

CASE NO.:
Appeal (civil) 3644 of 2002

PETITIONER:
M/S. BHARAT SALES LTD. & ANR.

Vs.

RESPONDENT:
SMT.LAKSHMI DEVI & ORS.

DATE OF JUDGMENT: 08/07/2002

BENCH:
D.P.MOHAPATRA, BRIJESH KUMAR.

JUDGMENT:

D.P.Mohapatra, J.

Leave is granted.

This appeal, filed by the tenants, is directed against the judgment of the High Court of Delhi dated 18th September, 2000 in S.A.O. No.363 of 1985 dismissing the appeal filed by the appellants herein with certain observations. The operative portion of the judgment is quoted hereunder :

"It was then urged that there is no rationale for the misuser charges demanded by the L&DO. This is really a matter between the L&DO and its lessee. Moreover, the quantification and apportionment of misuser charges are arithmetical matters of fact. I cannot go into all this in a second appeal. Under the circumstances, there is no option but to dismiss the appeal. The parties will pay the misuser charges in accordance with the order dated 14th August, 1984 passed by the learned Rent Controller. Respondent No.12, that is, the Union of India through the L&DO should quantify the subsequent misuser charges within a period of two months from today. The appellants should cease and desist from misusing the suit premises with effect from 1st January, 2001, failing which an order of eviction shall be deemed to have been passed against them.

The appeal is dismissed. There will, however, no order as to costs."

The appellants are the tenants on the first floor and barsati (hereinafter referred as 'the suit property') of P-2, Connaught Circus, previously known as 2/90,

Connaught Circus, New Delhi. The suit property was taken on rent from the predecessor in interest of respondents no.1 to 11, namely Ram Singh, sometime in 1950. The predecessor in interest of respondents no.1 to 11 had taken the suit property on lease from the Governor General in Council in 1938. The Governor General in Council is now succeeded by the Union of India acting through the Land and Development Officer (for short 'the L&DO'). It was stipulated in the lease that the leasehold property was to be used for commercial purpose. Despite the stipulation in the lease the lessee i.e. the predecessor in interest of respondents no.1 to 11 let out the suit property to the appellants for office purpose. The L & DO issued a notice dated 25.10.1968 to Ram Singh enumerating certain breaches in use of the leasehold premises, including misuse of first floor and barsati floors as office and misuse of unauthorized shop measuring 21'x7' as a tailoring shop. It was specifically stated in the notice that despite the previous notice issued under the L&DO's letter No.90(2C.C.)/63-LI, dated 9.2.1965 to stop/remove the misuser, the lessee had failed to comply with the notice. Therefore, in consequence of the failure on the part of the lessee to remedy the aforesaid breach the lessor had decided to determine the lease. The relevant portion of the letter dated 25th October, 1968 is extracted as under :

"Please take notice, therefore, that in consequence of your failure to remedy the aforesaid breach the Lessor has been pleased to determine the Lease and re-enter upon the premises with effect from 16.9.68 on & from which date, therefore all your rights and title in the leasehold property in question have ceased.

The entire plot of land forming the subject matter of the relevant Lease Deed and all the buildings standing thereupon including all structures, erections and fittings vest now in the President of India. Shri Bharat Bhushan, an Assistant Engineer of the Land and Development Office, has been directed to take possession of the premises from you and he will call upon you for this purpose on 13/11/68 at 10.30 A.M., and I, hereby call upon you to hand over peacefully the possession of the premises including land, buildings, fittings, fixtures, etc. to him."

In the meantime, Ram Singh had filed a petition for eviction of the petitioners under clauses (b), (c) and (k) of the proviso to Section 14(1) of the Delhi Rent Control Act, 1958 (hereinafter referred as 'the Act'), alleging sub-letting and misuser of suit property and breach of condition of the lease by the tenant in favour of the landlord. The Rent Controller dismissed the eviction petition vide order dated 18th August, 1981. The landlord filed an appeal, RCA No.717 of 1981 before the Rent Control Tribunal, Delhi

against the order of the Rent Controller. By the order dated 30th August, 1982 the Rent Control Tribunal affirmed the findings of the Rent Controller insofar as dismissal of the eviction petition filed under clauses (b) and (c) of proviso to Section 14(1) of the Act was concerned. It was stated by the Tribunal as regards clause (k) of proviso to Section 14(1) of the Act that "in view of the decision in the case of Lilawati V/s. K.B. Union Club 1981 Rajdhani Law Report p.524, it is admitted that ground of eviction is available and notice under Section 14 (11) be directed to be issued." Accordingly, the Rent Controller was directed to issue notice to the L & DO under Section 14(11) of the Act to determine the misuser charges. The parties were directed to appear before the Rent Controller. In compliance with the order of the Tribunal, the Rent Controller by its order dated 14th August, 1984 apportioned the misuser charges between the parties and directed the payment as apportioned and determined. It was further directed that in case there is any violation of the order by the tenants an order of eviction would be deemed to have been passed against them. Against the said order the appellants herein filed an appeal no.957 of 1985 before the Rent Control Tribunal. They also filed, though belatedly a petition for review of the order dated 30th August, 1982 on the ground that the counsel appearing for them (appellants) would not make a concession in law that the ground for eviction under clause (k) of proviso to Section 14(1) of the Act had been made out. By the order dated 19th August, 1985 the learned Tribunal dismissed the appeal as well as the review petition filed by the appellants. Therefore, they filed the second appeal before the High Court of Delhi which was decided by the impugned judgment. In the impugned judgment, as noted earlier, the High Court dismissed the appeal.

At the outset, Dr. Rajeev Dhawan, learned senior counsel appearing for the appellants, contended that the appellants do not intend to contest the order of eviction passed by the statutory authorities under clause (k) of proviso to Section 14(1) of the Act and that they are ready to handover vacant possession of the suit property to any party as this Court may direct. Thereafter Dr. Dhawan challenged the order passed by the Rent Controller purportedly under Section 14(11) of the Act. He contended that since the tenant is ready and willing to deliver possession of the suit property to the lessor or the lessee as the Court may direct, it cannot be made liable for payment of any amount towards the misuser charges. Dr. Dhawan further contended that since the owner (Governor General in Council succeeded by the Union of India) had decided to cancel the lease in favour of the lessee (predecessor in interest of respondents no.1 to 11) and to re-enter the property, the landlord or the petitioners has no locus standi to claim apportionment of misuser charges in the proceeding under the Act. Indeed, according to Dr. Dhawan, the proceeding under the Act is not maintainable and should be dismissed as infructuous.

Shri Jaspal Singh, learned senior counsel appearing for the respondents no.1 to 11 and respondent no.14 who had purchased the property during pendency of the proceedings, strenuously urged that the appellants having been responsible for misuser of the suit property cannot be absolved of liability to pay misuser charges under Section 14(11) of the Act. The learned counsel further contended

that the Tribunal rightly directed the Rent Controller to proceed under Section 14(11) of the Act giving notice to the L & DO and quantify the misuser charges and apportionment of the same between the parties.

In the context of the facts and circumstances discussed above, the question that arises for determination is whether in this proceeding the appellants could be made liable for payment of any amount towards the misuser charges as determined under Section 14(11) of the Act? The further question that arises in this connection is whether after determination of the lease of the suit property granted in favour of the predecessor in interest of respondents no.1 to 11 and the decision of the lessor to re-enter the property whether the proceeding under Section 14 of the Act should be proceeded with and any order passed therein can be said to be valid and binding on the parties?

At the beginning it would be convenient to quote clauses (b), (c) and (k) of proviso to Section 14(1) and Section 14(11) of the Act, which reads as follows:

"14. Protection of tenant against eviction.- (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:

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:-

Xxx xxx xxx

(b) that the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

(c) that the tenant has used the premises for a purpose other than that for which they were let-

(i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or

(ii) if the premises have been let before the said date without obtaining his consent;

(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;

xxx xxx xxx

(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."

Since the order of eviction of the tenant passed under clause (k) of proviso to Section 14(1) is not being challenged it is not necessary for us to enter into the correctness or otherwise of the said order. Coming to the order of the Rent Controller dated 14th August, 1984 passed under Section 14(11) of the Act regarding the determination of misuser charges in the context of the facts and circumstances of the case, we are of the view that the answer to the question depends on interpretation of clause (k) of proviso to Section 14(1) and Section 14(11) of the Act. From the statutory provisions quoted earlier it is manifest that user of the premises by the tenant for a purpose other than that for which it was let without obtaining the consent of the landlord, is itself a ground for eviction under clause (c) of proviso to Section 14(1) of the Act. Under clause (k) of proviso to Section 14(1) of the Act an independent ground of eviction is laid down in case of properties obtained on lease by the landlord from the Government or the Delhi Development Authority or the Municipal Corporation of Delhi. It is provided in that clause that if the tenant, notwithstanding the previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government while giving him lease of the property the tenants shall be liable for eviction. From this provision it is clear that the tenant is given an opportunity to stop the misuser or stop breach of condition of the lease and discontinue the misuser by issuing a notice to him and despite such notice he having failed to take the necessary steps for stoppage of misuser, a right is vested in the landlord to seek order of his eviction. Under sub-clause (11) of Section 14 yet another opportunity is given to the tenant to comply with the conditions imposed on the landlord by any of the authorities referred to in clause (k) of sub-section (1) of Section 14 of the Act and pay back the authority such amount by way of compensation as the Controller may direct before recovery of possession of the premises. From the scheme of the statutory provisions noted above, it is clear to us that the provisions are

intended for protection of the tenant against eviction from the premises. Then the question that arises is whether a tenant who is not interested in seeking such protection and wants to vacate the premises could be compelled to pay misuser charges in the proceedings under the Act? The answer to the question, in our considered opinion, is in the negative. But that is not to say that the owner of the property or landlord of the tenant is precluded from realizing any compensation or damages for misuser or unauthorized user of the suit property. The Rent Control legislation, being intended for the benefit of a tenant and to protect legitimate interests of a landlord does not contemplate of a proceeding which in essence will be a substitute for a suit or other proceedings under law for realisation of damages or mesne profits.

In the case of Faqir Chand vs. Smt. Harbans Kaur, AIR 1973 SC 921, this Court construing the statutory provisions in Section 14(11) and clause (k) of Section 14(1) proviso of the Act, observed :

"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 be 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 land in favour of the landlord. That 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.

.The policy of the legislature seems to be to put an end to unauthorized 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 unauthorized use. The tenant is given an opportunity to comply with the conditions imposed on the landlord by any of the authorities referred to in Cl.(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 for a breach of the conditions. Of course, the Controller cannot award the payment of compensation 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."

In the case of Dr.K.Madan vs. Krishnawati (Smt.) & Anr., (1996) 6 SCC 707, this Court, construing Section 14(1)(k) and Section 14(11) of the Act held as follows:

"Section 14(1) of the Act gives protection to the tenants from being evicted from the premises let out to them. Clauses (a) to (l) of the proviso to Section 14(1) of the Act contain the grounds on which recovery of possession of the premises can be ordered by the Controller. Where the premises are used in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or Municipal Corporation of Delhi, then the landlord would be entitled to recovery of possession under Section 14(1)(k) of the Act. Sub-section (11) of Section 14, however gives an option to the Controller to pass an order under sub-section (11) of Section 14 of the Act whereby the tenant is directed to comply with the conditions imposed on the landlord by the authorities referred to in clause(k) namely to stop the misuser of the premises in question. Sub-section (11) of Section 14 also uses the words "pays to that authority such amount by way of compensation as the Controller may direct". Keeping in view the fact that clause (k) of the proviso to sub-section (1) has been inserted in order that the unauthorized use of the leased premises should come to an end, and also bearing in mind that the continued unauthorized use would give the principal lessor the right of re-entry after cancellation of the deed, the aforesaid words occurring in sub-section (11) of Section 14 cannot be regarded as giving an option to the Controller to direct payment of compensation and to permit the tenant

to continue to use the premises in an unauthorized manner. The principal lessor may, in a given case, be satisfied, in cases of breach of lease to get compensation only and may waive its right of re-entry or cancellation of lease. In such a case the Controller may, instead of ordering eviction under Section 14(1)(k) of the Act, direct payment of compensation as demanded by the authorities mentioned in clause (k). Where, however, as in the present case compensation is demanded in respect of condoning/removal of the earlier breach, but the authority insists that the misuser must cease then the Controller has no authority to pass an order under Section 14(11) or Section 14(1)(k) of the Act giving a licence or liberty of continued misuser. In other words, sub-section (11) of Section 14 enables the Controller to give another opportunity to the tenant to avoid an order of eviction. Where the authority concerned requires stoppage of misuser then an order to that effect has to be passed, but where the authority merely demands compensation for misuser and does not require the stoppage of misuser then only in such a case would the Controller be justified in passing an order for payment of compensation alone.

The observations of this Court in Punjab National Bank case (1986) 4 SCC 660, to the effect that as long as the penalty continued to be paid, deviation to user could be permitted, do not appear to be in consonance with the decision of the larger Bench in Faqir Chand case. Continued wrongful user cannot be permitted by levying penalty but if the authorities do not require the stoppage of misuser, but merely ask for payment of penalty or compensation, then in such a case, an order of eviction or for stoppage of premises need not be passed and it will be sufficient if compensation is required to be paid."

The principles laid down therein were reiterated in the case of Munshi Ram & Anr. vs. Union of India & Ors., (2000) 7 SCC 22. In paragraph 9 of the judgment it was observed, inter alia, that : "the first opportunity to the tenant is given when the notice is served on him by the landlord and second opportunity is given when a conditional order under Section 14(11) of the Act is passed directing the tenant to pay the amount by way of compensation for regularization of user up to the date of stopping the misuser and further directing stoppage of unauthorized user". The Court has further observed : "The continued unauthorized user would give the paramount

lessor the right to re-enter after the cancellation of the lease deed". Then the Court took note of the fact that the Delhi Development Authority insisting on stoppage of misuser which was contrary to the terms of the lease. This Court also held that : "DDA cannot be directed to permit continued misuser contrary to the terms of the lease on the ground that zonal development plan of the area has not been framed."

In the case in hand, the clear factual position that emerges is that the appellants had used the suit property in a manner contrary to the stipulations in the lease granted by the paramount lessor in favour of their landlord. The paramount lessor had given notice to the lessee (landlord) to stop the misuser; despite such notice the misuser had continued. Therefore, the paramount lessor passed the order of termination of the lease and of reentry; the possession of the suit property continued with the tenants (appellants). In such circumstances the landlords (respondents no.1 to 11) were entitled to seek eviction of the tenants under clause (k) of proviso to Section 14(1) of the Act. The Controller was within his jurisdiction in passing the order of eviction under clause (k) of proviso to Section 14(1) of the Act. Regarding the order purportedly passed under Section 14(11) of the Act it has to be kept in mind that the L & DO representing the paramount lessor had not stated before the Controller its intention to receive misuser charges or permit such misuser despite the order of cancellation of the lease and reentry of the property. As noted earlier, Dr. Dhawan, learned senior counsel appearing for the appellants has, at the very outset, conceded that the appellants are not challenging the order of eviction passed against them and they are ready and willing to deliver vacant possession to the landlord or the paramount lessor as this Court may direct. In such circumstances the question of Controller directing the tenant to pay misuser charges does not arise. To maintain such an order will mean that even if the tenant has no intention to continue in possession of the premises and even if he is not contesting the eviction order the controller in exercise of his statutory power will compel him to pay misuser charge and continue in possession of the property. The Legislature could not have intended to create such a situation while enacting the provision in Section 14(11) of the Act. At the cost of repetition we would like to state here that we do not intend to hold that in such a situation the landlord or the paramount lessor cannot realize compensation, damages or mesne profits for wrongful user of the property from the tenant or erstwhile tenant. However, this purpose cannot be achieved by an order of the Controller under Section 14(11) of the Act in the situation as discussed earlier. Therefore, the position that emerges is that the order passed by the Controller for eviction of the appellants under clause (k) of proviso to Section 14(1) of the Act which was confirmed by the appellate authority and the High Court has to be maintained. The order passed by the Controller under Section 14(11) of the Act determining the misuser charges and apportioning the same between the parties which was also confirmed by the appellate authority and the High Court is unsustainable and has to be set aside.

Then the question arises to whom the tenants should be directed to deliver possession of the premises ? Ordinarily, in a case where the order of eviction passed by the Controller is confirmed then the landlord is entitled to recover possession of the premises from the tenant. But in

the present case, as noted earlier, the order terminating the lease granted by the Union of India in favour of the landlord has been passed and re-entry upon the premises has already been ordered; if possession of the premises has not yet been taken over, it may be due to pendency of the proceedings. In the particular facts and circumstances of the case we are of the view that the tenant should deliver possession of the premises to the Union of India represented by L&DO.

The appeal is allowed in part and the order passed by the Controller under Section 14(11) of the Act which was confirmed by the appellate authority and the High Court is set aside leaving it open to the respondents to proceed for realisation of compensation, damages or mesne profits for misuser of the property by the tenants in accordance with law. The appellants are directed to deliver vacant possession of the suit property to the Union of India represented by the L & DO within one month. There will be no order for costs.