

SMT. SHANTI SHARMA & ORS.

v.

SMT. VED PRABHA & ORS.

AUGUST 26, 1987.

[SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

Delhi Rent Control Act, 1958: Section 14(1)(e)—‘If he is owner thereof’—Interpretation of—Landlord constructing building on land taken on lease from DDA—Whether landlord ‘owner’ and entitled to eviction—Cancellation of the lease of land and subsequent staying of the cancellation—Effect of.

Words and Phrases: ‘Owner’—Meaning of.

An application was filed seeking eviction of the tenant-appellant by the landlord-respondent on various grounds. The Rent Controller granted an order for eviction only under Section 14(1)(e) of the Delhi Rent Control Act for bona fide use and occupation. The order of the Rent Controller for eviction was confirmed in appeal by the Tribunal.

Before the High Court, it was contended on behalf of the appellant that as the lease of the plot on which the building stood was cancelled by the DDA, the landlord-respondent ceased to be the owner thereof and, therefore, the requirement of Section 14(1)(e) was not satisfied and the respondent was not entitled to the decree for eviction. The High Court held that the landlord, whose lease had been terminated, but was in possession, continued to be a tenant holding over and, therefore, he continued to be the owner, and maintained the decree for eviction.

In the appeal before this Court, it was contended on behalf of the appellant that in order to get a decree for eviction on the ground of bona fide requirement, the landlord must establish that he was the owner of such property, that where the property was built up on a plot of land taken on lease from the Delhi Development Authority, it could not be said that the landlord was the owner of the property and that as the lease had been terminated, the landlord could not claim to be the owner of the property, and, therefore, the decree for eviction on ground of bona fide requirement could not be maintained.

- A On behalf of the respondent it was contended that although notice was issued, but subsequently the matter remained stayed and the respondent-landlord continued to be in possession and did not cease to be the owner of the property, that whole of the premises in question did not stand on the plot, lease of which had been cancelled by DDA and a major part of the premises stood on another plot which continued to be on lease in favour of the respondent, and that the tenant was estopped from challenging the title of the landlord, as the relationship of the landlord and tenant was admitted and it was not open to the tenant to contend that the respondent-landlord had no title to the property.

Dismissing the appeal, this Court

- C HELD: The word "owner" has not been defined in the Delhi Rent Control Act. [1081E]

- D The term "owner" has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. The Act has been enacted for protection of the tenants. But, at the same time, it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds. [1081G-H; 1082D]

- E Ordinarily, the concept of the ownership may be absolute ownership in the land as well as of the structure standing thereon. But in the modern context, where all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Government or the authorities constituted by the State. The legislature, when it used the term "owner" in s. 14(1)(e), did not think of ownership as absolute ownership. [1081F-G]

- F The meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. In cases where the plot of land is taken on lease, the structure is built by the landlord and he is the owner of the structure. So far as the land is concerned, he holds the long lease and as against the tenant he will fall within the ambit of the meaning of the term "owner" as contemplated under s.14(1)(e). [1082B-C]

- H In the instant case, although there were some proceedings for the cancellation of the lease, the lease had not come to an end. No steps have been taken for dispossession and only the formality of depositing the penalties and filing of the Indemnity Bond remained to be done, on fulfilling which the lease would be restored in the name of the legal

representatives. Therefore, it could not be said that the respondent landlord had ceased to be the owner of the premises. [1085G-H, 1086B] A

T.C. Rekhi v. Smt. Usha Gujaral, [1971] Rent Control Journal Page 322 at 326, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2935 of 1981. B

From the Judgment and Order dated 5.5.1981 of the Delhi High Court in S.A.O. No. 366 of 1980.

Shankar Ghosh and B.P. Maheshwari for the Appellants. C

A.B. Rohtagi, C.L. Sahu, Jose Verghese and O.P. Verma for the Respondents.

The Judgment of the Court was delivered by D

OZA, J. This appeal has been filed after grant of special leave in this Court by the tenant-appellant challenging a decree for eviction.

It appears that the respondent-landlord filed an application for eviction before the Rent Controller, Delhi on various grounds. The Rent Controller who heard the petition of the respondent rejected the petition on other grounds but only granted an order for eviction under Section 14(1)(e) i.e. the premises were bona fide required by the respondent-landlord for their own residence. It is not disputed that these premises are residential and the courts below, the trial court and the appellate court both came to the conclusion that the respondent-landlord has established his bona fide requirement and on these findings the order of eviction on the ground of bona fide requirement under Sec. 14(1)(e) of the Delhi Rent Control Act, 1958 has been maintained. E F

Before the Tribunal a contention was advanced that the appellant-tenant had come to know that the Delhi Development Authority ('DDA' for short) has cancelled the lease in favour of the respondent-landlord and therefore the respondent ceased to be the owner of the property and as such is not entitled to a decree for eviction under Sec. 14(1)(e). The landlord-respondent, on the other hand, contended that as a small portion of the premises in occupation of the appellant-tenant is on another plot which under the conditions G H

- A of the DDA was meant for non-residential purposes and in this view of the matter a notice for cancellation of the lease was given but on representation made by the respondent-landlord the DDA has stayed further action and it therefore could not be contended that the lease has been terminated by the DDA or that the respondent has ceased to be the owner of the property in question. The learned Tribunal therefore repelled the contention advanced by the tenant-appellant before it and maintained the order of the Rent Controller for eviction.
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- Before the High Court the contention advanced on behalf of the appellant was that as the lease of the plot on which the building stands is cancelled by the DDA the landlord i.e. the respondent ceases to be the owner thereof and in this view of the matter, it was contended that the requirement of Sec. 14(1)(e) of the Act is not satisfied and therefore the respondent is not entitled to the decree for eviction.
- C

- The High Court after considering circumstances and the affidavit filed by one of the appellants that the lease was cancelled but the proceedings for taking possession have been stayed on a representation made by the landlord, considered the question and felt that the landlord whose lease has been terminated but is in possession as possession has not been taken, he continues to be a tenant holding over and on that basis came to the conclusion that it could not be held that he ceases to be the owner and did not accept the contention advanced by the appellant and maintained the decree for eviction.
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- Before us on the basis of language of Section 14(1)(e) the learned counsel for the appellant contended that in order to get a decree for eviction on the ground of bona fide requirement the landlord must establish that he is the owner of such property and learned counsel attempted to contend that where the property is built up on a plot of land taken on lease from the Delhi Development Authority it could not be said that the landlord is the owner of the property and on this basis an attempt was made to contend that no eviction could be sought on the ground of bona fide requirement. Although learned counsel had to concede that in the Act itself the word 'owner' has not been defined and in the modern context it could not be contended that merely because the property situated on a plot of land taken on long lease that the landlord could not be said to be the owner. The other contention advanced on behalf of the appellant was that as there was a notice from the DDA cancelling the lease of the respondent-landlord and as the lease has been cancelled of the plot of land on which part of the premises in dispute stands the landlord-respondent is not entitled to this decree for eviction.
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It is admitted that this question was not raised in the trial court and the parties had no opportunity to lead evidence. It is only based on two papers and an affidavit which has been considered by the High Court. On the basis of these papers what appears to be, is that notice was issued to the landlord for cancellation of the lease and later on their representation the further proceedings have been stayed and it has been further observed in the subsequent paper from the DDA that the Authority is considering the restoration of the lease on the basis of payment of penalty or other dues that may ultimately be settled. It is nobody's case that ultimately the matter has been disposed of and it is also not in dispute that the landlord-respondent's possession has not been taken by the DDA. It is also not in dispute that although the land beneath the property is of the DDA given on lease to the landlord but the structure thereupon is of the ownership of the respondent-landlord. It is also not in dispute that the portion of the premises only stands on the plot of land the lease of which is alleged to have been cancelled but later on the proceedings for restoration are pending and the matter has been stayed. Nothing further has taken place.

Arguments were advanced at length on behalf of appellant that as the lease has been terminated and therefore the landlord could not claim to be the owner of the property and therefore the decree for eviction on the ground of bona fide requirement could not be maintained. Learned counsel for the respondent, on the other hand, contended that although some notice appears to have been issued but subsequently the matter remains stayed and admittedly the respondent-landlord continues to be in possession and therefore it could not be said that the respondent ceases to be the owner of the property. It was also contended on behalf of the respondent that unless and until the respondent's possession is taken it could not be said that he ceases to be the owner as possession is substantially the ownership of the property.

It was also contended by learned counsel for the respondent that even if the lease of the respondent-landlady is terminated by the DDA, DDA has to file a suit for possession and so long as she continues to be in possession, it could not be said that she is not the owner of the property. It was also contended that the premises in question do not stand on the plot the lease of which has been cancelled but it is only a small portion of the premises standing on that plot as apparently the plot Nos. 34 & 35 are both allotted to the respondent and the property in dispute stands on these two plots, the major part of the premises in question stands on No. 34 whereas a small portion stands

A on No. 35 and it is alleged that the proceedings or the notice for termination of the lease pertain to plot No. 35 and on this basis it was contended that as the major part of the plot on which the premises stand continues to be on lease in favour of the respondent the contention that respondent ceases to be the owner of the property is of no avail to the appellant.

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It was also contended on behalf of the respondent that the tenant is estopped from challenging the title of the landlord and as the relationship of landlord and tenant is admitted, it is not open to the tenant to contend that the respondent-landlord has no title to the property. Counsel for parties also referred to some decisions on the question of Transfer of Property Act, ownership and also on the question of estoppel.

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Sec. 14(1)(e) of the Delhi Rent Control Act reads as under:

“14(1) xxx xxx xxx

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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:-

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(a) to (d) xxx xxx xxx

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

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Explanation—For the purposes of this clause “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

xx xxx xxx”

H The phrase used in this provision is “if he is the owner thereof” and it

is on the basis of these words that the present controversy has been raised and it appears to be the only point on the basis of which the learned counsel for the appellant had argued this appeal.

As regards the first contention that the word 'owner' thereof indicates absolute ownership and where property stands on a plot of land taken on long lease from the DDA, it could not be said that he is the owner thereof and therefore the eviction on the ground of bona fide requirement under Section 14(1)(e) could not be granted.

Admittedly if this contention of the learned counsel for the appellant is accepted in Delhi more than 50% of the properties stand on leasehold plots and therefore it would not be possible for any landlord to seek an order or decree for eviction on the ground of bona fide requirement. It appears that it is therefore clear that if the Legislature had this narrow meaning of ownership in mind, it would not have used it, as it could not be contended that the Legislature did not keep in view that in most of the modern township in India the properties stand on plots of land leased out either by the Govt. or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bona fide requirement and it is in this context that we have to examine this contention.

The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Sec. 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumst-

- A ances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase 'owner' thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order
- B or decree for eviction, the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term 'owner' is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in
- C view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term 'owner' as is contemplated under this Section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in *T.C. Rekhi v. Smt. Usha Gujral*, [1971] Rent Control Journal Page 322 at 326 as under:
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- E "The word "owner" as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word 'owner' in this clause seems to me to have been inspired by the definition of the word 'landlord' as contained in section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word "owner" is used in
- F clause (e), it seems to me to include all persons in the position of Smt. Usha Gujral who have taken a long lease of sites from the Government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the
- G contention raised by Shri Kapur would virtually nullify the effect of clause (e) and would render all such landlords remedyless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the Legislature and I repel the appellant's contention. I consider it proper before
- H passing on to the next challenge to point out that the word

“owner” as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe some one as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject-matter and object and the occasion on which and the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning part from the context (See Halsbury’s Laws of England Third Edition Vol. 36 Paragraph 843 P. 394). The meaning of the word “owner” in clause (e) is influenced and controlled by its context and the appellant’s construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision.”

Learned counsel for the appellant also frankly conceded that it will not be possible for him to contend that the term ‘owner’ should be so construed that all those persons who have their houses standing on the leasehold plots will be deprived of the benefit of Section 14(1)(e).

The next contention advanced on behalf of the appellant is that as there is a notice addressed to the respondent-landlord about the cancellation of the lease of a plot over which a small portion of the premises stands he ceases to be an owner thereof and therefore will not be entitled to the decree for eviction.

In this connection the two documents, on which reliance has been placed are: one is a notice purporting to be of some date in Sept. 1981 which reads as under:

“DELHI DEVELOPMENT AUTHORITY

Regd. A.D.
Process Server

Old Scheme Branch
9th Floor, Vikas Minar,

New Delhi, the Sept. 81

A

NOTICE

B

It is notified for information of all concerned that the lease of the Plot No. 35, Block No. 15-A, W.E.A. scheme stands cancelled since 28.8.74. The action under PP. Act 1971 is being taken for taking over physical possession of the plot and building standing thereon. The occupants of the plot and building are, therefore, advised not to deal with any person except the D.D.A. who is now the lawful owner of the premises and not to pay rent, if anybody deals with any other person, he will be doing so at his own risk and cost.

C

Sd/-
(S.L. JAIN)
EXECUTIVE OFFICER (VI)
17.9.81

D To: All tenants:

1. M/s Nanik Ram and Sons,
15-A/35, W.E.A.
2. M/s Modern Centre,
E 15-A/35, W.E.A, Karol Bagh"

The other document is a letter to Smt. Ved Prabha and purporting to have been issued by the Deputy Director, DDA. This document apparently is dated October 30, 1981 and the relevant portion of this reads as under:

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"I am directed to inform you that your unconditional request for the purpose of being considered and necessary penalties for the past misuse and the continuing misuse till the date of its vacation by the tenants of the said premises under restoration of charges etc. are being worked out and the same will be communicated to you in due course."

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It is further stated in this letter that "after the necessary dues on this account are recovered and requisite formalities like submission of Indemnity Bond etc. are completed and accepted by the DDA, the lease of the plot would be restored in the name of the legal representatives of late R.S. Dinanath." A perusal of these documents therefore

clearly indicates that about plot No. 35 same notice was issued which is understood to mean that the lease was cancelled and later on on a representation made by the landlord to the legal representatives of the original allottees the further proceedings are suspended and it is clearly stated that the question of penalty and other dues is being worked out and on them being worked out and paid and Indemnity Bond being filed, the lease will be restored. It is also apparent that nothing further has happened and therefore it could not be said that the lease has come to an end even what is attempted to be contended on the basis of the first document that the lease is cancelled. The second document, reference to which has been made above, clearly goes to show that has been suspended and at present it could not be said that the lease has come to an end. Admittedly nothing has been started for taking possession. Under these circumstances therefore it is only on these facts that all these contentions have been advanced by learned counsel for the appellant.

Before going into the legal questions as to whether this question could be raised at this stage and also as to the question of estoppel or whether the tenant has a right to challenge the title of the landlord, as quoted above from the two documents which are the basis of all this controversy if are carefully examined, it appears to be certain that a notice for determination of the lease appears to have been issued by the DDA sometime before 1981. The document which is purporting to be a notice in 1981 shows that this notice is issued showing the cancellation of the lease and the subsequent letter from the DDA addressed to the legal representatives of the original allottee i.e. the present respondents indicates that on their representation the DDA is working out the penalties and details of payment which have to be recovered and on the payment being made and Indemnity Bond being filed the restoration of the lease will be considered and no further steps are being taken either for dispossession of the allottee or for any other purpose. In view of these two documents what appears to be clear is that although there were some proceedings for the cancellation of the lease but at present it could not be contended that the lease has come to an end. It is also clear that no steps have been taken for dispossession and the second document which has been quoted above clearly shows that only the formality of depositing the penalties which are being worked out in the Office of the DDA and the filing of the Indemnity Bond remains thereupon the lease will be restored in the name of the legal representatives. Under these circumstances at the best what could be contended is that so far as plot No. 35 is concerned some shadow was cast on its title. That shadow also appears to be very thin.

- A Apart from it the subsequent letter from the DDA indicates that what remains is only a formality of depositing the penalties and the Indemnity Bond. It is also clear that so far as the structure in the building is concerned it is not disputed that that is one of the ownership of the respondent. It is also not in dispute that the premises
- B mainly stand on plot No. 34 about which there is not even a shadow of doubt about its title either of the property or of the land and in this view of the matter, on the basis of the two documents put together in the context of the circumstances as they stand it could not be said that the respondent-landlord has ceased to be the owner thereof, in view of broad meaning of term 'owner' as has been discussed and considered above. In our opinion, it could not be said that the landlord is not the
- C owner of the premises and therefore we see no substance in the contention advanced by learned counsel for the appellant.

No other question was raised. We therefore see no reason to entertain this appeal. It is, therefore, dismissed. The respondents shall be entitled to the costs of this appeal.

D

N.P.V.

Appeal dismissed.