

Mitter Sen Jain vs Shakuntala Devi on 19 April, 2000

Equivalent citations: 85(2000)DLT658(SC), (2000)9SCC720, AIR ONLINE 2000 SC 791

Author: V.N. Khare

Bench: V.N. Khare, S.N. Phukan

ORDER

V.N. Khare, J.

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 under Section 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:

(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:

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 under Section 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.