

Sultan Singh Vs. Jai Singh

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Court : Delhi

Decided On : Jan-24-1990

Reported in : AIR1990Delhi314

Judge : Arun B. Saharya, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1), 25-B(9) and 45; [Delhi Municipal Corporation Act, 1957](#) - Sections 417

Appeal No. : C.R. (R) No. 148 of 1989

Appellant : Sultan Singh

Respondent : Jai Singh

Advocate for Def. : Ishwar Sahai, Adv.

Advocate for Pet/Ap. : Partap Kishan Jaitley, Adv

Judgement :

ORDER

1. This is a tenant's petition under S. 25-B(8) proviso of the [Delhi Rent Control Act, 1958](#), hereinafter referred to as the Act, against an order dated 9th of August, 1988 made by M. S. Sabharwal, Additional Rent Controller, Delhi, directing eviction of the tenant from the premises in question on a petition made by the respondent-owner, on the ground of bona fide requirement under S. 14(1)(e) of the

Act. The only question raised at this stage is whether the premises were let for residential purposes.

2. The premises consist of two rooms, an improvised kitchen, a toilet, one common verandah, common side-open court-yard and common rear-open court-yard, in the back portion of property No. B-39, Satyawati Nagar, Ashok Vihar Phase III, Delhi. These premises were let out to the petitioner in September 1978.

3. The respondent sought eviction of the petitioner on the ground that the premises let for residential purposes are required bona fide by him for occupation as a residence for himself and for members of his family dependent on him and that he has no other reasonably suitable residential accommodation. He averred, at the time when the petition was filed, that his family consisted of himself, his wife, one married son, daughter-in-law and three grand-children aged between 5 to 15 years, and that the accommodation available to him consisted of only one bed room, one drawing-cum-dining room, kitchen and latrine in the front portion of the same property. His wife died during the pendency of the proceedings.

4. The petitioner sought leave to contest the petition, inter alia, on the grounds that S. R. Singh, the son of the respondent is the real owner and landlord of the premises and not the respondent; that the alleged requirement of the respondent was not bona fide; that an earlier petition for eviction filed by the respondent was withdrawn; and that the respondent had been harassing the petitioner to somehow get the premises vacated to let out the same at a higher rent. Leave to contest the petition was granted to the petitioner. He filed a written statement in which he repeated the earlier mentioned grounds of his defense. After the owner-respondent concluded his evidence and on the day fixed for recording evidence of the tenant, he moved an application for amendment of his written statement to take up the plea that the premises were let out for residential-cum-commercial purposes. The respondent did not contest this application. This additional plea was, thus, taken in the amended written statement.

5. After trial, the Controller found that the premises were let for residential purposes, and that the same are required bona fide by the owner as a residence for himself and for members of his family dependent on him. He rejected the

tenant's defense on all scores. By the impugned order, the Controller also found that the plea that the premises were let out for composite purposes was an afterthought and that it was, even otherwise, not sustainable on the evidence on record.

6. Now, the petitioner has challenged the finding that the premises were let out for residential purposes. Learned Counsel for the petitioner has contended that there is no reliable evidence on record to prove that the premises were let out for residential purposes; and that the premises have been used, in fact, for commercial purposes also from the very inception of the tenancy; that the Controller was not justified in drawing an inference that the plea that the premises were let out for residential-cum-commercial purposes was an afterthought merely because it was not taken initially in the written statement; and that no reliance could be placed on the earlier pleadings after the petitioner was allowed to amend his written statement. The order of the Controller, according to him, is perverse and it should be set aside.

7. Letting purpose could be proved by documentary evidence and/ or oral evidence. In the absence of any document to show the terms and conditions on which the premises were let, especially the letting purpose, it would be appropriate to consider the oral evidence on this aspect of the case as also regarding the nature of the premises, the locality where the premises are situated, and the use to which the premises have been put from the very inception of the tenancy.

8. A.W.1 Jai Singh has stated in his examination-in-chief that he 'inducted' the petitioner into the premises and that the premises were let out for residential purposes. In his cross-examination, prior to amendment of the written statement, he denied the suggestion that the premises were let to the petitioner by his son S. R. Singh, and that he was not in Delhi when the premises were let out. He admitted that he was not living in Delhi at that time, but he explained that he used to come to Delhi every month and that his son used to collect rent as he had authorised him to do so. He categorically denied the suggestion that his son used to collect rent because the son had let out the premises to the petitioner. After the amendment, A.W. 1 was recalled for further cross-examination. He deposed that

he did not know what business was carried on by the tenant and that he had no occasion to visit the portion occupied by him. He specifically denied the suggestion that the tenant was carrying on business of manufacturing brass name plates or that any smell of Chemicals used to emanate from the premises or that any customers used to visit the premises in connection with the business carried on by the petitioner from there or that the premises were let out for commercial purposes as well. Likewise, A.W. 2 S. R. Singh deposed that he did not let out the premises to the petitioner and that his father did so. He admitted that his father used to live out of Delhi but he also asserted that he used to visit Delhi. He denied the suggestion that he was the real owner and landlord of the premises. He also was recalled after amendment of the written statement for further cross-examination. He denied all suggestions that the petitioner was manufacturing brass name plates, that he was using and storing Chemicals for that purpose and that smell of Chemicals came out from the premises.

9. It is pertinent to note that the plea taken in the amended written statement was that the petitioner was 'running his business of Brass name plates, Wall paper etc., from the premises' and that 'one of the rooms of the tenanted premises has been exclusively used for the Commercial purposes of running the respondent's above said business'. It was not the case pleaded by the petitioner that he was carrying on the business of 'manufacture' of brass name plates or wall paper etc. Yet, the suggestions made to A.W. 1 and A.W. 2 in their cross-examination were to the effect that the petitioner was doing the business of 'manufacture' of these goods and that he was using Chemicals also for this purpose.

10. The petitioner made a statement on oath as R.W. 1. He stated that he was manufacturing brass name plates and was also carrying on the business of wall paper, floor tiles, etc. in the premises, and that S. R. Singh let out the premises to him for commercial purposes also. He claimed that he was using one room for his office where he kept all his business material and that his customers also came there. He deposed that he has no other place of business. In his cross-examination, he denied the suggestions that the premises were let out to him by the respondent and also that the purpose for which the premises were let was residential only. He admitted that he did not obtain any license from the Municipal

Corporation of Delhi for carrying on any business activity in the premises. R.W. 2 Surendra Nath and R.W. 3 Om Prakash Yadav are close friends of the petitioner. Each of them resided far away from the premises, but claimed that they had accompanied the petitioner on 11th of Sept, 1978 when the premises were let out to him by S. R. Singh. According to them, they met the petitioner and each other on that fateful day just by chance. Each of them specifically mentioned the date when the premises were let out. In cross-examination, however, both of them fumbled when their memory was put to test. They were unable to give the dates of any other event in 1978 or thereabout. It is clear from the testimony of these two that they were tutored witnesses. So far as the letting purpose is concerned, R.W. 2 stated that the petitioner was carrying on the business of manufacture of name plates and also wall paper. Thus, he not only went beyond the case pleaded by the petitioner but even further than the statement of A.W. 1 and A.W. 3 that the petitioner carried on the business of manufacturing only brass name plates.

11. Learned Counsel for the petitioner has contended, on the basis of one sentence written in Ex. R-11, that the testimony of A.W. 1 and A.W. 2 that the premises were let by the respondent and not by his son S. R. Singh should not be believed. Ex. R-1 1 is the replication filed by the respondent herein in an earlier eviction case against the tenant which was withdrawn because of a formal defect in the eviction petition. This particular sentence, in para 3 of the replication, reads thus: 'The monthly rent of Rs. 175/- and water charges of Rs. 12.50 per month have been paid by the respondent to the petitioner's son S. R. Singh i.e. the landlord/ owner of house No. B/39, Satyawati Nagar'. Mr. Sahai, learned Counsel for the respondent has explained, with reference to the tenor and contents of the written statement, Ex. R- 10 as also the replication Ex. R-11, that the person who drafted the replication had followed a pattern which shows that the facts as alleged clause by clause in the written statement were controverted by pre-fixing the expression 'it is denied that' to every clause and/ or sentence in this replication. In the above quoted sentence, it seems, the typist omitted this expression while dealing with the corresponding averment in the written statement. This is evident from some of the other portions of this very replication. For instance, in para 1 it had been asserted, 'In fact petitioner Jai Singh is the real and actual owner of the premises in question'. With regard to rent, it was specifically averred in para 2, 'In

fact the rent settled was @ Rs. 375/ - p.m. excluding water and electricity charges as mentioned in the petition'. Even, in para 3, the statement preceding the above quoted sentence shows the real intention of the party. It reads thus: 'Para 3 of the preliminary objection is wrong and denied. It is denied that the petitioner has been paying rent of Rs. 175/-, p.m. plus Rs. 12.50 p.m. water charges, plus amount of separate electricity bills to the petitioner's son, Jai Singh the landlord/owner of the premises under respondent's tenancy'.

12. It may also be noted that the trend of cross-examination of A.W. 1 and A.W. 2 shows that the petitioner wanted to establish that S. R. Singh and not the respondent was the real owner and landlord of the premises. This was one of the pleas raised in his defense. This plea was rejected by the Controller, and now it has not even been pressed in view of the sale deed and the rectification deed, Ex. AW- 1 / 5 and Ex. AW- 1 / 6, which clearly establish that the respondent is the owner of the property. thereforee, it cannot be said that there is any contradiction between the previous pleading and the testimony of A.W. 1 and A.W. 2 with regard to the person who actually let out the premises to the petitioner.

13. The premises have been depicted in a plan attached to the eviction petition. Para 8 of the Eviction Petition mentions 'two rooms' to describe details of the accommodation. In the written statement the petitioner has himself described this accommodation as 'two bed rooms' . The plan shows that the rooms are 10'x 12' in size. The petitioner-tenant has 8 members of his family living in the premises. It is impossible to believe that only one room has been used for their residence and that the petitioner is using the other room exclusively for the purpose of his business.

14. Further, it has been established on record by a sale deed, Ex. AW- 1 / 5 and rectification deed, Ex. AW-1 / 6 that the premises are located in a residential colony and that the house is built upon a residential plot in a layout plan of a residential colony approved by the Municipal Corporation of Delhi as such. Thus, it is proved on record that the nature of the premises as well as that of the colony in which the premises are located is residential.

15. Next, learned Counsel for the petitioner has argued, on the basis of a number of postal envelopes and business letters received from different parties, that the petitioner has actually been carrying on his business from the premises. These documents, bearing the address of the premises, merely show the receipt of business correspondence by the petitioner at the premises. None of these documents shows that the petitioner has been carrying on any business activity at the premises. On the other hand, various letters show that the petitioner used to obtain orders and supply the required goods to his customers, and that his customers used to call him, or he used to go on his own, to their offices, to collect orders and to supply goods. The petitioner has not produced any document to show that he was storing any goods in the premises or that he was selling the goods from there or that he actually received any customer at the premises. R.W. 4 to R.W. 12 who were examined to prove the various documents on record, had never visited the premises, nor did any one of them claim to have any personal knowledge about the petitioner carrying on any business from the premises. On the basis of this evidence, it cannot be said that the petitioner was carrying on any business activity from the premises. In taking this view, I am supported by two decisions of this Court, on more or less similar facts, in *Salekh Chand Jain v. Vinesh Chand Sheth* (1986) 1 RCR 191, and *Kidar Nath Sodhi v. T. R. Kapoor* (1989) 1 RCJ 112.

16. Further, the petitioner, in his cross examination as R. W. 1, has admitted that he has not got any license from the Municipal Corporation of Delhi for carrying on the business of manufacture or storage of any goods. If the case sought to be made out by the petitioner, in his own testimony as R.W. 1 or by way of the suggestions made to A.W. 1 and A.W. 2 in their cross-examination, that he has been 'manufacturing' brass name plates and he has been 'using' or 'storing' Chemicals for that purpose in the premises is to be believed, then under the provisions made in the [Delhi Municipal Corporation Act, 1957](#), he should have obtained a license to do so. Section 417 of that Act prohibits any person from using any premises for the purposes specified in Part 1 of the Eleventh Schedule or for storing any of the articles in Part II of the said Schedule without or otherwise than in conformity with the term of a license granted by the Commissioner in that behalf. For the purposes of manufacturing brass name plates, it would be

necessary for the petitioner to cut, hammer, press, polish or assemble parts of brass as also to weld the metal. These activities are specifically covered by item No. 20(x) of Part I of the Eleventh Schedule. Further, if the petitioner has been storing Chemicals in the premises, he is required to obtain a license under item 13 and item 14 of Part II of the Schedule. Likewise, if the petitioner has been storing wall paper he would require a license under item 73 of Part II of the Schedule. Admittedly, the petitioner has not got any such license from the Corporation. thereforee, the Controller has correctly adverted to the want of license as a circumstance to show that the plea that the petitioner was carrying on the business of manufacturing brass name plates etc. cannot be believed.

17. In any event, the petitioner has not produced any books, or registers or other documentary evidence which could show the purchase of raw material or other equipment or even the employment of labour by the petitioner if he was actually carrying on the business of manufacturing anything as, alleged by him.

18. With regard to the finding that the plea that the premises were let out for residential-cum-commercial purposes was an 'afterthought', it is pertinent to note that there were several occasions, from 1981 onwards, when the petitioner was required to take a stand about the purpose for which the premises were let. In October, 1981, the respondent filed two eviction petitions against the petitioner. One on the ground of bona fide requirement of the premises under Clause (e) of the proviso to S. 14(1) of the Act, and the other on the ground of non-payment of rent as well as substantial damage caused to the premises under Cls. (a) and (j). The first petition, Ex. R-1 was registered as Suit No. E428181 and the second one, Ex. R-7, as Suit No. E-430/81. In each of these petitions, it was stated in para4 that the premises are residential and in para 5 that the tenant is residing in the premises with his family members (8 in all). In Suit No. E-428/81, the tenant did not controvert these facts in his application for leave to defend, Ex. R-3, and the affidavit in support thereof, Ex. R-4. In Suit No. E-430/81, he expressly admitted these paras as correct in his written statement, Ex. R-10. Not only this, in his written statement, Ex. R-10, he described the two rooms as 'two bed rooms' . These two eviction petitions were, however, withdrawn by the respondent with liberty to file fresh petitions as the common verandah and court-yard were not

shown as part of the premises. The order granting leave and liberty to withdraw these petitions is Ex. AW- 1 / 4. The present proceedings were then initiated by a fresh petition filed on 10th of March, 1983 only on the ground of bona fide requirement under S. 14(1)(e) read with S. 25-B of the Act. In this petition again it was stated in para 4 that the premises are residential and in para 5 that the petitioner was residing in the premises with his family members. In the first written statement filed on 29th of July, 1983, the petitioner admitted paras 4 and 5 of the petition as correct. He maintained the same position in his second written statement filed on 8th of February, 1984 after a formal amendment of the eviction petition. As noticed earlier, the respondent deposed as A.W. 1 and examined his son as A.W. 2. Both of them categorically stated that the premises were let out for residential purposes. After the respondent concluded and closed his evidence on 7th of October, 1985, the case was fixed for the petitioner's evidence on 8th of January, 1986. At that stage and on that day, the respondent made an application for amendment of his written statement to raise the plea that the premises were let out for residential cum-commercial purposes.

19. In the meanwhile, it must also be mentioned, in January, 1982 the petitioner himself filed an application under Sec. 45 of the Act alleging that the respondent had without just and sufficient cause cut-off electric supply to the premises, and in January, 1984 he filed a similar application in respect of water supply also. With reference to these two applications, the petitioner R.W. 1 specifically admitted in his cross-examination that he did not plead that the premises were let out for residence-cum-commercial purposes.

20. Thus, it is clear that the petitioner did not raise the plea that the premises were let out for composite purposes at any stage and on any occasion right from 1981 to 1986 despite there being several occasions for him to take this plea.

21. Mr. Jaitley, learned Counsel for the petitioner, has contended that the respondent did not oppose the application for amendment of the written statement, that an admission in pleadings can be explained or withdrawn, and that once pleadings are amended a reference to the previous pleading cannot be made.

22. It is no doubt true that the respondent did not oppose the petitioner's application for amendment of the written statement. But that does not conclude the matter. Conceding an application for amendment does not amount to the opposite party admitting the correctness of the facts alleged or the pleas raised by way of amendment of the pleading. Indeed, after amendment of the written statement, the respondent filed a replication, and the averment that the premises were let out for composite purposes was specifically denied. As noticed earlier, the eviction proceedings had been lingering on for almost 3 years, the respondent had already concluded and closed his evidence, and the case was fixed for the tenant's evidence on 8th of January, 1986 when the amendment application was moved. The respondent was really confronted with the Hobson's choice. Had he opted to oppose the application, it would have resulted in further delay of the trial. In view of the doubtful fate of a challenge to the application for amendment, because of the liberal law on the subject, the respondent opted, in my opinion, wisely to contest the plea on its merits rather than quibble on technicalities. In any event, no inference can be raised against the respondent for not opposing the amendment at that stage.

23. In *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi*, : [1960]1SCR773 , Hidayatullah, J. has explained that the expression 'burden of proof' really means two different things. It means sometimes that a party is required to prove an allegation before a judgment is given, it also means that on a contested issue one of the two contending parties has to introduce evidence. Further, His Lordship has explained, 'An admission is the best evidence that an opposite party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous'.

24. In the present case, the respondent had to introduce evidence to prove the purpose of letting. He discharged the initial onus by himself deposing as A.W. 1 and by producing A.W. 2 as his witness. Even otherwise, in view of the number of times that the petitioner-tenant had repeated the admission of the fact that the premises were let for residential purpose only, the burden heavily, lay upon him to prove that this admission was erroneous. In fact, the oral evidence discussed earlier shows otherwise. In the peculiar facts and circumstances of the present

case, especially in view of the numerous occasions on which the tenant was required to meet or make the averments with regard to the letting purpose, it cannot be said that he explained or that he could withdraw the admission that the premises were let for residential purposes only.

25. Mr. Jaitley relied upon Brij Kishore v. Smt. Mushtari Khatoon, : AIR1976 All399, to contend that the Court must take the pleadings as they stand after amendment and leave out of consideration the unamended ones. These observations made in that case are not applicable to the present situation and the decision in Brij Kishore's case (supra) is of no avail to the petitioner.) The question is whether the plea that the premises were let out for composite purposes was genuine and bona fide or whether it was taken only to delay disposal of the case. The decision in Brij Kishore's case (supra) is of no avail to the petitioner.

26. For the above mentioned reasons, I uphold the findings of the Controller that the premises were let for residential purposes only; and that the plea that the premises were let for residential-cum-commercial purposes was an afterthought, it was set up to delay the trial of the case, and it has not been proved.

27. I am satisfied that the Controller has made the impugned order in accordance with law. The revision petition is, therefore, dismissed with costs.

28. Petition dismissed.