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Court : Delhi

Decided On : Aug-08-1978

Reported in : 15(1979)DLT117; 1979RLR106

Judge : H.L. Anand, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B

Appeal No. : Criminal Appeal No. 428 of 1977

Appellant : Hakam Singh

Respondent : Jagat Singh

Advocate for Def. : Shri. A.B. Saharya

Judgement :

H.L. Anand, J.

(1) These petitions u/s 25(8) of the Delhi Rent Control Act, for short, the Act, by two occupants of different portions of the same building, belonging to the respondent assail a common order of the Controller by which, while refusing them leave to contest petitions for their eviction, they have been ordered to be evicted from the premises in their respective occupation.

(2) The respondent who is admittedly a public servant, in occupation of Government accommodation allotted to him by virtue of his employment, sought the eviction of the petitioners under Section 14A(1) of the Act on the ground that by a general and a special order, made by Government, the respondent has been required to vacate the Government accommodation or in default to pay penal rent, and that this entitled the respondent to evict the petitioners, as the respondent was the owner of the property. Leave to contest the petitions was sought, inter alia, on the ground that each of the premises had been let out for a residence-cum-commercial purpose. The petitioner in CR. 400 of 1977 justified leave on the further ground that there was no relationship of landlord and tenant between the parties. Leave was declined on the ground that the purpose of letting -was irrelevant so long as the premises were of a residential nature a fact which is not in dispute. The additional ground urged by the petitioner in Cr No. 400/77 was repelled on the ground that according to the house tax records and the electoral rolls, the petitioner had throughout been in occupation of the premises and was therefore, prima facie a tenant.

(3) At the hearing, leave to defend was mainly sought to be justified on the ground that subsequent to the impugned order, there had been a change in Government policy and that in terms of the revised policy, the respondent was entitled to continue in Government accommodation without incurring the obligation to pay more than the usual rent, and that on account of this subsequent event, the eviction of the petitioners could not possibly be justified under Section 14A(1) of the Act, and that in any event, the various questions arising out of the revised policy, the interpretation of its terms and its impact on the rights and obligations of the parties, deserved to be considered at the trial of the petitions for eviction thereby entitling the petitioners to the leave. Leave to contest was further sought to be justified on behalf of the petitioner in Cr No. 400/77 on the ground that the question' as to the relationship of landlord and tenant required investigation in that there was no material on either side which may indicate the existence of such a relationship and that the admitted occupation of the premises by the petitioner over the years did not by itself constitute any proof, prima facie or otherwise, of the requisite relationship.

(4) Shri A.B. Saharya appearing for the respondent did not dispute that subsequent to the impugned order there has been a change in the Government policy and that on account of that change the respondent has since continued to occupy the Government accommodation and has, since the change, been paying the usual rent. He, however, urged that nevertheless the eviction of the petitioners would be justified in-as-much as on the cause of action as on the date of the order, the petitioners had rendered themselves liable to be evicted and that, in any event, the respondent having been compelled to pay penal rent until the revision of the policy, had incurred an obligation within the meaning of Section 14A(1) so as to entitle the respondent to evict the petitioners. He, however, concedes that on the basis of this subsequent event, this Court has already held in at least two cases that in view of the change in policy leave to contest would be justified. He, however, sought to urge that none of these decisions had taken into account either the fact that on the cause of action as it stood on the date of the order, eviction was justified and the further fact that until the revision in policy the landlord concerned may have already incurred the obligations to pay penal rent and that on that account the subsequent change in policy did not have any impact on the right of the landlord to evict u/s 14A(1) of the Act. With regard to the question of relationship of landlord and tenant, concedes that the mere occupation which is admitted, would not constitute proof of the relationship of landlord and tenant, but urged that, having regard to the fact that the supposed tenant was no other than the brother-in-law of the petitioner, the plea was frivolous particularly having regard to the finding of the Controller that on that date of the commencement of the tenancy the said brother-in-law would have been only of 10 years of age.

(5) After hearing learned counsel for the parties, it appears to me that having regard to the revised policy and in the case of the petitioner in Cr 400 of 1977, the need to investigate the question of relationship, leave would be justified in both the cases.

(6) As far as the subsequent event, it is not disputed that in terms of the new policy, the respondent was under no obligation to vacate the Government accommodation until the age of retirement or resignation etc. nor is he subject to

any penal consequence if he continued to be in occupation because of the rent of the premises in dispute. The contention that the respondent had nevertheless incurred the obligation in the past in having to pay penal rent for some time is, however, not free from difficulty and does not raise an interesting question for decision. It is true that the earlier decision of this Court have not entered into an elaborate examination of this aspect of the matter, but, to my mind, the refinement sought to be introduced by Shri Saharya in his anxiety to justify the impugned order would, by itself, be a complete reply to his contention that leave would not be justified. To my mind, the effect of the revised policy and the factum of payment of penal rent for part of the period on the right of the respondent to evict the petitioners would be sufficient to justify leave to defend and it is unnecessary, as indeed improper, for this Court to embark on an examination of this question. Because at this stage this Court is only concerned with the narrow question if leave would be justified, leaving the Controller free, on a consideration of the various aspects of the matter at the trial of the petition to decide if the petitioners would nevertheless be liable to be evicted.

(7) As far as the relationship between the petitioner in Cr 400 of 1977 and the respondent the petitioner has admittedly been in occupation over the years, but according to his contention it is his brother-in-law who has been a tenant. It is interesting to notice in this context that in spite of the fact that the petitioner has been in occupation for a large number of years, there is no material on the record which may indicate, directly or indirectly, the relationship between the parties. Occupation by itself is not proof, prima facie or otherwise of the nature of the occupation. The finding by the Controller that the alleged tenant, the brother-in-law of the petitioner would have been only 10 years of age at the commencement of tenancy in his favor, is based on a presumption which could not be justified in the absence of any material. In any event, the contention, in the peculiar circumstances of the case, could not be said to be frivolous or for that account deserved to be thrown out of hand and would appear to need further investigation. Such a question would have to be decided at the trial of the petition and not at the initial stage.

