

Muni Lal Vs. Nand Lal

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Court : Delhi

Decided On : Jan-21-1971

Reported in : AIR1971Delhi300; 7(1971)DLT229

Judge : P.N. Khanna, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100 and 101; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 29; [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : S.A.O. No. 175-D of 1966, from order of C.G. Suri, Rent Control Tribunal, Delhi, D/- 8-8-1966

Appellant : Muni Lal

Respondent : Nand Lal

Advocate for Def. : A.N. Monga and ; M.K. Chawla, Adv.

Advocate for Pet/Ap. : R.K. Makhija, Adv

Judgement :

1. Nand Lal, respondent in S.A.O. 175-D and S.A.O. 176-D of 1966 and appellant in S.A.O. No. 211-D of 1966, is the owner of house No.5457 situated in Basti Harphool Singh, Delhi, having two flats on the ground floor and two on the first. There is also a garage and some 'kothas' attached to the house. This property

previously vested in the Custodian of Evacuee Property and was in the occupation of tenants since about the year 1948 or so.

2. Before, the Partition of the country in 1947, Nandlal was a resident of Okara in the district Montgomery now a part of West Pakistan. He used to have an interest in three factories there and was carrying on commission agency business. He was an income-tax assessed. As a result of the Partition he had to migrate to India and stayed at different places like Dehra Dun and Moghul Sarai, and ultimately came to Delhi to earn his living. One or the other of his sons was helping him in his business. He started living with certain members of his family including his children and grand children, as a tenant in two rooms in Shakti Nagar on a rent of Rs. 50/- per month.

3. It was in 1955, that Nand Lal purchased the property in dispute for a sum of Rs. 42,000/- from the Custodian of Evacuee Property in an auction; and was delivered provisional possession thereof with effect from February 5, 1957 from which date the sale was main building were in the occupation of tenants under the custodian, at a rental of Rs.17.14 per month each. One of the flats on the first floor, however was vacated soon after Nand Lal purchased the property, and he immediately occupied the same along with his family members. Suraj Parkash one of his sons, along with his wife and children started living in the said first floor flat, with his father; while Mulkh Raj the other son with his wife and four children occupied the garage having a low ceiling, which was attached to the said building. The other flat on the first floor was occupied by Kedar Nath, who is respondent in S.A.O. 211-d of 1966. On the ground floor flat immediately below him was Narinder Singh, the appellant in S.A.O. 176-D of 1966, while the other flat was occupied by Muni Lal, appellant in S.A.O. 175-D of 1966.

4. Nand Lal who had become the landlord qua Kedar Nath, Muni Lal and Narinder Singh, filed on September 24, 1962 three separate eviction petitions against the said three tenants after the expiry of five years, from the date of his acquisition of the said property on the ground that the premises let for residential purposes were required by him for occupation as a residence for himself and for the members of his family dependent on him and that he had no other reasonably suitable

residential accommodation.

5. The proceedings in these three petitions involving almost the same questions of fact and law were consolidated by the Controller with the consent of the parties and all the three petitions were disposed of by one order. The Controller ordered the eviction of Muni Lal and Narinder Singh, tenant, on the ground floor, while he dismissed the petition against Kedar Nath, the tenant on the first floor. Both the ground floor-tenants filed separately appeals against their eviction, while Nand Lal, landlord, filed an appeal against the dismissal of his application for eviction of Kedar Nath. These three appeals were decided by the order whereby all the three were dismissed leaving the parties to bear their own costs. The three second appeals, viz., S.A.O. 175 -D of 1966, S.A.O. 176-D of 1966 both filed by the tenants, and S.A.O. 211-D of 1966, filed by the landlord were heard together in this Court and are being disposed of by this judgment.

6. While these appeals were pending , applications were made by the tenant appellants, in March, 1970 for permission to urge additional grounds of appeal to the effect that no notice under Section 106 of the Transfer of Property Act having been served on them, their contractual tenancy was not terminated and the eviction petitions were, therefore, not competent. It was also stated that this ground was specifically urged before the Rent Control Tribunal, although no mention of this has been made in its judgment. In a counter -affidavit filed on behalf of the landlord this allegation was emphatically denied and it was asserted that the question of notice was never urged before the Tribunal, nor was there raised any such plea in the written statement, nor at any time before the controller nor in the grounds of appeal to this Court. Even the present application for raising this plea was made, three and a half years after the institutions of the appeal; and much after the expiry the period of limitation for filing the appeal. Mr. R.K. Makhija, the leaned counsel for Muni Lal and Mr. S.S. Chandha, the learned counsel for Narinder Singh, the tenants, contended that the question of notice, was an important one being of jurisdictional nature. Without the notice, the landlord gets no right to eject the tenant and no right to file the petition.

7. Mr. A.N. Monga, the learned counsel for the landlord urged that the tenancy in question was not a contractual tenancy, but was a tenancy created by statute. The landlord purchased the property at an auction held by the Ministry of Rehabilitation, Government of India, on December 4, 1955 and was declared purchaser with effect from February 5, 1957, from which date provisional possession was given over to him. As the landlord could not evict the occupants of the premises he was obliged to continue accepting rent from them. They were, therefore, occupants whose tenancy was created by law. This contention, however cannot be accepted. The house was purchased and provisional possession obtained by the landlord with the full knowledge that the tenants under the Custodian were to attorn to him. Ignorance about the implications involved cannot be allowed to be pleaded at this stage. All persons in lawful possession of immovable property of the class notified under sub-section (2) of Section 29 of the Displaced Persons(Compensation and Rehabilitation) Act, 1954, which is transferred to another person, under the provisions of that Act are deemed to be the tenants of the transferee in respect of the property in their occupation. It is no one's case that the property was not of the class as notified under sub-section (2) of Section 29 of the said Act. The occupants have throughout been treated as tenants by the landlords, who, therefore, cannot urge at this stage that the tenancy in their favor was not contractual.

8. Mr. Monga then contended that a notice to terminate the lease was not a statutory requirement but was a matter governed by contract between the parties, who can always agree to dispense with it. Section 106, Transfer of Property Act, provided a presumption in law about the tenancy being terminable by a notice to quit only if there was no contract to the contract, therefore, was a question of fact and unless it was agitated by the parties at the trial it could not be taken up for the first time in second appeal. He further urged that even if a notice to quit was required, the parties could always waive it; and in the present case it was actually waived by all the tenants and their objection should not be entertained.

9. In paragraph 14 of the eviction petition, in each of the three cases, it was stated that the occupants were the landlord's tenants at Rs.17.14 per month each which rent was being paid to the Custodian previously. No agreement, it was stated, was

executed by the tenants in favor of the landlord. Against the query in paragraph 18 (b) as to whether notice required has been given, it was stated in each petition that 'No notice is necessary'. In the written statements filed by the tenants, they admitted in paragraph 14, that on the purchase of the property they attorney as tenants to Nand Lal, the landlord. In reply to paragraph 14, that on the purchase of the property they attorney as tenants to Nand Lal, the landlord. In reply to paragraph 18 (b) it was stated by Narinder Singh and Kedar Nath, tenants 'that paragraph 18 (b) of the petition needs no reply'. Muni Lal, appellant in S.A.O. 175-D of 1966 stated in reply that 'no notice was given'. No objection based on the absence of a notice to quit was raised by the tenants during the trial before the Controller or before the Rent Control Tribunal in appeal. The landlord has sworn an affidavit to the effect that such plea was not urged before the Tribunal. The affidavit on behalf of one of the tenants to the effect that such a plea was urged before the Tribunal cannot be accepted as this plea was not raised in any of the grounds of appeal. The landlord and the tenants were thus agreed that no notice was necessary in this case. May be that the requirement of the notice had been dispensed with an agreement between the parties or may be for any other reason. The factum of the termination of the tenancy was not disputed. The requirement of the notice to quit, if any, had thus, at all events, been abandoned. It was three and a half years after the filing of the appeal that the application was made permission to urge for the first time a ground based on the plea of non-service of notice.

10. Now, it is well know, that waiver as distinguished from estoppel which is a rule of evidence, is a matter of contract and is an agreement to abandon, to release or not to assert a right. The terminability of a lease by a notice to quit is a matter of contract between the parties. The notice to quit required under Section 106, Transfer of Property Act is deemed to be a term of the tenancy only in the absence of a contract or local law or usage of the contrary. The parties to a lease, therefore, can always agree to vary the terms of their contract and there is nothing to prevent them from abandoning the requirement can be dispensed with by the consent of the parties, at any time, either to start with or at a subsequent stage. The tenant's concurrence with the landlord that notice was not necessary, was thus a complete waiver of notice even if it may have been required under their contract to begin with.

11. The learned counsel for the tenants relied on *Boota Ram v. Balmukand*, 1970 Ren Cr 1105 (Delhi) where Mr. Justice S.N. Shankar had held that the tenant in seeking an amendment of his written statement to incorporate the plea of notice specifically gave an indication that he did not waive this plea. But in that case, this plea had been raised at the trial itself, before the Controller. The learned Judge observed :

'Whether the objection has been waived or not in a given case is a question which has to be decided on the direct as well as circumstantial evidence available on record'.

The finding that there was no waiver in *Boota Ram's* case was finding applicable to the facts of that case alone. The said Judgment cannot be of any assistance to the tenants in the present case. On the other hand, as was observed in *Batto Mal v. Rameshwar Nath*, : AIR1971 Delhi98 the tenants have no inherent right to have tenancy terminated by a notice. It is a right acquired under a contract. Even under the provisions in Section 106, Transfer of Property Act, the requirement of a notice to terminate the tenancy, in the absence of a contract, local law or usage to the contrary, is for the benefit of both the landlord and the tenant and is not rigid in nature. One of the parties may give up and abandon or in other words waive a right which is acquired under a contract of lease, whether by express agreement or by virtue of a deeming provision in Section 106 of the Transfer of Property Act. It is not such a plea that cannot be waived. (See *Bhaiya Ram v. Mahavir Parshad*,). The facts of this case, where the tenants have all along been fighting the litigation for several years, without raising this plea, clearly establish that they had in fact waived this plea. Furthermore, as the lease can be terminated in many ways, and not necessarily by a notice to quit under Section 106 of the Transfer of Property Act only the Controller's jurisdiction cannot be said to depend merely on compliance with the requirements of Section 106 of the Transfer of Property Act. (See *Pritam Singh v. Suraj Pershad* 1967 Delhi Lt 704). The question of service of notice therefore, cannot be said to be of a jurisdictional nature.

12. The learned counsel for the tenants, then submitted that the landlord should have specifically invoked the aid of some contract, dispensing with the

requirement of a notice to quit. This argument of a notice to proviso to Section 14 of the [Delhi Rent Control Act, 1958](#) requires the Controller to act, on an application made to him in the prescribed manner; and form 'A' has been prescribed in the Rules, in which the eviction petition is required to be filed. The landlord did use this form for his application and in paragraph 18 (b) stated against the prescribed query that 'notice was not necessary'. He was not required to state why it was not necessary. It cannot be said that the failure on the part of the landlord to specifically plead that the tenancy has been terminated by a notice to quit, or that the notice was not otherwise required under a contract, discloses his intention to treat the lease as still subsisting. The mere filing of eviction application itself, on the other hand, shows this intention in unequivocal terms that it is nothing else than to evict the tenants and terminate the tenancy;. The tenants in reply did not dispute this position; and that was the end of the matter. It was for the tenants if they wanted to invoke the aid of a plea of want of notice, whether based on a contract or on Section 106 of the Transfer of Property Act, to have specifically stated so in their written statements. The unwillingness of the tenants to take Section 106 of the Transfer of Property Act, therefore, amounted, in fact, to an admission on their part that the notice was not required in the case of the tenancy under which they were holding the premises; and in any case it amounted to a clear waiver on their part. This view has been expressed by this Court on a number of occasions (See *Des Raj v. M/s. Ramji Lal Kundan Lal*, 1969 Ren Cr 54 (Delhi); *Inder Singh v. Nanak Chand*, : AIR1971 Delhi98).

13. It was urged that in order to constitute waiver there must be an intentional voluntary relinquishment or abandoning of a known existing right or privilege. The tenant's reply to the assertion of the landlord that notice was not necessary, was made submitted the learned counsel for the tenants, at a time when the requirement of notice for terminating the tenancy was not considered essential, owing to the interpretation placed on the Rent Control legislation by various Courts, that it being a complete code in itself, did not require a notice to quit, to terminate the tenancy. It cannot be said, therefore, urged the learned counsel for the tenants, that the requirement of the notice had been intentionally relinquished. But notice being the requirement of a contract is a question of fact, required to be established by evidence. If by their conduct, the tenants have not given the

landlord an opportunity to prove the fact of termination of tenancy, they cannot now, after the trial ended several years back be allowed to urge a plea for the first time. The eviction petition was filed more than eight years back, on September 24, 1962. The landlord has been deprived of the opportunity to withdraw the petition at the earlier stage and to file another one after serving a notice to quit, if the tenants had urged this objection at the proper time and the landlord considered this plea to be of any force. The parties have been fighting this litigation on the basis that 'the notice is not necessary' for the maintainability of the eviction petitions and after the lapse of all these years, the tenants in all fairness to the landlord, cannot be permitted at this stage to urge this plea, which is essentially a plea of facts.

14. Under these circumstances, the objection raised on behalf of the tenants based on the alleged non-service of a notice to quit, is without any substance and cannot be entertained. This is more so, as the permission to raise this new point at this late stage, when the limitation for preferring the appeal has expired; and this aspect, as was observed in Pritam Singh's case, 1967 Delhi Lt 794, cannot be completely ignored.

15. Coming to the merits of the case, the present accommodation with the landlord consists of one room measuring 12' X 12', one verandah, one store, a bath, a kitchen and a latrine. The tenants have stated that the so-called verandah is a hall which is being used by the landlord as a living room. The landlord as a living room. The landlord in reply has asserted that the verandah is not enclosed on all sides and is essentially a verandah, may be that for paucity of accommodation this verandah is being used by the landlord for living purpose also. This would show that on account of shortage of accommodation even the verandah is being used by him as a living room and would lend support to his plea that his claim is bona fide.

In any case, it is clear that he has one main room with him. His family consists of himself and his wife, both of whom are old and said to be ailing. His son Mulk Raj, with his wife, one son and two daughters is living with the landlord in the garage attached to the building. A son of Mulk Raj who also used to live with him has been married and is obliged to shift to Model Town along with his wife and two

children. The second son of the landlord, viz, Suraj Parkash with his wife and three children (one child was born after the filing of the application for eviction) lives with the landlord in the same one-roomed flat on the first floor. The landlord's daughter has been married and she with her husband and family lives in Simla. During winter she with members of her family comes to Delhi and stays with the landlord. It was found that the landlord was justified in his desire to live on the ground floor. The son, Suraj Parkash, with his wife and children, was already living on the first floor flat and could not be asked to leave that flat. The second ground floor flat was considered necessary for the needs of the landlord, in view of the fact that his married daughter with her family is normally staying with the landlord during the winter. The requirements of Mulk Raj were not taken into consideration at all and for that reason Muni Lal and Narinder Singh, tenants on the ground floor, were ordered to be evicted, while eviction first floor was dismissed. The landlord's requirement for properly accommodating his other son Mulk Raj has been ignored without any justification.

It is stated on behalf of the tenants that another 'kotha' adjoining the garage occupied by Mulk Raj has been vacated by another tenant who was living there. The landlord in reply has submitted that the said 'kotha' has a low ceiling and no ventilation. In fact, during the course of argument, an offer was made to Kedar Nath, to exchange his accommodation on the first floor with the accommodation consisting of the garage and the adjoining 'kotha' said to have been vacated, but the same was declined. If, therefore, the garage and the adjoining room is not considered suitable for the tenant living on the first floor, who is paying Rs.17.14 per month as rent, it cannot be said that the same accommodation is suitable and sufficient for the needs of the landlord's second son Mulk Raj, his wife and his four children. It was contended on behalf of Narinder Singh, tenant, that Kedar Nath, has built a house which gives him alternate accommodation; he should, therefore, be evicted and not Narinder Singh. Kedarnath, however, resisted this plea and stated that he was entitled to continue living in the flat on the first floor. In any case, as would appear from above, the requirements of the landlord for the entire house are bonafide.

16. It has been repeatedly held by this Court that the landlord is entitled to claim eviction of his tenant if the premises are required bona fide for occupation as a residence for himself, living with the other members of his family who normally live with him, even though the said members may not be financially dependent on him. In the present case, it has been established that the landlord had purchased the property in dispute for the purpose of his residence. It was for this reason that he occupied as soon as, any portion of the property fell vacant. He lost no time in filing eviction application when he got the right to file petitions after the expiry of five years from the acquisition of the property. Both his sons, Mulk Raj and Suraj Parkash have all along been living with him. It has been stated that they are not messing with him. Common mess, however, is not an essential requirement. The landlord may like to live with the members of his family, even though they may not be taking their food in common with him. The Muni Lal and Narinder Singh, tenants, on the ground floor are maintained. The dismissal of landlord's eviction petition against Kedar Nath is set aside and an order for recovery of possession is passed against Kedar Nath, tenant also.

17. In the circumstances, the appeals of the tenants, S.A.O. 175 -D of 1966 and S.A.O. 176 - D of 1966 are dismissed, while the appeal of the landlord S.A.O. 211 - D of 1966 is accepted. Orders of eviction shall operate against all the three tenants. The landlord, however, shall not obtain possession from any of the tenants, before the expiry of six months from the date of this order. In the circumstances of this case, however, there shall be no order as to costs.

18. Order accordingly.