

Shanti Devi Vs. Rattan Lal

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Court : Delhi

Decided On : Dec-01-1975

Reported in : ILR1978Delhi573; 1977RLR531

Judge : Rajinder Sachar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 3

Appeal No. : Second Appeal No. 46 of 1977

Appellant : Shanti Devi

Respondent : Rattan Lal

Advocate for Pet/Ap. : L.M. Sanghvi,; K.B. Rohtagi,; V.K. Jain,;

Judgement :

Rajindar Sachar, J.

(1) This is second appeal against the order of the Rent Control Tribunal dated 22-2-1977, dismissing the application of the petitioner and holding that the proceedings for eviction were not liable to be reopened at her instance under proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976 (hereinafter called the Amendment Act, 1976).

(2) The petitioner's husband Mukat Behari (since deceased) was a tenant of the demised premises. The respondent landlord filed an application for eviction on the ground of bona fide need and got an order of eviction from the Rent Controller on 8-8-1972. Said Mukat Behari was however allowed four years time to surrender vacant possession. Mukat Behari died in April, 1975. In July, 1975. the respondent landlord moved an application for execution of the eviction order against the legal heirs of the deceased, the proceedings were pending when on 1-12-1975 an ordinance known as Delhi Rent Control (Amendment) Ordinance No. 25 of 1975 was issued, the said Ordinance has later on been replaced by the Amendment Act, 1976 which is deemed to have come into force on 1-12-1975.

(3) The appellant moved an application on 10-12-1975 and sought to have the eviction order of 8-8-1972 passed against her deceased husband set aside and for reopening of the proceedings for eviction. The trial court allowed this application and set aside the eviction order dated 8-8-72. The landlord went up in appeal and the tribunal has held that the proviso to Section 3 of the Amendment Act, 1976 is not applicable and the proceedings are not liable to be reopened. He, therefore, dismissed the application of the appellant. Aggrieved the appellant has come up in second appeal to this Court.

(4) In the unamended Delhi Rent Control Act, the definition under Section 2(1) of 'tenant' included any person continuing in possession after the termination of his tenancy. But the heirs of the tenant were not included in the definition. As a result it had been held by various courts that after the termination of the contractual

tenancy the statutory tenant had only a personal right to continue in possession till evicted and that he had no right or interest in the premises occupied by him. His right to remain in possession after the termination of his contractual tenancy is personal and is not capable of being transferred or assigned. It has also been held that if during the pendency of the eviction proceedings a tenant dies his legal representatives could be brought on record and they could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Thus if an application for eviction 576 had been brought on the ground of bona fide need of the landlord the legal representative of the deceased tenant whose tenancy had been terminated could not urge the contention based on the ground of bona fide requirement by the landlord as the same was personal to the statutory tenant and on his death the same was not open to his legal representative to urge;

(5) In the court pointed out the difference in the position of a statutory tenant under English law and in India. It consequently held that if after having filed an appeal in eviction proceedings statutory tenant died his legal representatives had a right to prosecute the appeal and that the appeal did not abate by the death of statutory tenant. This case however did not decide as to what defenses were open to the legal representatives as laid down in case of J. C. Chatterjee (supra).

(6) There is now substituted a new definition of tenant in Section 2(1) which by Section 2 of the Amendment Act, 1976, has to be deemed always to have been so substituted. The Amended definition of the tenant like old, still does not include in tenant any person against whom an order or decree of eviction has been made except where such decree or order for eviction is liable to be reopened under the proviso to Section 3 of Amendment Act, 1976. As undoubtedly an order of eviction had already been passed against Mukat Behari he could not be deemed to be tenant by the amended definition unless his case fell within the exception. This is not a case where Mukat Behari was continuing to occupy the premises after the termination of his tenancy but before an eviction order could be passed has died. If that was the case by virtue of the amended definition the appellant would have been deemed a tenant and could not be evicted without filing an eviction petition against her. Rather we are concerned here with the application, filed by the appellant under proviso to Section 3 of the amendment Act, 1976, to set aside the decree passed against Mukat Behari and to reopen the proceeding and decide the matter afresh. Question is whether she is competent to do so. Dr. Singhvi urges that proviso to Section 3 of Amendment Act, 1976 permits the tenant against whom an order of eviction has been made to apply and therefore it would stand to logic that his spouse who is now included in the definition of a tenant should also be allowed to do so. I do not agree. In, my view the proviso to .Section 3 of the Amendment Act, 1976 does not permit the tenant to move an application for reopening the proceedings. Section 3 of Amendment Act, 1976 is a saving provision to provide for eventualities brought by amendment, of definition of tenant and the consequential action. The provision requires the decision to be given in accordance with provisions of Principal Act as amended by Amendment Act, 1976. But how can the Amendment Act, 1976 apply in the case of a person who was already a tenant under the Principal Act. No doubt the heading of a chapter is not to be used for interpretation of the provision but the same may be looked into to determine the history of the legislation and they do give a key to the mind of the legislature. Now Section 3 is to be found headed by Amendment of the Definition of 'Tenant and Provisions consequential to Amendment and this would show that a person who can apply to have the proceedings reopened must be one who has become a tenant by virtue of amendment of the definition of a tenant. Obviously the original tenant does not have to invoke the amended definition of tenant and could not thus invoke proviso to Section 3 of the Amendment Act, 1976. I can hardly see any logic in the legislature giving such right to the original tenant. The rounds of eviction under Section 14 remain the same as in the unamended Act- excepting the addition, of Section 14 A which provides for right to recovery of immediate possession of the premises in the case of the government servant : The result of accepting Dr. Singhavi's argument would be that all orders for eviction which had been obtained according to the provisions of the Principal Act would have to be set aside at the instance of tenants and fresh proceedings started for no other reasons excepting that the possession had not yet been, recovered by the landlord. This is a consequence so serious that it cannot be accepted unless it was so specifically provided by the Act. If the legislature was wanting to nullify all the orders of

eviction which had been obtained prior to the Amendment Act, 1976 it would have so specifically provided by making all those orders and decrees inexecutable. The precedence for that is clearly to be found in Section 14 of the Act which provides that no order or decree for recovery of any premises shall be made by any court against a tenant except on the grounds mentioned therein. Thus all orders or decrees for eviction which had been, obtained prior to the coming into force of the principal act became inexecutable. Legislature therefore where it wishes to make orders and decrees obtained earlier ineffective specifically so provides. It has however not done so in the present case. It could obviously not have permitted or contemplated to permit to tenant who had defended the eviction application on merits but failed to reopen the proceedings and have it tried de novo on precisely the same ground. If this were permitted an anomalous situation would arise where a landlord may have obtained an order for eviction on merits and succeeded right up to the Supreme Court would have to start de novo and obtain from the Controller a fresh decision on those very points on which a decision had already been given in his favor right up to the highest court. It is also well settled that where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system, vide. This was followed by a bench of five judges of this court in This reinforces my finding that the tenant included in the original definition i.e. Mukat Behari would not have been competent to ask for reopening of proceedings under proviso to Section 3 of Amendment Act, 1976. So the appellant cannot do so by claiming a right through Mukat Behari, but must be able to establish an independent right to invoke proviso to Section 3 of Amendment Act 1976. Now if we read Proviso to Section 3 Along with Section 2(1) A, it shows that if a controller is satisfied that the landlord had not recovered possession of premises in relation to which the order for eviction of the person in possession thereof was made, he shall if such person by a written application so desires set it aside, this would show that only that person can apply under Proviso to Section 3 where the order for eviction was passed against such person. In the present case order for eviction was passed against Mukat Behari. It was not passed against the appellant and she therefore does not fulfill any of the condition precedent required by the Proviso and therefore application at her instance could not lie. Section 25 of the Act does not avail her because it only makes the order for recovery of possession binding on all persons who may be in occupation of the premises, but does not make the order of eviction against Mukat Behari an order against the appellant though she may be bound by virtue of Section 25 of the Act.

(7) Next question is then who are the persons for whose benefit Proviso to Section, 3 was enacted. It is well settled that to decide the true scope of interpretation of enactment the court must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation, the purposes thereof and the other provisions of the statute and to construe the language in the light of the indication furnished by them, vide It is apparent that an application, under Proviso to Section 3 of Amendment Act, 1976 for reopening the proceedings contemplates a situation which has arisen because of the amendment of the definition of a tenant. To give an illustration as, in the case of J. C. Chatterjee (Supra) where it was held that the legal representatives of a deceased statutory tenant could resist the eviction order on contentions appropriate to representative characters and not one which was personal to the deceased tenant. Thus if an order of eviction had been passed by the first court against the tenant and if he had died after filing an appeal, his legal representative could not resist and urge that the landlord did not bona fide require the premises for his own requirement and the landlord would get the order of eviction without having to establish and prove on merits that he bona fide requires the premises. This really meant that without satisfying the conditions laid down by the Rent Act the landlord could obtain eviction of the tenant. This was a nullification of beneficial legislation. Legislature realised that this position was unsatisfactory. It had already by the amendment recognised heirs of the deceased tenant who had continued in possession after the termination of tenancy as tenants vide 2(1)(e). The position thus was that in the event of death of a tenant after the termination of the tenancy no problem would arise to his legal heirs to succeed to the tenant because the amended definition of tenant safeguards their rights. In case the decree for eviction had been obtained against the tenant himself while he was alive no benefit was to be given to his

successor because both the litigation had been fought on merits and also by the definition of a tenant a person against whom an order or decree for eviction has been made is not included in the definition of tenant. This was no hardship because if a tenant had failed to avoid eviction order even after having assisted it on merits, the legislature did not wish to set at naught those decrees or orders obtained by the landlords. In that case, as in the present case, if the landlord sought to execute the decree which he has obtained against the tenant the legal representative cannot seek to reopen it because he was not a party to the order of eviction. Then there was third case where during eviction proceedings either pending in the first court or in the appellate court, the tenant having died his legal representative had been imp led to the proceedings. In such a case in view of the law laid down by the courts the legal representatives had to suffer an order of eviction against them without having been given an opportunity to defend it on merits. It was this limited class of person who were being prompted by Proviso to Section 3 of Amendment Act of 1976. That this is what the legislature had in mind is clear from the fact that while stating that tenant does not include any person against whose order or decree for eviction has been made exception was made where such decree or order for eviction is liable to be reopened under the proviso to Section 3 of Amendment Act, 1976. That exception by proviso contemplates that proceedings should have been finally disposed of before the commencement of the Amendment Act which in view of Explanation to Section 4 of the Amendment Act 1976 meant that an appeal or revision in an application for proceedings of eviction were not pending in appeal or the period of limitation for preferring the appeal has expired and further that the landlord had not recovered possession of the premises in relation to which decree or order for eviction of the tenant was made. Thus as an illustration similar to that case of the Supreme Court, viz. J. C. Chatterjee's (supra) where the legal representatives had to suffer the eviction, order without having been given a right to defend on merit, the said heirs would now be in a position to apply to the controller to have an eviction order set aside and the proceedings reopened subject of course to their being in possession of the premises. Proviso to section 3 of the Amendment Act, 1976 thus gives protection to all those legal representatives of the deceased tenant who had been imp led in eviction proceedings on the death of the original tenant, but had not been allowed to defend the case on merits. They now have been given the right to have a trial on merits by having the proceedings reopened. This right is simply consequential to the amendment of the definition of the tenant. The legislature obviously reasoned that as by the amendment of definition of the tenant spouse, sons, etc. are being included in the definition of the tenant, it would be inequitable and anomalous that they should be liable to be evicted in pursuance of the decree for eviction passed against them even though when they had not been given right to defend on merits. The legislature thus was preventing the consequence of mischief of the unamended definition of a tenant by which a large number of landlords had obtained decrees of eviction against the legal representatives of the tenant without satisfying the requirement laid down by Section 14 of the Principal Act, Proviso to Section 3 of the Amended Act, 1976 was thus enacted to serve a beneficial purpose by giving an opportunity .to those legal representatives to have the eviction order set aside and have the proceedings for eviction reopened and have them decided in accordance with principal Act and on merits. This proviso to Section 3 of Amendment Act, 1976 was certainly not meant to enable a person like the appellant to have the eviction order reopened when, full opportunity had been already given to the deceased tenant to resist it on merits, and he had failed. The appellant thus did not fulfill the requirement of proviso to Section 3 of the Amendment Act, 1976 and, therefore, is not competent to have the proceedings reopened. The lower appellate court therefore rightly dismissed her application,. In that view I see no merits in the appeal and dismiss the same but with no order as to costs.