Faqir Chand

Vs

Shri Ram Rattan Bhanot

K. S. Gupta

Vs

Smt. Harbans Kaur

Civil Appeal Nos. 846 and 1343 of 1972

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

30.01.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. These two appeals by special leave are against the judgment of the High Court of Delhi allowing the appeals filed by the two respondents.

2. The respondents are landlords of two houses in the Karol Bagh area of Delhi. The houses are built on lands given on long lease by the Delhi Improvement Trust to the rights, liabilities and assets of which the Delhi Development Authority has since succeeded.

3. Under the terms of the lease, subject to revision of rent, the lessees were to put up residental buildings on the leased lands and the lessees undertook :

> "(vi) not to use the said land and buildings that may be erected thereon during the said term for any other purpose than for the purpose of residential house without the consent in writing of the said lessor; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the lessor ....."

4. The present landlords are not the original lessees but their successors in interest. Portions of buildings have been leased for commercial purposes, a barber shop in C.A. No. 846 and scooter repair shop in C.A. No. 1343. The Delhi Development Authority appears to have given notice to them, drawing their attention to the provision of the lease extracted above, and that as they had permitted the buildings to be used for commercial purposes contrary to the terms of the lease deed, the lease was liable to be determined and called upon them to discontinue the use of the land for commercial purposes, failing which they were asked to show cause why their lease should not be determined and the land, together with the buildings thereon, re-entered upon without any compensation to them. Thereupon the landlords issued notice to the tenants asking them to stop the commercial use of the buildings and later instituted the proceedings out of which these appeals arise. In both these cases the buildings had been put to commercial use even before 1957 when the

Delhi Development Authority Act of 1957 came into force.

5. The Controller dismissed the petitions filed by the landlords and the appeals filed by them were dismissed. They thereupon filed appeals to the High Court. A learned single Judge of the High Court taking a view contrary to two earlier decisions in Smt. Uma Kumari v. Jaswant Rai Chopra, ((1960) PLR 460 (Punjab HC) and S. P. Arora v. Ajit Singh, (ILR (1970) 2 Delhi 130 (HC) referred the question that arise in these appeals to a Division Bench which took a view contrary to that taken in the two earlier decisions above referred to, and decided in favour of the landlords.

6. The question that arises for decision in these cases is this : Are the landlords estopped or otherwise prohibited from getting possession of the property from the tenants because they themselves had let it out for commercial purposes. We shall set out the relevant portion of the statutory provisions regarding this question. Section 14 of the Delhi Rent Control Act, 1958 which deals with the question of protection to tenants against eviction, insofar as it is relevant, is as follow :

> "14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :
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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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> (c) that the tenant has used the premises for a purpose other than that for which they were let -
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> (i) if the premises have been let on or after June 9, 1952, without obtaining the consent in writing of the landlord; or
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> (ii) if the premises have been let before the said date without obtaining his consent;
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> # X X X X##
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> (k) that the tenant 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."

7. Sub-section (11) of the same section, which is also relevant, read :

> "(11) No order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct."

8. Section 14 of the Delhi Development Act, 1957 is as follow :

> "14. Before 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 :
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> Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force."

9. Before this Act was passed the United Provinces Town Improvement Act, 1919 was in force in Delhi and the Delhi Improvement Trust was constituted thereunder. It was this Trust which had leased the lands to the predecessors of the two landlords in the present appeals. The Delhi Development Authority established under the Delhi Development Act, 1957 succeeded to the assets, rights and liabilities of the Delhi Improvement Trust. We shall deal first with the question that arises under the Delhi Rent Control Act.

10. Clause (k) of the proviso to sub-section (1) of Section 14 provides 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 the ground that the tenant 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. In this case the lease granted by the Delhi Improvement Trust, the predecessors in interest of the Delhi Development Authority, to the predecessors in interest of the landlords contains a condition that any building to be erected on the land shall not be used for any purpose other than residential purpose. There is no dispute that part of each of the buildings is being used in a manner contrary to that condition. The landlord has also given notice asking the tenant to cease using the building for that purpose. The two earlier decisions referred to held that notwithstanding this provision the landlord was not entitled to get possession of the land because he himself had leased the building for a commercial purpose and was, therefore, estopped from claiming possession. The result will be this : The Delhi Development Authority can enforce the conditions of the lease and forfeit the leased land with the building thereon. In that case both the landlords as well as the tenant stand to lose. The landlords point out this situation and say that they are not interested in evicting the tenants but are interested only in seeing that the tenants do not use the buildings for commercial purpose with the consequences that they may have to lose the land and the buildings and the tenants also cannot any longer use it for a commercial purpose.

11. It has been argued on behalf of the tenants that this clause will apply only where the tenant has used the land after previous notice from the landlord, i.e. if the landlord had told him at the beginning of the tenancy that the building was not to be used for commercial purpose and notwithstanding that the tenant used it for a commercial purpose. They, therefore, contend that as in this case both the landlord and the tenant were aware of the use to which the building was to be put there is no question of any notice from the landlord asking the tenant not to use the building for commercial purpose and by merely issuing such notice the landlord cannot take advantage of clause (k). This is really another way of putting the argument that the landlord having granted the lease for a commercial purpose is estopped from contending that the tenant should not use it for commercial purpose. While the argument appears to be plausible we are of opinion that there is no substance in this argument. If it is a case where the tenant has contrary to the terms of his tenancy used the

building for a commercial purpose the landlord could take action under clause (c). He need not depend upon clause (k) at all. These two clauses are intended to meet different situations. There was no need for an additional provision in clause (k) to enable a landlord to get possession where the tenant has used the building for a commercial purpose contrary to the terms of the tenancy. An intention to put in an useless provision in a statute cannot imputed to the Legislature. Some meaning would have to be given to that provision. The only situation in which it can take effect is where the lease is for a commercial purpose agreed upon by both the landlord and the tenant but that is contrary to the terms of the lease of the land in favour of the landlord. This clause does not come into operation where there is no provision in the lease of the land in favour of the landlord, prohibiting its use for a commercial purpose.

12. The Legislature has clearly taken note of the fact that enormous extents of land have been leased by the three authorities mentioned in that clause, and has expressed by means of this clause its anxiety to see that these lands are used for the purpose for which they were leased. The policy of the Legislature seems to be to put an end to unauthorised use of the leased lands rather than merely to enable the authorities to get back possession of the leased lands. This conclusion is further fortified by a reference to sub-section (11) of Section 14. The lease is not forfeited merely because the building put upon the leased land is put to an unauthorised use. The tenant is given an opportunity to comply with the conditions imposed on the landlord by any of the authorities referred to in clause (k) of the proviso to sub-section (1). As long as the condition imposed is complied with there is no forfeiture. It even enables the Controller to direct compensation to be paid to the authority except in the presence of the authority. The authority may not be prepared to accept compensation but might insist upon cessation of the unauthorized use. The sub-section does not also say who is to pay the compensation, whether it is the landlord or the tenant. Apparently in awarding compensation the Controller will have to apportion the responsibility for the breach between the lessor and the tenant.

13. The provision of clause (k) of the proviso to sub-section (1) of Section 14 is something which has to be given effect to whatever the original contract between the landlord and the tenant. The leases were granted in 1940, and the buildings might have been put up even before the Delhi and Ajmer Rent Control Act, 1952, came into force. It was that Act that for the first time provided the kind of remedy which is found in clause (k). The relevant provision in that Act enabled the landlord to get possession where the tenant whether before or after the commencement of the Act used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Improvement Trust while giving him a lease of the land on which the premises are situate notwithstanding previous notice. The anxiety of the Legislature is to prevent unauthorized user rather than protection of the tenant or strengthening the hands of Development Authority in effecting forfeiture. The Development Authority can always resort to the terms of the lease. There is no estoppel here because both the landlord and the tenant knew that the tenancy was not one permitted under the terms of the lease of the land. In any case there can be no estoppel against the statute. It would not benefit the tenant even if it is held that the landlord cannot, under the circumstances, evict him. The landlord will lose his property and the tenant also will lose. He cannot, after the Development Authority takes over the building use it for a commercial purpose. We thus reach the conclusion that the lease in its inception was not void nor is the landlord estopped from claiming possession because he himself was a party to the breach of the conditions under which the land was leased to him. Neither the clear words of the section, as in Waman Shriniwas Kini v. Rati Lal Bhagwandas, (AIR 1959 SC 689 : 1959 Supp 2 SCR 217 : 1959 SCJ 635) nor a consideration of the policy of the Act lead us to the conclusion that the lease was void in its inception if it was for an unauthorised user.

14. We are also of the opinion that the High Court was not justified in leaving to the Controller no option but to pass an order for eviction. That would make the alternative provided in sub-section (11) of Section 14 useless. The High Court is not correct in saying that since the Authority has no power to legalize the misuser of land contrary to the plans by acceptance of compensation under the Development Act, the Controller cannot order the payment of compensation by the tenant to the Delhi Development Authority. This is in effect nullifying part of the provisions contained in sub-section (11) of Section 14. The High Court has arrived at its conclusion on the basis that Section 14 of the Delhi Development Act applies to this case. We shall presently show that section has no relevance to the decision of this case.

15. What has been done in Delhi is only a preparation of the master plan for Delhi under Section 7 of the Delhi Development Act, 1957. The High Court seems to have misread the provisions of the master plan because Karol Bagh is one of the areas mentioned in page 56 of the book containing the master plan for Delhi. The same list contains the built up residential areas of Daryaganj, Jama Masjid, Chandni Chowk and Fatehpuri. Nobody can say that there are no buildings in these areas used for commercial purposes. This list is at page 56 found in Chapter II which has the main heading "Zoning and sub-division Regulations" and sub-heading "Provisions regarding uses in 'use zones'", "Provision regarding requirements in use zone : Density, coverage, floor area ratio, set back and other requirements of use zones". A careful reading of that section which deals with individual plots; minimum plot size, plot coverage, floors, frontage of plots, set back lines, front set back, rear set back line, side set back line, service lanes, show that these are concerned with construction of buildings. The provision regarding requirement in use zones can come in only if the zonal development plans are prepared under Section 8 of the Delhi Development Act, 1957. It is that section which provides for a zonal development plan containing a site plan and use plan for the development of the zone. No such zonal development plan has been prepared. The High Court was, therefore, in error in proceeding on the basis that there was a plan in relation to this area which prohibits the use of this building under Section 14. It is under the terms of the lease granted by the Delhi Improvement Trust that the use of this building for commercial purpose is prohibited and not under the Delhi Development Act.

16. Moreover, Section 14 deals with prevention of the use of any land or building in the zone otherwise than in conformity with the zonal plan. Furthermore it applies to lands leased by authorities like the Delhi Development Authority containing conditions against unauthorised user as well as to lands which do not belong to that category. Its provisions are not intended to enforce the conditions in those leases. The proviso to that section deals with the use to which a land or building may continue to be put even after the coming into force of the zonal plan subject to such terms and conditions as may be prescribed by regulations, provided that building or land had been used for that purpose prior to the coming into force of the zonal plan. The section, therefore, does not contemplate complete prohibition of the use of a land or building for purpose other than that permitted in the zonal plan. Such uses can be continued subject to terms and conditions prescribed by the regulations provided it had been there even before the zonal plan. It is admitted that no such regulations have even been framed. Therefore, even if a zonal plan had come into operation in this area (we have already shown such a zonal plan has not come into force in this area) the previous use can be continued till the regulations are framed and after the regulations are framed they will be subject to the terms and conditions of those regulations. That zonal plans have not been prepared has been recognised by this Court in its decision in Municipal Corporation v. Kishan. ((1969) 2 SCR 166 : AIR 1969 SC 386 : (1969) 1 SCJ 764) We are of opinion, therefore, that Section 14 of the Delhi Development Act has no relevance in deciding the question at issue in these two appeals.

17. The appeal is allowed and the judgment of the High Court is set aside. The matter will have to go back to the Controller for deciding the question under sub-section (11) of Section 14 whether he should exercise the one or the other of the two alternatives mentioned therein. As already mentioned, no order awarding compensation under the second alternative given in that sub-section can be made except in the presence of the Delhi Development Authority. In the circumstances of this case we direct the parties to bear their own costs.

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