Shri Munshi Ram & Anr vs Union Of India & Ors on 10 August, 2000

Equivalent citations: AIR 2000 SUPREME COURT 2623, 2000 AIR SCW 2789, 2000 (7) SCC 22, 2000 (3) LRI 1092, 2000 (5) SCALE 512, 2000 SCFBRC 419, (2000) 8 JT 612 (SC), 2000 (8) SRJ 65, 2000 (8) JT 612, (2001) 1 LANDLR 261, (2000) 2 RENCR 154, (2000) 2 RENTLR 522, (2000) 3 SCJ 217, (2000) 5 ANDHLD 71, (2000) 5 SUPREME 491, (2000) 5 SCALE 512, (2000) WLC(SC)CVL 689, (2000) 3 CURCC 261, (2000) 86 DLT 863

Author: S.S.M.Quadri

Bench: S.S.M.Quadri

PETITIONER:
SHRI MUNSHI RAM & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 10/08/2000

BENCH:
S.S.M.Quadri, Y.K.Sabharwal

JUDGMENT:

Y.K.SABHARWAL,J.

The appellants are tenants. The tenanted premises are situate in Karol Bagh Area, Delhi. The landlord is respondent no.3 whereas Union of India and the Delhi Development Authority (for short `DDA') are respondents 1 and 2 respectively.

The tenanted premises are part of building constructed on the land leased to the original lessee by Delhi Improvement Trust. The DDA succeeded the said Trust. The perpetual lease, inter alia, provides that the lessee will not use the land and building that may be erected thereon during the terms of the lease for any other purpose than for the purpose of residential house without the consent in writing of the lessor. Admittedly the premises are being used by the appellants for commercial purposes.

By notice dated 4th January, 1982 issued by DDA, respondent no.3 was informed that the premises were being used for the purpose of commercial-cum-residential which is contrary to the terms of the lease and the lease has become void and the lessor has right to re- enter after cancellation of lease. It was further stated in the said notice that the lease has been cancelled by DDA on 23rd December, 1981 for breach of Clause I(VI) and the possession of the plot together with the building and the fixtures standing thereon will be taken over by DDA. In a suit filed by respondent no.3 against DDA for grant of permanent injunction, interim injunction was granted by civil court inter alia noticing in the order that the owner had instituted eviction proceedings as far back as in 1974 against the tenants who were running their shops even at the time of the purchase of premises in question by the owner from its erstwhile owner.

In 1974, respondent no.3 instituted eviction petitions against the appellants seeking their eviction under clause

(k) of proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (for short `the Act'). The said clause stipulates an order of eviction being passed against the tenant who has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate. The tenant cannot resist his eviction when sought under Section 14(1)(k) of the Act merely on the ground that the landlord had himself let out the premises for commercial use (Faqir Chand v. Shri Ram Rattan Bhanot [1973] 1 SCC 572). Under sub-section (11) of Section 14 of the Act, before an order for recovery of possession of any premises on the grounds specified in clause (k) of the proviso to sub-section (1) of the said section is made, the Controller is required to give to the tenant time to comply with the conditions imposed on the landlord by any of the authorities referred to in clause (k) or pays to that authority such amount by way of compensation as the Controller may direct.

The Additional Rent Controller by order dated 6th September, 1988 after coming to the conclusion that the DDA is not interested in permitting the misuse permanently or even temporarily and has threatened to re-enter the premises, directed the appellants to pay within two months the past mis-user charges to respondent no.3 for being deposited with the DDA. The appellants were also directed to pay further compensation/charges as may be demanded by DDA in this regard. The appellants were directed to stop mis-user of the premises within two months from the date of the order and in the event of non-compliance of any of these conditions, it was directed that the order of eviction under Section 14(1)(k) of the Act shall be deemed to have been passed against the appellants for their eviction from the premises in question. This conditional order of eviction has been upheld by the Rent Control Tribunal in appeal as also by the High Court.

Challenging the aforesaid orders, Mr.D.D.Thakur submits that since the appellants are prepared to pay such amount of penalty as compensation as may be determined by the Controller to be payable to DDA till the matter of regularisation of user is finally decided by the said authority, the case be remanded to the Rent Controller for such a determination. Learned counsel places strong reliance on the decision in the case of Narain Das v. Manohar Lal & Anr. (1988 Supp SCC 432). In the said

case, an order of eviction passed under Section 14(1)(k) was set aside by this Court and the case was remitted to the Controller to determine the quantum of penalty payable to the DDA for the purpose of wrong user of property by changing it from residential to commercial purpose and directing that the tenant will bear the burden of penalty as may be determined. The said decision has no applicability to the facts of the present case since in that case the DDA did not press the notice for cancellation of the lease and for this reason the case was remitted to the Controller for determining the penalty. In view of resolution of the DDA, a statement was made on its behalf in that case that the lease would not be cancelled pursuant to the notice which had been sent to the owner. Under these circumstances, in the relied upon decision there was no threat of cancellation of the lease which is a pre-condition for an order of eviction under clause (k) of proviso to sub-section (1) of Section 14 of the Act. The Court made it clear that in the event of fresh notice being issued by DDA to the landlord for cancellation of the lease in his favour, the landlord would be free to take action against the tenant in accordance with law and the decision of this Court shall not operate as a bar to such proceedings. Unlike the facts of the relied upon case, in the present case the DDA has been insisting to act upon the notice dated 4th January, 1982 sent to respondent no.3. That has been the clear stand of DDA in proceedings before the Additional Rent Controller. The Secretary of the DDA to the same effect has filed an affidavit in this Court as well. The stand of the DDA is that after due payment for past misuser, the lessee is bound to discontinue the misuse in future. A statement showing action taken by DDA against misuser of premises in the vicinity of the premises in question has also been filed. Mr. Kirti Rawal, learned Addl.Solicitor General appearing for DDA submits that the DDA is not contemplating to regularise the misuser and in case the misuser is not stopped, the DDA will act upon the notice and re-enter the premises. In this state of affairs, the decision in Narain Das case (supra) can be of no assistance to the appellants.

Next, Mr.Thakur relies upon (i) the order dated 3rd January, 1983 passed by Lt.Governor of Delhi inter alia stating that the issue of notices and further action under misuser clause in the various areas of Delhi may be suspended till the matter has been reviewed at a high level or in the next meeting of DDA; (ii) the affidavit of the Secretary of Delhi Development Authority of February, 1983 filed in the High Court of Delhi in another case in a second appeal inter alia stating that the further show cause notice has been suspended for the time being and even the prosecution for the misuse has been suspended for the time being as per the order of the Lt.Governor as there is a likelihood of permission being granted for commercialisation of the area in accordance of the provisions of the master plan/zonal plan after charging certain dues, and (iii) to a somewhat similar statement as in (ii) given in another case by the Commissioner (Land), DDA. Reliance on the these documents is wholly misplaced for more than one reason. Firstly, these documents pertain to 1980s whereas in the present case the Commissioner (Land Disposal), DDA has filed an affidavit even in September, 1998 inter alia stating that though a scheme dated 12/17 September, 1996 has been forwarded by DDA to the Ministry of Urban Affairs and Employment for approval of the Government of India for promotion of Karol Bagh area as special area and for promotion of commercial use on ground floor on the basis of location but the examination of the plan of the premises in question shows that the disputed area falls outside the area of the scheme which is under consideration with DDA and the Union of India. In nutshell, the affidavit is that in respect of the area in question there is no proposal under consideration to allow commercial user. Secondly, we do not have the facts of cases in which the abovenoted affidavit was filed by the Secretary of DDA or statement was given by Commissioner

(Land Disposal), DDA. Thirdly, we are considering not a violation of master or zonal plan but breach of a term of lease, which paramount lessor is unwilling to condone. In the present case, it is not necessary to decide as to the effect of the proposal sent by DDA to Central Government to allow commercial user since the ground of eviction is clause (k) as aforesaid where the question is about breach of a term of lease and the lessor has declined to regularise the misuser for future. Learned Additional Solicitor General submits that the DDA is not only serious in pursuing the action taken by it on account of misuser but it is duty bound to do so.

Mr.Thakur also referred to the provisions of the Delhi Development Act, 1957 (for short `the DD Act') to contend that plans thereunder have not specified any particular use of the area where the building is situate. Chapter III of the DD Act deals with Master Plan and Zonal Development Plans. Section 7 provides for the DDA to carry out a civic survey and prepare a master plan for Delhi. Section 8 provides for preparation of a Zonal Development Plan for each of the zones into which Delhi may be divided and also refers as to what aspects may be contained in the said Plan. The land use is one such aspect. Mr. Thakur contends that neither the master plan for the year 1990-2001 shows that the permissible user of the area in question is only residential nor zonal development plan under Section 8 of the DD Act has been framed providing for only residential use. Reference has also be made to Section 14 which inter alia provides that after the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. The proviso to the said section stipulates that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations, any land or building for the purpose and to the extent for and to which it is being used on the date on which such plan comes into force. Section 57(1)(f) stipulates making of regulations to provide for terms and conditions subject to which user of lands and buildings in contravention of plans may be continued. Learned counsel contends that the impugned eviction orders deserve to be set aside as even regulations under Section 57(1)(f) have not been framed by DDA providing for terms and conditions on which continued user in contravention of plans may be permitted. None of the aforesaid provisions have any applicability to the present case. We are not concerned with the contravention as postulated by Section 14 of the DD Act. The question whether master plan and/or zonal plans provide or not for any use is not relevant for this matter. As already noted, we are concerned with the breach of the terms of the lease. It is not in dispute that the commercial use is contrary to the use permissible under the lease. The paramount lessor has taken action to terminate the lease for contravention of the terms thereof. It cannot be held that despite contravention of the lease, the paramount lessor is debarred for exercising its rights under the terms of the lease for absence of providing a user under Section 7 in the master plan or under Section 8 in the Zonal Development Plan.

In Dr. K.Madan v. Krishnawati (Smt.) and Anr. [(1996) 6 SCC 707], this Court has held that where the premises are used in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or Municipal Corporation of Delhi, then the landlord will be entitled to recovery of possession under Section 14(1)(k) of the Act and that sub-section (11) of Section 14 of the Act enables the Controller to give another opportunity to the tenant to avoid an order of eviction. The first opportunity to the tenant is given when the notice is served on him by the landlord and the second opportunity is given when an conditional order under

Section 14(11) of the Act is passed directing the tenant to pay the amount by way of compensation for regularisation of user up to the date of stopping the misuser and further directing stoppage of unauthorised user. The continued unauthorised user would give the paramount lessor the right to re- enter after the cancellation of the lease deed. As already noticed, the DDA is insisting on stoppage of misuser. The misuser is contrary to the terms of lease. The DDA cannot be directed to permit continued misuser contrary to the terms of the lease on the ground that zonal development plan of the area has not been framed.

For the aforesaid reasons, we find no merit in the appeal and it is accordingly dismissed. We, however, grant to the appellants two months time to comply with the order of the Additional Rent Controller dated 6th September, 1988. There will be no order as to the costs.