

Curewell (India) Ltd.

Vs

Sahib Singh (dead) by L.Rs. and others

Civil Appeal No. 462 of 1984

(Kuldip Singh, Dr. T. K. Thommen, M. N. Venkatachaliah, N. M. Kasliwal, Smt. M. S. Fathima Beevi, B. P. Jeevan Reddy, K. N. Singh, P. B. Sawant, G. N. Ray, R. M. Sahai, S. Mohan JJ)

18.12.1991

### JUDGMENT

1. This appeal by special leave is by a person who was put into possession of the premises in question by the principal tenant who obtained the land from the Government under a perpetual leasedeed. By the impugned judgment, the High Court held that for the periods ending respectively on 14-1-1979 and 21-6-1981, the appellant was liable to pay Rs. 1,17,761.73 and Rs. 3,57,391.61 as misuse charges. In default of payment of these two amounts, the High Court held that the appellant was liable to be evicted from the premises.

2. Counsel for the appellant, Mr. Bhat, contends that the misuser by the appellant had stopped in 1981. This, he submits, is clear from an affidavit filed by the Government in October, 1982. He, therefore, submits that there has been no misuser since 1981. Counsel further submits that although the appellant is liable to pay misuse charges for the period up to 21-6-1981, his liability is only for such misuse charges as are determined by the competent authority, namely, the Controller as provided under S. 14(11) of the Delhi Rent Control Act, 1958. Such a determination has not been made. The High Court, counsel says, wrongly held that the misuse charges claimed by the Government had been determined by the Rent Control Tribunal. The Tribunal had not made any such determination. In fact, the High Court was merely endorsing the claim of the Government in respect of the misuse charges. The Act does not postulate that the misuse charges can be unilaterally determined by the Government and that the person in possession of the land under a sub-lease from the original lessee is bound to pay it.

3. Mr. Mahajan appearing for the Union of India is not in a position to say whether the amounts ordered to be paid by the High Court had been determined by the statutory authority or whether the misuser has stopped, and if so when. We appreciate Mr. Mahajan's difficulty. The records made available to him do not clearly disclose these facts, apart from certain vague averments in the counter-affidavit filed on behalf of the Government of India.

4. Mr. Sodhi appearing for the original lessee submits that the lessee is entitled to evict the appellant by reason of his misuser. He submits that the appellant continues to misuse the premises contrary to the present submissions on behalf of the appellant. The amount payable by the appellant, counsel submits, is a matter for the concerned authority to decide.

5. S. 14 of the Delhi Rent Control Act, 1958 provides that misuser is one of the grounds on which a tenant is liable to be evicted. Cl. (k) of sub-sec. (1) of S. 14 reads as under:-

"(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;"

It is not in dispute that the premises in question is reserved for residential purposes and any user for non-residential purposes amounts to a misuser falling within the ambit of S. 14. It is also not disputed that the appellant had been called upon by the original lessee by notice to desist from using 'the building for non-residential purpose.

6. Sub-section (11) of S. 14 reads:

"(11). No order for the recovery of possession of any premises shall be made on the ground specified in Cl. (k) of the proviso to sub-sec. (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 the authority such amount by way of compensation as the Controller may direct."

This sub-section prevents eviction if the tenant has complied with the condition imposed on the landlord by the Government. The sub-section also requires the person in possession, namely, the sub-lessee to pay to the authority such amount by way of compensation as the Controller may direct. It is not in dispute that the original lessee, upon receipt of notice from the Government, had in turn issued notice to the sub-lessee, namely, the appellant calling upon him to stop misuser or vacate the premises. If the appellant has, as contended by him, stopped misuser, he is of course not liable to be evicted by reason of the protection given to him under sub-sec. (1). Nevertheless, for the past misuser, the appellant is liable to pay such charges as are payable in terms of the sub-section. The charges under the sub-section are such charges as are determined by the Controller. The Controller must, therefore, after hearing the parties determine the amount payable by the person responsible for the misuser, namely, the appellant who is the tenant of the original lessee and determine the correct amount.

7. We are of the view that the appellant is liable to be evicted unless he has already stopped or stops immediately the misuser of the premises and pays the misuse charges for the period of misuse. Whether the misuser has stopped, and if so when, are questions of facts which do not appear to be clear from the pleadings or the impugned judgment and the orders of the statutory authorities.

8. There is substance in the appellant's submission that the High Court was wrong in holding that the amount had been determined in the manner postulated in sub-sec. (11). We are of the view that the correct amount has to be determined by the Controller.

9. Accordingly, we set aside the impugned judgment of the High Court as well as the orders of the authorities and direct the Controller to issue notice to the original lessee and the sub-lessee 5 namely, the appellant and the Government represented by the Land and Development Officer and determine (1) the actual period of misuser by the appellant, and (2) the compensation payable by the appellant in respect of such misuser. We make it clear that if the appellant has stopped the misuser or if he stops the misuser within a period to be specified by the Controller and also pays the amount determined by the Controller as compensation, he shall have the protection of sub-sec. (11) of S. 14 from eviction on the ground mentioned in Cl. (k) of sub-sec. (1) of that section.

10. The appeal is disposed of in the above terms. No costs.

Writ Petitions Nos. 13473-74 of 1983

11. Counsel for the petitioners Mr. Bhat submits that in view of our judgment in Civil Appeal No.462 of 1984 ,the petitioners do not wish to press the writ petitions. The submission is recorded. Accordingly, the writ petitions are dismissed as withdrawn.

Order accordingly.

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