

P.S. Devgun Vs. P. Walia

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Court : Delhi

Decided On : Feb-12-1975

Reported in : ILR1975Delhi393

Judge : B.C. Misra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14

Appeal No. : Second Appeal No. 267 of 1973

Appellant : P.S. Devgun

Respondent : P. Walia

Advocate for Def. : Mr. Thanai

Advocate for Pet/Ap. : T.N. Sethi,; Amrjit Singh,; C.B. Thanai,;

Judgement :

B.C. Misra, J.

(1) This second appeal has been filed under section 39 of the Delhi Rent Control Act, 59 of 1958, (hereinafter referred to as 'the Act'), by the landlord appellant against the appellate order of Mr. G. C. Jain, Rent Control Tribunal, dated 28th July, 1973, by which he had allowed the appeal and reversed the order of Mr. Jaspal Singh, Controller, dated 1st November, 1972, finally dismissing the

eviction petition, which had been filed by the appellant against the tenant respondent.

(2) The property in dispute consists of first floor of house No. R-120, Greater Kailash, which had been let out to the respondent tenant on 22nd October, 1967 for a period of two years on a rent of Rs. 320 per month. The appellant landlord came to Delhi for study leave for the period from 15th January, 1969. On 14th July, 1970, which is about 18 months after his arrival in Delhi, the landlord served a notice on the respondent requiring him to vacate the premises on 31st August, 1970. Not getting any response, the appellant landlord filed the petition for eviction on 6th October, 1970 on the ground of bona fide personal need for residence being the ground specified in clause (e) of the proviso to sub-section (1) of section 14 of the Act. The allegation made in support of his claim was that he was an Army Officer, who was likely to be transferred from place to place and so he needed the premises in dispute for residence of himself and members of his family, which consisted of his wife, a minor son and a minor daughter, besides his mother. The respondent tenant contested the petition and urged that the same had been filed mala fide on account of the dispute, which arose in April, 1970 out of the demand of the tenant respondent for a servant quarter or proportionate reduction in rent since the old existing servant quarter had been demolished. It was also contended by the tenant that the landlord appellant claimed enhancement of rent on account of further renewal of the lease. The tenant respondent also pointed out that the ground floor of the tenanted property, which had been let out by the appellant earlier on a monthly rent of Rs. 550 had fallen vacant on 31st August, 1970 (which was the date on which the period of notice of the respondent had expired), but the landlord appellant had let out the said premises again on 1st September, 1970 on a higher rent of Rs. 675 per month. Furthermore, during the pendency of the eviction petition, it has transpired that the same ground floor again fell vacant and on 10th May, 1972 it was again let out to the Chief Administrative Officer, Ministry of defense, on a rate of rent which the respondent has alleged to be still higher.

(3) The claim of the appellant landlord found favor with the controller and he passed an order for eviction. On appeal, the Rent Control Tribunal came to the

contrary conclusion and found that the landlord had failed to establish that he bona fide needed the premises in dispute for his residence or that the accommodation already available with him was not reasonably suitable. As a result, the eviction petition was dismissed by the Rent Control Tribunal by the appellate order under challenge in this appeal.

(4) Mr. T. N. Sethi, appearing in support of the appeal, has assailed the findings of the Rent Control Tribunal as being contrary to law and the counsel has submitted that the Tribunal has erred in relying upon the authorities reported as *Freddy fernandes v. P. L. Mehra*, 1973 RCR 53 and *David Brown v. Dr. Surjeet Singh*, 1971 R C J 716.

(5) I have heard the counsel for parties at some length. My learned brother, V. S. Deshpande J. in *Freddy Fernandes's* case has considered all the then existing authorities of the court on the subject. With greatest respect, I agree with him and hold that there is no doubt that the landlord has to establish to the satisfaction of the Controller, firstly he requires the residential premises bona fide for occupation as a residence for himself and or for any members of his family dependent on him, and secondly there is no other reasonably suitable residential accommodation available with him. The required satisfaction must be done objectively and cannot be left entirely to the subjective will or mind of the landlord. The choice and desire of the landlord has an important part to play; where there are two or more accommodations occupied by two or more different tenants and the landlords chooses to evict one of them to occupy the premises himself, there landlord's choice prevails and it will not afford any valid pica to the tenant to contend that the accommodation with any other tenant of the landlord is more convenient to 'the landlord and he must try to evict that other person. However, if some accommodation has already fallen vacant and the landlord fails to occupy it, he cannot be allowed to plead that it was his choice and he did not like the accommodation ; but, he must explain to the satisfaction of the Controller the reasons why, as a, reasonable man, the landlord was justified in the circumstances of the case in not occupying the said premises. In such a case, the landlord cannot urge that he is in arbiter of his needs. If the Controller is satisfied that the accommodation which had fallen vacant was not reasonably suitable or at

that time the landlord did not have the need to occupy it, but he now requires the premises bona fide, the Controller may still allow the eviction. But, it is the satisfaction and decision of the Controller about the landlord fulfilling the requirements of the statute and not the view of the landlord that must prevail. I am further of the view that in what circumstances the need of the landlord can or cannot be considered to be bona fide depends on the facts and circumstances of each case placed before the Controller. In my opinion there is nothing in the judgment of my learned brother, Deshpande J. in Freddy Fernandes's case which be in real conflict with the previous decisions of the Circuit Bench of the Punjab High Court at Delhi or of this court. I also wish to add the observations of S. K. Kapur J. in a Division Bench judgment, Roop Lal Mehra v. Kainia Soul, 1966 Plr 146, (which incidentally has been affirmed by the Supreme Court in 1969 Rcr 1017, still hold good and Deshpande J. has not differed from them. They are to the following effect: The landlord is within reasonable limits, adjudged from the practical and not fanciful point of view, entitled to be more comfortable by occupying his own house and in decking his need, 'the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out as irrelevant'. The decision in Freddy Fernandes's case has been rightly relied upon by the Rent Control Tribunal and as I respectfully agree with the said decision, it does, in my opinion, not require any reconsideration. So far as the other authority, David Brown v. Dr. Surjit. Singh, is concerned, I am of the view that it does not lay down that the petition for eviction must in all cases be dismissed as premature if the landlord established to the satisfaction of the Controller that his need is not immediate, but is likely to arise in future. My learned brother, Deshpande J. has himself dismissed the appeal on the ground that on account of subsequent events the petition had ceased to be premature. It is common knowledge that petitions for eviction under the Delhi Rent Control Act do take consideration time for disposal. firstly by the Control and then in first appeal before the Rent Control Tribunal and should there be a second appeal then in the High Court. It is certainly not a rule of law that a landlord must find himself on the street before he moves the Controller for eviction. The landlord cannot correctly estimate the time during the which his petition is likely to be decided and so it is open to the landlord to institute the petition for eviction on the ground that his need

is bona fide and is likely to arise in the foreseeable future. Should the Controller find the need to be imaginary or fanciful, he can dismiss it holding that the landlord has failed to establish that the landlord needs the premises bona fide. On the other hand, if the Controller finds that the need of the landlord has been established to be bona fide, but the need to physically occupy the premises is not likely to arise before the happening of some particular event or a particular date, e.g. the date of retirement, then, I am of the view that it would be open to the Controller to specify the date before which the order for eviction passed by him would not be executable and he need not dismiss the petition as premature. It may be noted that sub-section (7) of section 14 requires the Controller to give six months time to the tenant to vacate, where he orders eviction on the ground of bona fide personal necessity and so, in my opinion, there is nothing in the law to prevent the Controller from fixing the date for delivery of possession longer than six months in appropriate cases, where list justice of the case so requires.

(6) Applying the aforesaid rules of law to the present case, I find that the Rent Control Tribunal has not dismissed the petition of the appellant landlord only on the ground of its being premature. It has taken the entire facts and circumstances into consideration and has arrived at a finding that the landlord has failed to establish his case to the satisfaction of the Tribunal. I have carefully considered the matter over again and hold that there is no legal infirmity in the reasoning or conclusion of the Rent Control Tribunal. I wish to add that I have been considerably impressed by the facts which appealed to the Rent Control Tribunal that the landlord having arrived at Delhi in January, 1969 gave notice of eviction only in July, 1970 after a quarrel had developed with the tenant over the servant quarter and then the landlord finding that the ground floor of the property had fallen vacant on the expiry of the period of notice again let out the same on a higher rent. Not feeling content, the landlord again let out the same ground floor on a still higher rent during the pendency of the eviction petition on 10th May, 1972. The reason advanced by the landlord for not occupying the ground floor when it had fallen vacant that it was yielding him a higher rent while the rent of the tenanted premises in dispute was comparatively less, is not a sufficient ground to hold that the premises on the ground floor available to the landlord were not reasonably suitable. This is in accord with the decision of Deshpande J. in Freddy

Fernandes's case. and has not appeared to the Rent Control Tribunal. In a case where a landlord does not occupy the premises without any reasonable justification, which has fallen vacant immediately before as well as during the pendency of the petition for eviction on the ground that he secured a higher rent for the said premises while the tenanted premises were yielding him a comparatively small rent, renders the landlord liable to the charge that his motive in seeking eviction of the tenant was oblique to obtain a higher rent from the tenant and his contention of needing the premises for his personal residence was not bona fide. The Explanation of the landlord did not satisfy the Rent Control Tribunal, nor has the same appealed to me. The findings of fact recorded by the Tribunal are binding on this court in second appeal as has been held by the Supreme Court in *Mattulal v. Radhey Lal*, Air 1974 Sc 1956 and the jurisdiction of this court under section 39 of the Act is confined to determination of substantial questions of law and does not extend to reversing the finding of fact arrived at by the Tribunal. This would dispose of this appeal.

(7) Mr. Sethi, counsel for the appellant, has stated at the bar that a subsequent event has happened, that is the appellant has again been transferred back to some place outside Delhi and his need for residing in the tenanted premises has become acute. Mr. Thanai, counsel for the respondent tenant, has also stated about the happening of another subsequent event. He contends that the premises on the ground floor is likely to fall vacant again in February, 1975, but the landlord has already agreed to renew the lease of the premises again on a higher rent. Both these facts contended by the counsel for the parties are not established on the record. At all events even after noticing the submission of the counsel in respect of subsequent events, which they want to allege and prove on the record, I am not persuaded to differ from the findings of the Rent Control Tribunal.

(8) As a result, I do not find any merit in the appeal and affirming the order of the Tribunal, dismiss the appeal with costs.