

Gian Singh Vs. Tarlok Singh

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SooperKanoon Citation : sooperkanoon.com/685880

Court : Delhi

Decided On : Mar-12-1975

Reported in : ILR1975Delhi215; 1975RLR340

Judge : Avadh Behari Rohtagi, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal No. 52 of 1972

Appellant : Gian Singh

Respondent : Tarlok Singh

Advocate for Pet/Ap. : F.C. Bedi and; B.S.C. Singh, Advs

Judgement :

Avadh Behari, J.

(1) This is a tenant's appeal against the order of the rent control tribunal dated January 13, 1972.

(2) The appellant Gjan Singh is a tenant of house No. 40-4J/4921 Mtlulcd in Raigarpura, Karol Bagh. New Delhi on a monthly rent of Rs. 20.00 . In this house he has one room. kitchen, varandah and common bath, latrine and a court yard in his occupation. The respondent Tarlok Singh is the landlord. He purchased this

property on March 30, 1968. The appellant is a tenant since the days of the previous owner. On March 30, 1968, he attorney to the respondent.

(3) On May 23, 1969, the landlord filed a petition for the tenant's ejection. Ejection was sought on clause (h) of the proviso to S. 14 (U of the [Delhi Rent Control Act, 1958](#) ('the Act')). That Clause reads:

'(H) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence.'

(4) The landlord's case was that on February 6, 1966, the tenant was allotted a residence by the Central Public Works Department ('C.P.W.D.'), that is, quarter No. 489 Sector V, R. K. Puram, New Delhi and he promised to vacate the premises in dispute but did not shift to his Government allotted accommodation. It was said that the tenant 'took possession of the said accommodation but further let it out to somebody in order to get enhanced rent and has retained the suit premises without any basis'.

(5) The tenant contested the case. He raised three principal defenses. Firstly, he said that the notice to quit was not valid. Secondly, he denied that the premises had been let to him only for residential purpose. Thirdly, he denied that he was in possession of any allotted accommodation.

(6) The rent controller by order dated January 27, 1971, passed an order of eviction. He found that the notice to quit was valid, that the letting purpose was residential and that the C.P.W.D. did allot a quarter to the tenant on February 5, 1966 possession whereof was handed over to him on February 7, 1966 by the department. He further found that the tenant surrendered possession of the quarter in April 1968 to the department.

(7) In his evidence before the controller the landlord produced a clerk of C.P.W.D. He proved that the quarter was allotted to the tenant on February 5, 1966 which remained with him till April 10, 1968. In his evidence the tenant admitted this fact of allotment. But he, however, said that he himself never shifted to that quarter. The quarter was used by his son for studies and that is why he got the allotment.

Later he found that the quarter was situated at a very inconvenient distance and, therefore, he voluntarily surrendered it as he had no use for it. He also said that he had attained the age of Superannuation and was getting yearly extension in service and, therefore, was not entitled to retain the Government allotted accommodation. He said he was entitled to retain his private rented house as he was on the verge of retirement. The rent controller found the purpose of allotment for studies not proved. The tenant also did not prove that he had attained the age of superannuation. But one fact was clearly established. It was this: that the quarter was allotted to the tenant in February 1966 which remained in his possession till April 10, 1968. In the view of the controller clause (h) applied. He, therefore, passed an order of eviction, as I have said.

(8) The tenant appealed to the rent control tribunal. The tribunal affirmed the findings of the controller and held that the notice was valid and the letting purpose was residential. Following a division bench ruling of this Court in *Ilulu Mill v. Ruinesi Mar Nalti*, 1970 R.C.R. 532(1) the tribunal held in agreement with the controller that the tenant was liable to ejection as he had once been allotted a quarter and it did not matter that he surrendered possession thereof in April 1968. The tenant's appeal was dismissed.

(9) The tenant appeals to this Court. The issue to be decided in the appeal is: Is the tenant liable to be evicted on the ground stated in clause (h) notwithstanding the fact that the quarter was allotted and the allotment was cancelled long before the petition was brought? It will be remembered that the respondent purchased the house on March 30, 1965. The quarter was allotted in February 1966 and that it was surrendered in early April, 1968. The petition was filed on May 23, 1969, that is, after more than a year of the cancellation of the allotment of the quarter.

(10) This appeal raises a question of interpretation of clause (h). It seems to me that the crucial word in the clause is 'has'. That word gives us a key to its interpretation. The underlying object in enacting clause (h) of the proviso to S. 14(1) of the Act is that the tenant should not have more than one premises for his residence in these days of housing shortage. In case the tenant has taken on rent a particular premises for his residence and thereafter acquires vacant possession of another

premises for his residence, he. the tenant in such an eventuality would have to quit the earlier tenanted A premises. See *Shyam Sunder v. Khan Chand*, 1966 (2) O.L.T. 223(^). The controller and the tribunal both thought that all that. this clause required the landlord to prove is that the tenant was once allotted a residence and that he was given vacant possession thereof. They thought that it did not make any difference that the allotment was cancelled before the ejectment petition was filed as in their view on allotment a cause of action arose to the landlord which the tenant could not destroy by his own act of surrender of the house. This view was avowedly based on the division bench ruling in *Hutoo Mal's case* (supra). Though there was a later decision of P. S. Safer J in *Ved Parkash v. Sh. Chum Lul*, 1971 D.L.T. 59 taking a contrary view the tribunal declined to follow that ruling as he felt himself bound by the division bench. The tribunal expressly said that the single bench ruling in the case . " *Ved Parkash* (supra) favored the tenant but unfortunately he did not. follow it. He preferred to rest his decision on the authority of the division bench.

(11) In *Barren v. Foi-dree* (1932) A.C.. 676 Lord Warrington of Clyfl'c said:

'THEsafer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.' Clause (h), in my view, should be construed according to the ordinary meaning of the English language. The words used there have. no idiomatic meaning. An elementary rule of construction is that the phrases and sentences are to be construed according to the rules of grammar. 'The length and detail of modern legislation' wrote Lord Evershed M.R.. 'has undoubtedly reinforced the claim of literal construction as the only safe rule.' If there is nothing to modify, alter or qualify the language which the statute contains. it must be construed in the ordinary and natural meaning of the words and sentences. (See *Maxwell on Interpretation of Statutes*. Twelfth Edition page 28).

(12) Clause (h) uses the word 'lias'. It is a key word in the setting of the clause. The word 'has' or 'have', the dictionaries tell us, means to hold in possession us property; own; to hold. keep or retain, esp. in one's use. service, or at one's disposal as for example (You cannot have your cake and eating too). (The

Chairman has all the tickets needed).

(13) Plainly the words in the clause mean that on the date of the application the tenant must be having a residence either because he has (1) built; or (2) acquired vacant possession; or (3) been allotted a residence. One of these situations must exist on the date of the application in order to furnish a cause of action to the landlord. If one of the situations exist he can go to court and say: 'the tenant should be asked to vacate my house as he has an alternative residence in his possession by reason of building or acquisition or allotment.' If on the date of the application for eviction the tenant, has not got any such residence in his possession then it cannot be said that the landlord has a cause of action to move the controller for passing an order of eviction against him. If the tenant has no present right to the vacant residence on the date of the application then his ejectment cannot be ordered under this clause. When we say that the tenant has been acquired vacant possession of a residence' or that the tenant 'has been allotted a residence'. we mean that he has a present right to move into the premises. for. the vacant residence, whether built, allotted or acquired, is at his disposal. It is not possible to ignore in the construction of the clause the possessive character which the word 'has' denotes. In interpreting the clause in this way i am not alone. I am in good company of P. S. Saleer J. He has also taken this view in the case of Ved Parkash (supra).

(14) Indisputably in this case it has been established that a quarter was allotted to the tenant in February 1966 and it remained in his possession till the beginning of April, 1968. It is also not in dispute that the present landlord purchased the premises on March 30. 1968. For all practical purposes, therefore, both the allotment and the surrender took place in the time of the previous landlord. The present landlord thought of suing the tenant only in May, 1969. On that date again it is not disputed that the tenant was no longer in possession of an allotted quarter and that he had surrendered the same in April. 1968. As the tenant on the date of the application was not in possession of a Government allotted accommodation the landlord, in my opinion, was not entitled to invoke clause (h) and seek the tenant's ejectment. This interpretation, it appears to me, fits with the facts of life. 'The canons of construction are not so rigid as to prevent a realistic solution.' (Per

Lord Reid in *Cramas Properties, Ltd. v. Connaught Fur Trimmings, Ltd.*, 1965 1 W.L.R. 892 (5).

(15) 1. The counsel for the landlord has argued that on the allotment of the quarter to the tenant in February 1966 a complete cause of action accrued to the landlord to sue the tenant in ejectment as all the conditions of clause (h) were satisfied and the present landlord after purchase of the house was entitled to sue and that it did not matter that on the date of the application the allotment had been surrendered, it cannot read the words of the clause as counsel would have them read.

(16) The word 'has' received a judicial interpretation at the hands of the Supreme Court in *Goppulal v. Thakurji Shriji Shirii Dwarkadheeshji*, 1969 R.C.R. 300. In that case the Court had to interpret clause 13(1) (c) of Rajasthan Pre-rent Control (Control of Rent and Eviction) Act, 1950. The relevant words were "has sub-let". Speaking for the Court Bachawat J said:

'The present phrase contemplates a complete event connected in some way with the present time. The words take within their sweep any subletting which was made in the past and has continued up to the present time.'

(17) The counsel for the landlord placed great reliance on *Mangilal v. Sugnchand Rathi*, [1964] 5 SCR 239. In that case the Court was called upon to interpret S. 4(a) of the Madhya Pradesh Accommodation Control Act, 1955.

(18) The tenant was in arrears of rent. He was given one month's notice to pay the arrears. He failed to make payment to the landlord of the arrears within one month of the written notice of demand. The landlord sued the tenant for ejectment. The High Court ordered ejectment. Appeal to the Supreme Court was dismissed.

The Supreme Court said: "This provision clearly speaks of a tenant having failed to make payment to the landlord of the arrears of rent due from him within the time prescribed in that clause, it does not mean that the ground on which (eviction) is claimed must subsist till the date of suit the grounds set out in clause (a) of s. 4 need not be shown by the landlord to exist at the date of

institution of the suit. All that is necessary for him to establish is that the tenant was in fact in arrears, that he was given one month's notice to pay up the arrears and. that in spite of this he failed to pay those arrears within one month of service of notice on him.'

(19) The counsel turn the respondent submits that as in that case .so in this it is not necessary turn the landlord to show that the ground on which eviction is claimed subsists till the date of the suit. I do not agree. Mangi Lal's case (supra) was a decision of a different hue. in that case the landlords' claim was based upon 'the right which had accrued to them tinders. 4(a) of the Act in consequence of the default made by the defendant in paying arrears of rent', as the Supreme Court said. This was emphasised again when it was said that the claim was on the basic of the statutory right under s. 4 of the Accommodation Act accruing by reason of the default made in the payment of rental arrears.'

(20) The provisions of the Madhya Pradesh Accommodation Control Act, 1955 were different from the [Delhi Rent Control Act, 1958](#). Now the protection to the tenent by the Delhi Rent Control Act. 1958 is more extensive and a tenant in arears of rent is given time to pay the arrears after the institution of the suit for eviction : See S. 14(2) of the Rent Act, This was not so under the Madhya Pradesh Act and, thereforee, a right accrued to the landlord on the failure of the tenant to pay the rent within the period of one month and no subsequent event, it was held, could lake away that right. (See page 247 of the report). The decision of the Supreme Court in that case, thereforee, is to be confined to an interpretation of clause (a) of S. 4 of the Madhya Pradesh Act. The observations made in that case are of no help to us in the interpretation of clause (h) of the proviso to S. 14(1) of our Act. ft is most dangerous to interpret one. section of an Act: on the analogy of interpretation placed upon another section of a different Act.

(21) Lastly I must examine the division bench ruling of this Court in the case of Batoo Mal (supra). The tribunal thought that it was bound by that decision. So am 1. But in my opinion, that case has not been correctly understood by the tribunal.

(22) Batoo Mal's ejectment was sought by his landlord vi. the ground mentioned in clause (h) oi the proviso to S. 14(1) of the Act. Batoo Mal. owned oilier premises

also which he had let out on i-cni:. One of them fell vacant in 195^ and another in 1962. In 1962 the petition for ejectment was filed against him. The tenant said that the house which became vacant in 1962 was not sufficient for his residence. The learned judges of the division bench rejected the. argument. They said.-- in the present case the tenant owns other premises which he has let out on rent. One of them fell vacant in '1958 and another in 1962. He must, thereforee, be said to have acquired vacant possession of a residence in 1958 and 1962 within the meaning of proviso (h) to section 14(1). On 12-1-196 L the tenant Batoo Mal had made a statement before the Magistrate First Class Delhi, that he would vacate the premises in favor of the landlord as and when his own house would become vacant (vide exhibit R/I). The tenant's house has actually become vacant in 1962. The eviction petition was filed in 1962. Learned counsel for the tenant said that the house which had become vacant in 1962 was not sifficient for the purpose of residence of the tenant. But the tenant cannot be heard to dispi.i'te its sufficient in view of his own admission that he would vacate the premises when his own house would become vacant. Apparently he had thought that his house would be sufficient for his residence nor did the landlord delay too much in Filing the eviction petition on this cause of action. It may be that in an exceptional case if the landlord files the eviction petition too long after the tenant obtains vacant possession of a residence for himself then the tenant may defend the eviction petition on the ground that he had in the mean while let out his own residence to some oilier person as he was not bound to keep it vacant wailing for the landlord to file an eviction petition. Tile present is not such a case.' The above passage contains the quintessence of their decision.

(23) Batto Mal's case was a decision on the particular facts of that case. Tenant's house actually fell vacant in 1962. The landlord did not delay the filing of the eviction petition. He brought the petition in 1962 itself. The tenant could not say that the accommodation was insufficient. His eviction was ordered.

(24) The division bench itself recognises that there may be cases where delay will defeat landlord's claim for tenant's ejectment under clause (h). The present. I think, is such a case. Circumstances in this case are substantially different from Bafii Mal's case (supra).

(25) *Batto Mal's* case is an authority for what it decides and not for what it says. Lord Halsbury in *Quinn v. Leathern* (1901) A. C. When the judges of this court (the Court or Appeal) give a decision on the interpretation of an act of Parliament that decision itself is binding on them and their successors. But the words which the judges used in giving a decision are not binding. This is often a very fine distinction, because the decision can only be expressed in words. Nevertheless it is a real distinction which will best be appreciated by remembering that, when interpreting a statute, the sole function of the court is to apply the words of the statute to, given situation. Once a decision has been reached on that situation the doctrine of precedent requires us to apply the statute in the same way in any similar situation : but not in a different situation. Whenever a new situation emerges, not covered by previous decisions, the court must be governed by the statute and not by the words of the judges.'

(26) In *Wright v. Walford* (1955) 1 Q. B. 363 (CA) Evershed M. R. pointed out that, after a matter has come before the courts on the meaning of a phrase in an Act of Parliament, there is a danger that the courts will thereafter construe not the Act and the words in it but expositions of the Act expressed in judgments of the courts, which expositions were in a sense necessarily limited to the particular facts of the particular case.

It is true that after an ejection petition is filed a tenant cannot destroy the cause of action by giving up the newly acquired residence. If that were so every tenant would defeat the right of a landlord easily. In the case of *Shyain Sunder* (supra) this is what happened. During the pendency of the ejection proceedings the tenant vacated the premises H. R. Khanna J said:

'MR. Misra then contends that the appellant has, during the pendency of the ejection proceedings, vacated the premises in Kishen Ganj. This fact, in my opinion would not make material difference because the appellant became liable to ejection when he shifted to his new place of residence after having acquired vacant possession to the same. Once that liability to ejection has been incurred the same cannot be undone by the appellant surrendering possession of the premises he took on rent in Kishen Ganj.'

(27) In view of the fact that in the present case the quarter was surrendered by the tenant in April, 1968, and the petition for ejectment was brought in May, 1969, when admittedly the tenant was not in possession of the acquired residence the tenant's ejectment cannot be ordered for something which he did in the past during the time of the previous landlord. In my opinion, a landlord cannot store causes of action. If the tenant acquires new residence ejectment proceedings have to be launched immediately. A tenant can not be evicted for what he may have done in hoary past. If in the days of yore a tenant was allotted an accommodation and he surrendered it much before he is sued it is neither right nor just to ask him to vacate the premises in his occupation. Such an interpretation not only is unwarranted but also not in keeping with the purposes and plain words of the social legislation such as is the Rent Act.

(28) In the result the appeal is allowed. Ejectment order is set aside. The parties are, however, left to bear their own costs in the circumstances of the case.