenant between the parties. OPP

5. The learned trial court, after going through the evidence led and material placed on record, has recorded the finding that the MCD was no more tenant after the demolition of the property in the year 1970. This finding is supported by the following admitted position which the learned trial court gathered from the witnesses produced by the MCD itself:

a) The building in question was declared as dangerous building.

b) The MCD itself demolished this building in the year 1970.

c) After the demolition of this building, the MCD shifted its school to some other site. At that time all the belongings of the MCD were removed and there was nothing in existence as on that date.

d) The MCD stopped paying rent also from the year 1970 onwards after the demolition of this property.

e) The land was taken possession of by the then owner and new structure constructed thereon.

6. This factual matrix could not be denied even before us. In view of these facts established on record, we are of the opinion that the learned trial court rightly concluded that the tenancy stood determined by implication when the suit property was demolished by the MCD itself in the year 1970 and all the goods of the school were taken away including the Malba. The learned trial court, in support of this conclusion, relied upon the judgment of Kerala in the case of [Dr. V. Sidharthan Vs. Pattiori Ramadasan](#), which is a Division Bench judgment and extracted the following portion there from:

Where the subject-matter of a lease like the building is totally destroyed, the tenant is not entitled to squat on the ground where the building stood or construct a new

building in its place or require the landlord to put up a new structure/demise must have a subject-matter and if it is destroyed, the lease comes to an end. The question regarding due notice to quit u/s 106 is otiose in such a case.

7. Section 111(f) of the Transfer of Property Act provides that lease of the property can be determined by implied surrender. In this case, it was a clear case of implied surrender as not only the MCD removed all its belongings but it did not assert its right as tenants thereof and stopped paying rent. The erstwhile owner occupied the land in the year 1970; enjoyed the property for 26 years after rebuilding and sold the same to the respondents herein in the year 1996. It started creating annoyance to the respondents by trying to interfere in their possession thirty years thereafter.

8. Learned Counsel for the appellant submitted that since the rent was less than Rs. 3,500/-, the tenancy of the MCD is protected under the Delhi Rent Control Act. However, this argument loses sight of the fact that in the instance case, the tenant namely the MCD itself surrendered the tenancy. Thereafter, it cannot claim protection under the provisions of Delhi Rent Control Act. The suit filed was not for possession but declaration and injunction as aforesaid as the respondents were already in possession.

9. Learned Counsel for the appellant also referred to the judgment of the Supreme Court in the case of Parvati Bai Subhanrao Nalawade v. Anwarali Hasanali Makani and Ors. 47 (1992) DLT 102. What is sought to be pleaded, on the basis of this judgment, is that when the building is declared dangerous and is demolished by the MCD, after the construction of the building, the tenant has right of reinduction. However, that would be only when the landlord files a petition for eviction before the Rent Controller u/s 14(1)(g) of the Delhi Rent Control Act, 1958 which provides ground for eviction for the purpose of building or rebuilding or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated. Section 20 of the Delhi Rent Control Act gives right to the tenant to get back the possession. In the instant case, the respondents had not filed any eviction petition. It is stated at the cost of the repetition that the MCD surrendered the tenancy.

10. Last plea of the learned Counsel for the appellant was that when the building had become dangerous, it was the statutory duty of the MCD to demolish the same. Therefore, it should not be held against the appellant and case of implied surrender of tenancy cannot be presumed. Such a plea could have been raised had the MCD continued to assert its tenancy rights. However, it allowed the owner to regain the possession, reconstruct the same and enjoy it for more than 30 years. The realisation came too late as it is of no avail.

11. This appeal is accordingly dismissed.