



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 19 November 2024**

Judgment pronounced on : 26 November 2024

+ LPA 1129/2024 and CM APPL. 67137/2024 (Interim Relief)

MOHD ARSHAD AND ORSAppellants

Through: Mr. Rajesh Mahajan, Ms. Jyoti Babbar, Mr. Ranjeeb Kamal Bora, Advs.

versus

UNION OF INDIARespondent

Through: Mr. Ajay Jain, SPC with Mr. Krishna Sharma, Mr. Bijay Lakshmi, Mr. Manoj Gautam, Mr. M.N. Mishra, Mr. Harshit Batra and Mr. Manoj Sharma, Advs. for R-1

Mr. Rajat Aneja and Mr. Anant Chaitanya Dutta, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The appellants have instituted the present LPA¹ in terms of Clause 10 of the Letters Patent of Lahore, as applicable to the Delhi High Court, read with Section 10 of the Delhi High Courts Act, 1996, assailing the impugned order dated 06 November 2024, passed by the learned Single Judge of this Court, whereby the writ petition bearing

¹Letters Patent Appeal



WP(C) No. 15470/2024 titled “*Dr. Mohd Arshad v. Union of India*” seeking setting aside of the order dated 10 March 2022 passed by the learned ARC² (South), Saket Courts, New Delhi, (*hereinafter referred as the learned ‘Executing Court’*) in Execution Petition No. 331/2017 arising out of Eviction Petition 6265/2016, was dismissed by the learned Single Judge.

FACTUAL BACKGROUND:

2. Briefly stated, the appellants were inducted as tenants of Property bearing No. 111(Old) & 261(New) *Basti Hazrat Nizamuddin*, New Delhi (*hereinafter referred to as “subject property”*) belonging to the respondent No.2 in the year 1953.

3. Eventually, the respondent No.2-landlord filed an Eviction Petition bearing No. 6265/2016 (old No. 40/2012) under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 [“**DRC Act**”] before the learned ARC, seeking eviction of the appellants-tenants on the ground of *bona fide* requirement for more accommodation for himself and his family. The said petition is the inception point of the long drawn-out litigation that ensued between the appellants-tenants and the respondent No.2-landlord herein.

4. Shorn of unnecessary details, the appellants-tenants filed an application seeking leave to defend, which was allowed by the learned ARC *vide* order dated 08 August 2016. Respondent No.2-landlord feeling aggrieved, filed CM (M) No. 1007/2016 before this Court and

²Additional Rent Controller



the above said order passed by the learned ARC was quashed *vide* order dated 14 February 2017 and resultantly, an eviction order was in favour of the respondent No.2-landlord in terms of Section 14(7) of the DRC Act.

5. The aforesaid order of this Court was assailed by the appellants-tenants by way of SLP (C) No. 15776/2017 which ultimately came to be dismissed on merits by the Supreme Court *vide* order dated 04 July 2017, thereby observing that the order dated 14 February 2017 did not require any interference.

6. Subsequently, the respondent No.2-landlord instituted an Execution Petition bearing No. 331/2017 in which the appellants-tenants filed two applications under Section 151 of the Code of Civil Procedure, 1908, *inter alia* contending that the area in which the subject property is situated falls outside the purview of the DRC Act for not being an “urbanized area”, hence the eviction order against them is a “nullity”. However, the learned ARC *vide* order dated 10 March 2022 dismissed such contentions along with all the other objections, thereby issuing warrants of possession against the appellants-tenants.

7. It is pertinent to mention here that in the said execution proceedings, by way of the aforesaid applications, the appellants-tenants for the first time raised the issue of jurisdiction viz., Notifications dated 03.06.1966, 14.04.1979 and 06.05.1982 issued under sub-Section(2) of Section (1) of the DRC Act not having



designated *Basti Hazrat Nizamuddin* as “urbanized”. In response, the respondent No.2-landlord, in the said execution proceedings, relied upon Notification under Section 507 of the Delhi Municipal Corporation Act, 1957, claiming that all the areas of Delhi, barring a few pockets, but including *Basti Hazrat Nizamuddin*, have been declared as “urban areas” *vide* said notification. It was also specifically averred that the MCD³ had received House Tax from the owners of *Basti Hazrat Nizamuddin* and the plans of buildings were being sanctioned by the MCD, and on this basis, it was averred that the DRC Act was applicable to the limits of *Basti Hazrat Nizamuddin*, and that the subject property is situated in an urban area and not a rural area.

8. Anyhow, since the contentions raised by the appellants-tenants before the executing Court did not come to their rescue, the appellants-tenants invoked the Appellate jurisdiction of the learned RCT⁴(South) by filing an appeal under Section 38 of the DRC Act, assailing the order dated 10 March 2022 passed by the learned ARC. To cut the long story short, such appeal came to be dismissed by the learned RCT on 01 July 2022 on the ground of maintainability, thereby restoring effect and operation to the order dated 10 March 2022 passed by the learned ARC.

9. The said decision precipitated the filing of yet another CM (M) No. 661/2022 by the appellants-tenants before this Court, under

³Municipal Corporation of Delhi

⁴Rent Control Tribunal



Article 227 of the Constitution of India, 1950, which also came to be dismissed by this Court *vide* order dated 15 October, 2024, thereby observing that the right to appeal was not available to the appellants-tenants as per the proviso to Section 25B(8) of the DRC Act.

10. The unrelenting appellants-tenants then preferred a Rent Revision Petition under Proviso to Section 25B(8) of the DRC Act, assailing the order dated 01 July 2022, which petition was ultimately dismissed as withdrawn with liberty to the appellants-tenants to pursue appropriate remedies in accordance with law.

11. In the said backdrop, the appellants-tenants now invoke the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, by instituting a writ bearing WP(C) No. 15470/2024 for setting aside of the order dated 10 March 2022 passed by the learned ARC. It is in the said writ proceedings that the order--cum-judgment dated 06November 2024, which is presently impugned before us, came to be passed by the learned Single Judge of this Court.

IMPUGNED ORDER:

12. Suffice to state, the writ petition bearing WP(C) No. 15470/2024 filed by the appellants-tenants also met with the same fate resulting in the impugned order dated 06November 2024, the relevant portions of which are extracted hereunder:

“7. The Court has considered the aforementioned contentions, but remains unpersuaded. The Petitioner has invoked this Court’s jurisdiction under Article 226 of the Constitution, seeking a remedy that, in the opinion of the Court, is untenable in light of procedural history and circumstances surrounding the case. The record reveals that the Petitioner had ample



opportunities to raise the jurisdictional objection at various stages, beginning with the eviction proceedings ARC. The Petitioner actively participated in these proceedings by filing an application for leave to defend and subsequently pursued civil miscellaneous main petitions, including a Special Leave Petition before the Supreme Court. The Petitioner chose not to assert the jurisdictional objection either in the initial application for leave to defend or at subsequent stages when the matter was being examined by higher courts, including this Court and the Supreme Court. This sequence of events suggests that the Petitioner did not consider the jurisdictional issue significant enough to raise at the relevant times and is now attempting to bring it forth at a late stage.

8. While the failure to raise the jurisdictional objection at the appropriate time may be attributed to improper legal guidance or mere oversight, this does not imply that the Petitioner lacked a legal remedy. The record reflects that ample procedural avenues were available to the Petitioner, yet the objection was not raised when it was most relevant. In such circumstances, the Court finds that there must be finality to the matter. Although the issue of eviction was conclusively settled with the dismissal of SLP before the Supreme Court, the Petitioner has effectively denied Respondent No. 2, the opportunity to reap the benefits of the eviction order. Such repeated legal proceedings, has prevented Respondent No. 2 from realizing the outcome of the eviction proceedings. However, having exhausted these avenues unsuccessfully, the Petitioner cannot now invoke Article 226 of the Constitution by framing this as a matter of violation of fundamental or his legal rights. Judicial review under Article 226 is an extraordinary remedy, intended to address genuine grievances involving substantial violations of rights, not as a means to reopen issues that have already been adjudicated and settled.

9. In view of the above, the Court declines to entertain the present petition.

10. Dismissed, along with pending applications.”

ANALYSIS AND REASONS FOR DECISION:

13. We have given our thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. We have gone through the entire record of the proceedings before the learned ARC as also the record of the writ proceedings besides the impugned order.



14. At the outset, learned counsel for the appellants-tenants is unable to persuade us to find anything fallacious with the impugned judgment passed by the learned Single Judge. While we agree with the submissions advanced by the learned counsel for the appellants-tenants that the issue of jurisdiction of the Court deciding the matter can be invoked at any stage and even in collateral proceedings, there is no denying the fact that the learned Executing Court has rendered its finding that the area in question falls under the purview of the DRC Act based on appreciation of evidence led before it.

15. Suffice to state that the DRC Act is a piece of social legislation and is meant to protect the tenants from harassment and exploitation at the hands of the landlords due to scarcity of accommodation but at the same time providing certain legal rights to the landlords to evict the tenants on fulfillment of certain conditions laid down therein. The DRC Act came into force w.e.f. 09 February 1959 and sub-Section (2) of Section 1 of the DRC Act extended the provisions of the DRC Act to the areas within the limits of New Delhi Municipal Committee and Delhi Cantonment Board and to such urban areas within the limits of Municipal Corporation of Delhi as are specified in the First Schedule.

16. The Proviso to subsection (2) to section 1 of the DRC Act also empowers the Central Government to extend the provisions of this Act to any other urban area included within the limits of Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof by notification in the official Gazette.



The First Schedule to the Act envisages that all those urban areas within the limits of Municipal Corporation of Delhi to which the Act extends would include the areas which, immediately before 07 April 1958, were included in the Municipality of New Delhi excluding the area specified in the First Schedule to the Delhi Municipal Corporation Act, 1957 (66) of 1957.

17. In the said backdrop, the bone of contention between the parties is as regards whether or not *Basti Hazrat Nizamuddin* falls within the limits of New Delhi Municipal Committee prior to the Act being brought into force. Although, much mileage is sought to be taken by the learned counsel for the appellants-tenants that burden of proof upon the appellants-tenants was wrongly placed in the negative, it is rendered a mere academic issue since eventually the onus shifted upon the respondent No.2-landlord to also show the applicability of the DRC Act to the area in question.

18. A careful perusal of the order dated 10 March 2022 passed by the learned Executing Court would show that while the Decree Holder proved on the record two maps of New Delhi Municipal Committee, dated 28.08.1938 Ex.DHW-1/1 and dated 24.06.1938 Ex.DHW-1/2 respectively, to show that the tenanted premises fell within the purview of the DRC Act, on the other hand, the appellants-tenants merely brought on the record a downloaded copy from the Website of the NDMC⁵ Ex.JDW-1/4. The Executing Court, after examining oral

⁵New Delhi Municipal Corporation



and documentary evidence, made a categorical finding that the area containing the tenancy premises fell within the New Delhi Municipal Committee's limits before the Delhi Rent Control Act, 1958 came into effect. Learned Executing Court correctly discarded Ex.JDW1/4 i.e. the copy downloaded from the Website of the NDMC in the year 1994.

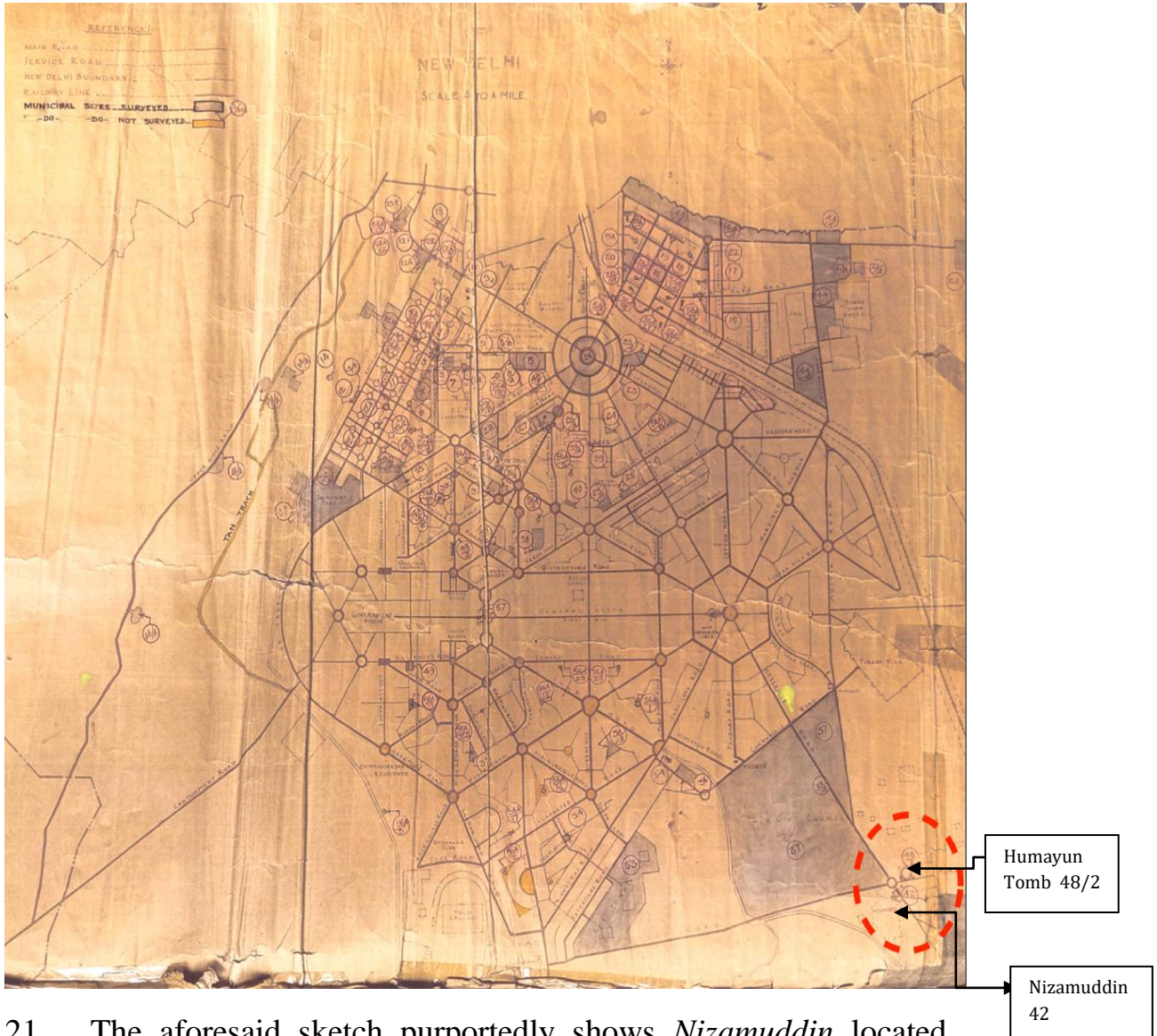
19. It would be expedient to reproduce the observations by the learned Executing Court, which read as under:-

“.....Moreover, the onus was on the JDs and Objector to show that the area of Nizamuddin Basti does not fall within the limits of New Delhi Municipal Committee in the year 1958 but neither any map prior to 1958 was filed to show the same nor any witness was summoned from New Delhi Municipal Council to put forward their case. Whereas on the other hand, the Decree Holder has placed on record two maps of the year 1938 showing the area where the tenanted premises is situated and as per map Ex.DHW1/2, the area between Mathura Road and Naala, where the tenanted premises falls, came within the jurisdiction of New Delhi Municipal Committee and the tenanted premises is situated within this area and therefore, it is clear that the tenanted premises was within the Municipal Committee in the year 1958 and therefore, the DRC Act was applicable to the tenanted premises from the inception of the Act itself and moreover, as discussed above, it was the prerogative of the Objector and JDs to prove that the area does not fall within the limits of New Delhi Municipal Committee in which they have clearly failed and accordingly, this issue is decided against the JDs and Objector and in favour of the Decree Holder.....”

20. Challenging the aforementioned findings, the learned counsel for the appellant-tenants attempted to introduce a new argument by drawing our attention to the original 1938 layout plan sketch of New Delhi, prepared/verified by the Draftsman on 15 May 1938, the



scanned copy of which is as under:



21. The aforesaid sketch purportedly shows *Nizamuddin* located across the Humayun Tomb, between Mathura Road and Naala, designated as '*Khasra No. 42*', which we have placed in the encircled portion for the purpose of identification. It is sought to be canvassed that *Nizamuddin* or *Basti Hazrat Nizamuddin* is falling outside the



purview of New Delhi Municipal Committee. However, this layout plan of New Delhi is depicting boundaries of the New Delhi Municipal Committee on the sides and which on the Eastern side is up to Nizamuddin, which is depicted as 'Khasra No.42'. Although the sketched Layout plan was never placed for consideration before the learned Executing Court, the same does not substantiate the challenge thrown by the petitioner either. Therefore, we have no hesitation in holding that the plea raised in the present appeal merits no consideration.

22. In summary, the finding that the premises in question lie between Mathura Road and Naala, within the New Delhi Municipal Corporation area, is a factual determination. Consequently, the learned Single Judge correctly held that this factual finding cannot be disputed in writ jurisdiction.

23. In the light of the foregoing discussion, we find no ground to interfere with the impugned order dated 06 November 2024 passed by the learned Single Judge. The present appeal is, therefore, dismissed.

24. The pending application also stands disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 26, 2024

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