

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Order: 6.11.2008

CM(M) No.449/2002

PADMAWATI and ORS ...

Through: Petitioner
Mr.Vijay Tandon, Advocate

Versus

HARIJAN SEWAK SANGH ...

Through: Respondent
Mr.M.K. Kaushik with Mr.Sunil
Kumar Advocates

JUDGMENT(ORAL):

1. By this petition under Article 227, the petitioner has assailed an order of first appellate Court dismissing appeal of the petitioner.

2. The facts relevant for the purposes of deciding this petition are that one H.Kameshwar was working with Harijan Sewak Sangh, respondent, a registered society in the service of down trodden. Due to his being in service with the respondent, he was allotted premises in question for his residence as an incident of employment. He died on 13.3.1982. The petitioners are legal heirs of late H.Kameshwar and are in possession of the premises allotted to H.Kameshwar since his death. After death of H. Kameshwar, one of the sons was given service on compassionate grounds by respondent but he also resigned on 13.7.1984. The legal heirs of H. Kameshwar did not hand over the vacant possession of the premises allotted to H. Kameshwar after his death or after the resignation of his son and continued to be in illegal possession of this premises from 1984 till date on the basis of litigation in costs.

3. An eviction petition was filed by Harijan Sewak Sangh against the petitioner who are legal heirs of deceased H.Kameshwar. One of the LRs was a Sub-Inspector in Delhi Police, another an official of ISI, third an officer in PNB and fourth a teacher. The eviction petition was filed on the ground that premises was required by the respondent, Harijan Sewak Sangh, for furtherance of its activities. After appreciating the evidence, the learned Rent Controller came to conclusion that respondent was a public institution and the premises was let out to the deceased H. Kameshwar while in service or employment of the respondent and since H. Kameshwar died in 1982 and his son resigned in 1984, they had no right to continue in the premises. It was also observed that

the premises was required by Harijan Sewak Sangh for its own use for furtherance of its activities. An eviction order was passed by the ARC on 23.1.2001. The appeal against this order filed by the petitioners was dismissed by the ARCT after considering all the arguments raised by the petitioners and discussing the evidence and the law threadbare vide order dated 3.8.2002. This revision petition has been preferred assailing the order of learned ARCT in appeal.

4. Learned counsel for the petitioners argued that learned ARCT in its order observed that respondent Harijan Sewak Sangh was a corporate body and the premises was allotted to deceased as an employee at the time of employment. It is submitted that the observation of the learned ARCT that the respondent was a corporate body was contrary to record. It has not been proved that the respondent was a corporate body. Therefore, the order of the learned ARCT was bad in law.

5. I consider that the argument advanced by the petitioners' counsel is baseless and frivolous one. The respondent in eviction petition has categorically stated that the respondent was a Society registered under the Societies Registration Act. The petition was filed through Secretary of the Society. No issue was raised by the petitioners at any stage that the petition was not filed by a competent person or Harijan Sewak Sangh was not a registered Society. An observation by the ARCT that it was a corporate body would not change the basic facts of the premises having been allotted to late H. Kameshwar by the respondent as an incident of his employment and his death on 13.5.1982 and continuation of petitioners illegally in the premises thereafter without any rhyme and reason. A registered society can also sue and be sued in its own name and is an equivalent to corporate body as far as filing of a suit is concerned. The argument of the petitioners' counsel in this regard is therefore, rejected. There is no other ground on which this petition has been pressed.

6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

7. In the present case the petitioners have enjoyed a large premises consisting of three rooms, dining room, verandah, store, kitchen, bath and WC on ground floor at one of the prime locations in North Delhi near Kingsway Camp. The premises is situated in a sprawling green area and has large grounds around it, I consider that the petitioners are liable to pay as costs to the respondent-society for the unlawful gains by them by illegally holding this property for 24 years and 4 months. The average rental value of the property

in present days is around Rs.10,000/- per month. Though property was given on rent in 1982 to the petitioners' father at Rs.102.50 paise per month, but when premises are given to the employees on rent normally market rent is not charged and only nominal rent is charged. I consider that in order to see what would have been the rent during all these years, it would be appropriate to have an average rent. I consider that for such a premises Rs.5,000/- per month can safely be taken as average rent. The petitioners have deprived the respondent- society, who is in the service of down trodden, of this property for 292 months (24 years and 4 months). The petitioners are therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the respondents and which comes to Rs.14,60,000/- apart from litigation expenses and counsel's fee through out which is assessed at Rs.50,000/-. The petition is hereby dismissed with costs of Rs.15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, same shall be adjustable.

8. The petitioners who are high officials and hold high positions in the society have been in occupation of this property illegally all along. They are directed to vacate the premises within 30 days, failing which the Court of Addl. Rent Controller shall provide immediate police help for getting the premises vacated from the petitioners or whosoever is in occupation of the premises. For any reason, the premises is not vacated within 30 days, petitioners shall be liable to pay user charges at the rate of Rs.10,000/- per month.

9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

November 06, 2008.

Sd./-
SHIV NARAYAN DHINGRA, J.