

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Nazar Akbar

R.A No.256 /2004

Applicant : Muhammad Khalid
through Mr. Shahanshah Hussain,
Advocate

Respondent : Muhammad Khaliquir Rehman
None for the Respondent.

R.A No. 257 /2004

Applicant : Muhammad Hanif Khan
through Mr. Shahanshah Hussain,
Advocate

Respondent : Muhammad Khaliquir Rehman
None for the Respondent.

Date of hearing : 16.08.2016

Date of announcement : 26.08.2016

JUDGMENT

NAZAR AKBAR, J:- I intend to dispose of these two Revision Applications by a common judgment as both the revisions are directed against a common judgment dated **31.7.2004** passed by VI Additional District Judge, East Karachi whereby Civil Appeals No.123 and 127 of 1999 filed by Appellants/Applicants herein were dismissed and the judgment & decree dated **08.07.1999** and **28.07.1999** passed by the III Sr. Civil Judge East, Karachi in Suits No.2142 and Suit No.2177 both of 1985 filed by Respondent against the applicants were maintained.

2. Brief facts of the case are that the Applicants in R.A No.256/2004 (Defendant in Suit No.2142/1985) and R.A.No.257/2004 (Defendant in

Suit No.2177/1985) have been in occupation / possession of two different portions of Plot No.672/2 respectively, situated in Motomal Compound, Jamshed Quarters, Karachi an Evacuee Property since 1948-49. After construction on the said portions of plot they are residing therein as “displaced persons”. The Applicants alongwith other occupants had approached Settlement Department for transfer of their respective occupied portions in their names but no decision was taken on their applications by the Settlement Department. In the year **1970** the Applicants alongwith other residents approached Settlement Department and submitted relevant documents for transfer of the portions in their possession. The then Settlement Commissioner by his letter No.(OS)SCK-E-1243 dated **28.9.1970** forwarded their applications to the then Deputy Settlement Commissioner and the matter was fixed for hearing on **22.1.1971** when the applicants were represented through their counsel. However, during the course of proceedings on **27.3.1971** the then Deputy Settlement Commissioner advised the Applicants and other occupants to file ‘**B.S. Form under Scheme No.VIII** (Amended) as the Chief Settlement Commissioner had invited such applications upto **31.3.1971**. Accordingly, the Applicants filed B.S. Form in time but no action for disposal of their forms has been taken by the Settlement Department.

3. Suddenly on **5.10.1978** the Respondent filed separate Civil Suits for possession, mesne profit and injunction against six different persons including two Suits bearing Suit 2391/79 and 2394/79 respectively against the applicants which were renumber in 1985 as **Suits No.2177/1985** and **2142/1985** in the court of Ist Sr.Civil Judge, Karachi. The case of the respondent was that he had purchased a portion of plot No.672/5 situated

at New Town, Karachi measuring 221 sq.yds. The Applicants filed their respective written statements. All the suits were ordered to be consolidated by the trial court. The learned trial court framed various issues on different dates and evidence was also recorded. All six suits were heard by IIIrd Sr. Civil Judge, East, Karachi who decreed them by one consolidated judgment dated **28.7.1999**. The applicant challenged the said judgment by filing Civil Appeal No.123/1999 and 127/1999 in respect of the portions of plot in their occupation. These appeals alongwith other appeals were heard by the learned VIth ADJ East, Karachi who dismissed the same by a common judgment and decree dated **31.7.2004**. The Applicants through these revisions have challenged the said judgment and decree of the learned IIIrd Sr.Civil Judge and of VI ADJ East, Karachi to the extent of their portion of plot in their occupations.

4. These revisions were filed on **20.10.2004** and after notice the following admission order were passed on **11.11.2004** in both the revisions:-

11.11.2004

Mr. Shahanshah Hussain, Adv.

1. Granted.
2. Granted with all just exceptions.

3&4. It is contended that the applicant is in possession of the premises (Evacuee Property) since 1948. Application for allotment was pending. It is contended that without prejudice of the applicant's right, the position of the applicant would be a tenant and suit for possession is not maintainable in absence of notice **U/S.30** by the transferee of the property and the applicant cannot be dispossessed.

To examine the above contentions revisions are admitted. Notice, the operation of the impugned judgment is suspended.

Sd/-
Judge

On **27.1.2005**, Mr. G. M. Saleem, advocate filed power on behalf of Respondents but except on 13.4.2005, 12..2005, 20.4.2006 & 10.4.2007, he never attended the case.

5. I have heard learned counsel for the applicant and gone through the record. The only ground taken by the learned counsel in these civil revisions is that the applicants are admittedly occupants of the suit premises as “displaced persons” in terms of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (hereinafter DP(C&R) Act of 1958). This plea was taken by the applicants in their written statement and they have produced correspondence showing that they are old occupants of the property since 1948-1949. The property in question has been declared Evacuee Property and therefore, it was disposed of in terms of the DP (C&R) Act, of 1958. Therefore, the Civil Court had no jurisdiction to dispossess the occupants who were in possession of the evacuee property and the suit was barred in terms of **Section 30** of the DP (C&R) Act of 1958. The possession of the occupants / applicants in terms of **Section 30** ibid was protected and they were to be treated statutory tenants by the transferees and / or subsequent purchaser from transferee of the Settlement Department. However, the trial court despite framing issue about maintainability of the suit exercised it jurisdiction and decreed the suit. The appellate court also did not examine the provisions of DP (C&R) Act of 1958. Learned counsel has relied on the following case law:-

- 1) Muhammad Ramzan ..Vs.. Ch. Bashir Ahmed (PLD 1981 SC 340)
- 2) Hashim ..Vs... Mrs. Hamida Begum and another (PLD 1981 Kar. 151).

and contended that in view of the above case law the civil court had no jurisdiction to entertain suit for recovery of possession. In fact the only remedy available with the transferee of the suit property in terms of **Section 30** of the DP(C&R) Act of 1958 for subsequent buyer was to invoke provisions of relevant rent law governing the relationship of landlord and tenant. Transferee and the subsequent purchaser have never sent any notice of such transfer to applicants/occupants who had become statutory tenant.

6. I have examined the evidence on record. The Respondent has examined himself and also produced Nooruddin as **PW-2** who admitted that he was Transferee of the portion of the suit plot from Settlement Department and the applicants/Defendants were already in possession / occupation of about 40 or 48 sq.yds portion of the suit plot. He has also admitted that he has not filed any case to seek possession of suit plot. In his cross-examination he admitted that:-

“he has not filed any civil suit against the Defendant/applicant for possession.....It is correct that applicants were immigrants from India”.

He further stated that:-

“It is correct that the name of the area which I am residing is the Motomal Compound. The plot in question is situated inside the Motomal Compound. It is correct that Motomal Compound is surrounded with compound wall from all the side. It is correct that there was about 80/90 houses constructed in the Motomal Compound.....

.....
I see order dated 8.10.1969 passed by Deputy Settlement Commissioner, as Ex. P/14.....Voluntarily says that Hanif and Khalid were in possession of their respective portion since 1948-49.

.....
I do not know as to whether plaintiff had got any meeting with the defendant 2 or 3 persons who came from India during partition occupied some respective portions in Motomal Compound. It is correct that in the

partition I also occupied the Motomal Compound. Only 4/5 persons received the transfer order from Settlement Department.”

The Respondent in his own evidence has also admitted that:

“after purchase of plot I had visited the site of plot for about 4/5 times. When I visited the plot first I had met the Defendants. I asked them to vacate the plot in question. Few months after my purchase I had met with the Defendants at the plot in question. At that time my father was with me and Defendants were called in the house of Nooruddin. On my request for vacation of my plot Defendants promised that they will vacate the plot in question”

In view of the above evidence both the courts below while holding that the Respondent / Plaintiff was owner of suit plot have failed to appreciate that the property acquired by the respondent was an “evacuee house” and it was in possession of the applicants herein at the time of its transfer by the Settlement Commissioner, and therefore, the applicants notwithstanding anything contained in any other law, has become the tenant of the transferee / subsequent purchasers. The record shows that the Respondent/Plaintiff has purchased the suit property from Nooruddin, the Transferee, who had acquired it from the Settlement Department and both the Transferee and the subsequent purchaser admit that before the transfer of the suit property to the Respondent, the applicants were residing / occupying the same as “displaced persons” being immigrant from India in 1947-1948 .

7. In view of the above facts clearly available on the court file the failure of the Court to examine and apply provisions of **Section 30** of the DP(C&R) Act of 1958 has deprived the applicants of their right to be dealt with as statutory tenant in terms of the provisions of **Section 30(4)** of the DP (C&R) Act of 1958. Once it was established that the applicants were in possession of “evacuee house” and the same has been transferred to the

respondent by the Settlement department, the Court was under an obligation to apply its judicial mind to the provisions of **Section 30** of the DP (C&R) Act of 1958, which reads as follows:-

“30. Protection of certain occupants.—(1) Where any person is in possession of any evacuee house, or shop, or has been declared, by a custodian to have tenancy rights from a date prior to the fourteen day of August, 1947, in any industrial concern, cinema house or printing press which is transferred to any other person under the provisions of this Act, then, notwithstanding anything contained in any other law such person shall without prejudice to any other right which he may have in that house, shop, industrial concern, cinema house or printing press, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held in immediately before transfer:-

Provided that--

(a) it shall be lawful for the **transferee to charge a rent** on the basis of the latest assessment carried out by the municipality or local authority, as the case may be, for other properties in the locality generally, and

(b) **it shall not be lawful for the transferee to eject such persons from the house or shop for a period of six years**, and from the industrial concern, cinema house or printing press for a period of three years **from the date of transfer, notice of which shall be given by the transferee to the tenant within one month of such transferee** registered post (acknowledgment due).

(2)

(3)

(4) On the expiry of the period mentioned in proviso (b) to subsection (1) or on the contravention of any of the provisions of subsection (3), whichever is earlier, **the relationship of landlord and tenant between the transferee and the tenant shall be regulated in accordance with the law for the time being in force relating to such relationship.** (The emphasis has been provided, to highlight relevant and important portions in Section 30).”

An analysis of provision of **Section 30** of DP(C&R) Act of 1958 in the given facts and circumstances of the case clearly indicates that the

applicants were statutory tenants of the respondent. They were neither illegal occupants nor trespasser, therefore, the respondent, instead of filing suit for recovery of possession under **Section 8** of the Specific Relief Act, 1877 should have approached the Rent Controller for eviction of the applicants as well as he should have claimed rent from the applicants instead of mesne profit. In fact the two courts below erred in law when they failed to appreciate that in the year **1985**, the relationship between the applicants and the Respondent by operation of law, irrespective of the other legal right accrued to the parties, were governed by the Sindh Rented Premises Ordinance, 1979. The two case law relied upon by the learned Counsel for the Applicant supports the inescapable conclusion that by application of **Section 30** of DP(C&R) Act of 1958 the relationship between the respondents / plaintiffs and the applicants / defendants was governed by Special Law, i.e. Sindh Rented Premises Ordinance, 1979 therefore, the suit for recovery of possession and mesne profit against the tenant was not maintainable.

8. The two case law cited by the Counsel for the applicants supports the legal proposition that an owner of evacuee house as transferee or buyer cannot seek recovery of possession through civil suit. His remedy lies in the Court of Rent Controller. The relevant portion from the case law reported in Hashim V. Mrs. Hamida Begum and another (PLD 1987 Karachi 151) is reproduced below:-

“The ratio decidendi in the case of Muhammad Moosa and 2 others v. Shabbir Ahmad and another supports the contention of the learned counsel for the appellant that, where the property transferred to a person under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1958, is a building site on which construction existed, which is

either used as a commercial or a residential unit, then the occupant of such construction shall be deemed to be a tenant of the transferee within the meaning of section 30 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958. The above cited case having been decided by a Division Bench of this Court is binding on me as a Single Judge, and, therefore, I hold that the suit instituted by the respondent against the appellant for possession and mesne profits was not maintainable, as the appellant shall be deemed to be a tenant in respect of the shop premises on the above building site, which was transferred to the respondent, within the purview of section 30 of the Displaced Persons (Compensation and Rehabilitation) Act in view of the decision in the case of Muhammad Moosa and 2 others v. Shabbir Ahmad and another. I accordingly accept the appeal, set aside the judgment and decree passed by the first appellate Court and restore the order of the trial Court. In the circumstances of the case, there will be no order as to costs.”

In the case of Muhammad Ramzan V. Ch. Bashir Ahmed (PLD 1981 SC 340), the Hon’ble Supreme Court while dealing with the provisions of **Section 30** of DP(C&R) Act of 1958 after the repeal of the said Act had made two clarifications about the **Section 30** *ibid*. The clarification No. 1 is relevant and the same is reproduced below:-

“Therefore, the right, privilege, obligation or liability or for that matter the penalty or forfeiture and other similar incidence covered by various clauses of section 6 of the General Clauses Act would not apply to those provisions of section 30 after the repeal which were of transitory and temporary character.

Two clarifications need to be made here :-- .

“(1) **That subsection (4) of section 30 which, inter alia, contains an element of permanence would of necessity be read with the first part of section 30:-** it is the application of the ordinary laws including the Rent Restriction Laws after the expiry of the temporary phase or the repeal of the law which ever happens to be earlier. **The repeal Would not nullify the mandate contained in section 30(4) with regard to the application of ordinary laws** (including the Rent Restriction Laws) **after the repeal ; and”**(emphasis provided)

9. In the light of the evidence discussed in para 6 above and on the strength of the above observations of the Supreme Court and High Court, I hold that the applicants have established by means of evidence before the trial Court that they were statutory tenants of the respondents since the respondents had purchased “evacuee house” in possession of the applicants prior to its transfer under the DP (C&R) Act of 1958 and therefore, the Civil Court had no jurisdiction to entertain the suit against the applicants. The finding of the trial Court on the question of maintainability in the absence of jurisdiction was erroneous and it was clear cut case of assumption of jurisdiction which did not vest in the Court to redress the grievance of respondents, if any, against the applicants.

10. In view of the above discussion, the two revisions are allowed with no order as to cost and the judgment and decree of the trial Court and the appellate Court passed in Civil Suit No. 2142 and 2177 of 1985 and Civil Appeal No. 123 and 127 of 1994 respectively are set aside.

J U D G E

Karachi
Dated:26.08.2016

SM