

Satyapal Vs. Parsani Devi

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Court : Delhi

Decided On : Mar-15-1974

Reported in : 11(1975)DLT124

Judge : H.L. Anand, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14 and 39(2)

Appeal No. : Second Appeal No. 82 of 1971

Appellant : Satyapal

Respondent : Parsani Devi

Advocate for Pet/Ap. : K.C. Nayar and; M.L. Bhargav, Advs

Judgement :

H. L. Anand, J.

(1) By this second appeal under Section 39 of the [Delhi Rent Control Act, 1958](#) (hereinafter called 'the Act'), the appellant, an unsuccessful tenant, challenges an order of the Rent Control Tribunal by which it has affirmed in appeal an order made by the Additional Rent Controller directing the eviction of the appellant from the premises in dispute under Section 14(1)(e) of the Act on the ground that the premises in dispute were bona fide required by the respondent/landlady for her residence and that the respondent/landlady had no other suitable accommodation

available for the purpose.

(2) The appellant has been in occupation of the premises in dispute being a portion of the ground floor of the property, consisting of two rooms, a verandah, kitchen, bath, court-yard and a common laterine. The landlady has been in occupation of a part of the first floor of the property and while it is not disputed that the premises in the occupation of the landlady on the first floor is otherwise sufficient for her requirements, the eviction of the tenant was sought on the ground that on account of old age and disease of the legs and joints, the landlady found it painful and difficult to climb the stairs and the premises in question were required by her bona fide for her residence as there was no suitable accommodation available to her for the purposes on the ground floor. The Additional Rent Controller returned a finding that the premises were bonafide required by the landlady for her residence as on account of old age and disease of the limbs and legs, the landlady found it difficult and painful to climb the stairs and that the need of the landlady was both genuine and reasonable. The pleas urged on behalf of the appellant that the ground on which the eviction was sought was merely a ruse to enhance the rent; that the landlady was healthy and fit enough to climb the stairs and that the landlady was not owner of the property in dispute were dispelled. In appeal, the order of the Additional Rent Controller was upheld and the further contention urged on behalf of the appellant that, during the pendency of the proceedings, the landlady had obtained vacant possession of two different portions of the ground floor one consisting of a room, verandah in front, courtyard, common bath and common laterine and the other of a room measuring 6' x 10' and that therefore the need of the landlady had been satisfied and it could not be said that no reasonably suitable residential accommodation was available for the landlady on the ground floor, was turned down by the Rent Control Tribunal on the ground that the additional accommodation made available to the landlady could not be considered reasonably suitable for her requirement because the said portions did not constitute a compact unit and the rooms were not adjacent to each other and there were other tenants living in the portion which could make it difficult for the landlady, who was old and ailing, to live comfortably.

(3) On behalf of the respondent/landlady, a preliminary objection was raised as to the maintainability of the Second Appeal on the ground that the question whether the landlady bona fide required the premises in dispute and whether there was no other reasonable accommodation available to her were questions of fact and the Courts below having returned a concurrent finding on these questions against the tenant, it was not open to this Court under Section 39(7) of the Act to consider the correctness of such a finding. This objection appears to me to be unsustainable because the question whether the premises are bona fide required by the landlady and as to whether the alternative residential accommodation available was suitable or not were not pure questions of fact but were mixed questions of law and fact and it was open to the High Court, while exercising its jurisdiction under Section 39(2) of the Act, to consider the correctness or otherwise of such a finding and the concurrent finding of fact on these questions could not divest the High Court of its jurisdiction under the aforesaid provision. The preliminary objection is, therefore, overruled.

(4) On the merits, a number of contentions were raised on behalf of the tenant.

(5) In the first instance, it was contended that the entire proceedings were vitiated because the tenancy of the tenant had not been terminated before the institution of the proceedings for the eviction of the tenant and there was, therefore, no foundation for these proceedings. It is correct that the termination of a tenancy is a condition precedent to proceedings for the eviction of a tenant but the requirement of termination of the tenancy is not of an absolute nature because it can be waived by the tenant and would be deemed to have been waived in the present case because neither in the proceedings before the Additional Rent Controller nor in the proceedings in the appeal before the Rent Control Tribunal, the question of want of notice of termination of the tenancy was raised on behalf of the tenant and that being so, it is not open to the tenant to raise the question at this stage. This contention of the appellant must therefore, fail.

(6) It was next contended that the respondent/landlady had not been established on the record to be the owner of the property and the finding of the Courts below on the question was assailed on the ground that the execution of the release deed

Ex. A8 on which reliance was placed by the Courts below for the finding that although the property at one time stood in the name of the son of the landlady, the said son by the said release deed divested himself of interest in the said property, thereby making the landlady the exclusive owner of the property, could not divest the son of his interest and it was urged on the basis of A.I.R. 1920 Nagpur 265 that a full owner could not divest himself of the ownership by a mere release deed because it involved transfer of the property which could be done only by a valid instrument duly registered in accordance with law. This contention of the respondent was lightly repelled by the Courts below on the ground that according to the release deed the property was throughout owned by the landlady but stood in the name of the son although the consideration had been paid by the landlady and the release deed was, therefore, not in the nature of any transfer but an affirmation of the fact that the son was benamidar for the mother who was the only beneficial owner of the property and that being so, the principle enunciated in the Nagpur decision (supra) could not apply to the facts of the present case and the affirmation by the son in the course of the release deed that the landlady had always been the owner of the property was sufficient in law and it could not be said that the property did not exclusively belong to the landlady. This contention of the appellant must, therefore, fail.

(7) It was next contended that the finding of the Courts below that the landlady was suffering from any disease of the limbs or feet and it was, therefore, difficult and painful for her to frequently climb the stairs was not justified by the evidence on record. It was, however, not disputed that medical and other evidence had been adduced on behalf of the respondent/landlady in support of the contention that the respondent was suffering from a disease of the limbs and the feet which would cause pain and difficulty in climbing the stairs and that being so, it would not be open to this Court to reappraise the evidence on the question and disturb the concurrent finding of the Courts below on the question. This contention of the appellant must, therefore, fail.

(8) It was then urged that the finding of the Courts below that the respondent bona fide required the premises in dispute and the additional finding of the Rent Control Tribunal that the accommodation available to the respondent on the ground floor

was not reasonably suitable for her requirement were unjustified. It was urged that [the question whether the landlady bona fide required the premises in dispute and whether the premises available on the ground floor were reasonably suitable for her requirement, assuming that she honestly needed the premises on the ground floor, could not be decided on the basis of a mere whim or the fanciful desire of the landlady but must be based on objective criteria having regard to all the relevant factors including the standard of the landlady, the objective conditions obtaining in the country with regard to residential accommodation and other material factors.

(9) It appears to me that this contention of the appellant must also fail.

(10) The Act, according to its preamble, was intended to provide for the control of rents and evictions and for certain other matters and was part of the rent control legislation enacted in Delhi as indeed in rest of the country, to deal with an extraordinary situation that arose soon after the outbreak of the Second World War because of increasing pressure on urban land. The situation was further aggravated in the years that followed on account of the increasing population explosion and the consequent pressure of population on the urban areas and the influx of large number of displaced persons from the territories, now forming part of Pakistan, in the wake of the partition of India.

(11) The Rent Control legislation throughout the country was intended to strike reasonable balance between the requirements of the tenants for adequate protection against the aggressive designs of greedy landlords to evict the tenants or to increase the rates of rent to an exorbitant limit and the need to assure to the landlords, whose normal legal right were sought to be restricted, the minimum right to receive the agreed rent, lawful increase of it and to evict the tenants who may be guilty of misconduct within certain circumscribed limits.

(12) Section 14 of the Act provides for the control of eviction of tenants and sets out the grounds on which a tenant may be evicted from the tenanted premises. Clause (e) of the proviso to sub section (1) of Section 14, which deals with the right of the landlord to evict a tenant on the account of the landlords bona fide personal need for residence and with which I am concerned in the present appeal, is in the following terms:

'E'that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

(13) The question as to the true meaning and scope of the term required bona fide by the landlord' occurring in the said clause and of the criteria for the determination of 'reasonably suitable residential accommodation' occurring elsewhere in the said clause has been subject matter of judicial controversy.

(14) It may, therefore, be useful at this stage to consider the various decisions having bearing on the question and to which reference was made in the course of arguments.

(15) In the case of *Roop Lal Mehta v. Shrimati Kamla Soni*, the true scope of the term 'bona fide requirement' of the landlord was considered and it was held that in determining the personal requirement of a residential premises the Court has to find out whether or not the requirement of possession is bona fide and whether or not the premises already in possession of the landlord afford a reasonably suitable alternative accommodation. It was observed that it would be incorrect to suggest that the question of accommodation in possession of the landlord being reasonably suitable is to be judged solely in the context of the physical sufficiency of the accommodation and that the Court may hold that accommodation insufficient having regard to various circumstances, such, as, the social status of the family or traditions and customs observed by it. It was further held that so long as the landlord was able to establish that he in good faith and genuinely wished to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale and that the viability of the other accommodation will have also to be considered from the standpoint of a reasonable landlord. It was further observed that the law did not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises were let to a tenant and for deciding whether or not the alternative

accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out as irrelevant and that the problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord. It was further cautioned that clause (e) of Section 14(1) of the Act did not make the landlord sole arbiter to decide the question of his requirements and that the clause conferred a power, though of limited nature, on the authorities constituted under the Act.

(16) In the case of *Shri Krishan Kumar and another v. Mrs. Vimla Sangal* a Single Judge of this Court held that clause (e) of proviso (1) to section 14 of the Act has to be construed as a whole with the result that merely because the premises were really and genuinely required by the landlord for his own occupation as a residence, would not entitle him to the eviction of the tenant unless the Controller is satisfied that the landlord had no other reasonably suitable accommodation. It was further observed that the irrational desire or wish of the landlord could not be considered conclusive as against the tenant's right as protected by the Act and that the request of the landlord has, therefore, to be viewed from a practical point of view, not confined to consideration of extent of accommodation alone. He must be conceded reasonable liberty to live in his own house. It was further observed that the question of the landlord having other reasonably suitable residential accommodation has similarly to be determined not from the point of view of mere space but on a consideration of all the relevant factors in a given case including age, general health of the owner landlord and of the members of his family and all other relevant considerations. It was further observed that the word 'bona fide' according to the dictionary meaning as also according to the legal terminology, as commonly understood and accepted, connotes good faith which is suggestive of honesty of purpose, and if the landlord requires the premises for occupation as residence in or with good faith or with sincerity or genuinely, without fraud or deceit, then he would seem to have established that the premises were required bonafide by him. Adverting to the scheme of the Act, it was held that the Act afforded protection to the tenants from unscrupulous landlords who used the plea of personal residence as a veil for extorting exorbitant rent from tenants and protected the tenants against whimsical or arbitrary eviction but did not impose on the landlord any obligation to sacrifice

the genuine requirement of his own comforts merely because he had at one time thought proper or considered it necessary on account of circumstances to let out his premises. It was further held that it may be appropriate for a landlord after a certain age either on medical advice or by way of precaution or preventive measure not to climb up the stairs in order to protect his heart, from possible damage by reason of excessive strain and that in such circumstances it is not necessary that the actual damage to the heart may also be insisted upon as an essential mandatory condition precedent in order to give to the landlord the possession of the ground floor for residence.

(17) In the case of *Shri Om Parkash Singal v. Shri Roshan Lal, Khanna* it was held that as a broad workable rule, the landlord must be left to assess his requirements the background of his position, circumstances, status in life and social and other responsibilities and other relevant factors and that while considering the question of ejection on the ground of bona fide requirement of the landlord, it was eminently desirable to strike a proper and just balance between the rights of the owner on the one hand and those of the tenant as protected by the law on the other. The owner was entitled to make himself comfortable and was normally speaking the best judge of his own requirements, and unless he could be considered to be abusing and misusing this right to acquire possession of his property in eviction proceedings. It was further observed that in some rare cases when the claim of the landlord *prima facie* appears to be unreasonable and considering in the background of his status, position and other family circumstances of the landlord the Controller or the Tribunal may be persuaded judicially to negative his bona fides. The term 'bona fide' was construed as meaning genuinely or in good faith and as conveying an idea of absence of intent to deceive.

(18) In the case of *Lalit Kumar Vijay v. Soroj Kumar* a Single Judge of this Court construed the term required as meaning that the premises were needed by the landlord, i.e. the landlord in fact was in need of the premises and that the landlord's desire for the premises was not merely fanciful or unjustified for some other reason. It was further held that the need of the landlord was not the sole justification other requirement of the premises but must also appear to be based on an objective fact and this has to be judged by the Rent Control authorities while

dealing with the question. It was further observed that such need must be based on haid reality and was not a question of mere sentiment or desire. Nor was it a question of opinion where the opiaion was of the landlord or of the Rent Control authorities or the High Court and that the need had to be assessed on the consideration of the tacts of each case and according to the standard of a reasonable person. It was further observed that the standard of the need would, of course, vary according to the circumstances of each case and of special particulars of the need of the landlord in a particular case.

(19) In Pandit haru Parshad Sharma v. Shri Dhanpat Singh a Single Judge of this Court held that the suitabilityof a particular residential accommodation has to be Judged from the point of view of the landlord himself unless the point of view on examination was found by the Court to be unreasonable and that the Court was not expected to impose its own standards on the landlord. It was further observed that the case had to be examined from the perspective of the landlord himself, and it js his way of life and his outlook which are the governing lactors and the suitability of any particular accommodation and its reasonableness has to be determined from that point of view.

(20) In P. N Khanna v. T. P. Balakum, a Single Judge of this Court upheld the right of the landlord to ask for the possession of the ground floor to be able to live comfortably in old age and it was held that a land lord must have freedom to choose any of premises in which he may like to live. ft was further held that there was no reason to disregard the plea of the landlord 'hat he at his old age he could not live comfortably on the first floor of the property and would like to live on the ground floor and it was held that such a plea was not fanciful one and the realities of life could not be over-looked as it was well known that as people advanced in age they are averse to climb the stairs.

(21) In Gunmala Devi.v. kishori lal. a Single Judge of this Court held that the need of the landlord under the Act had to be adjudged bona fide in the sense that the accommodation was needed by the landlord but this by itself was not sufflient because it must also be shown that the preperty in possession of the landlord was not reasonably suitable for his requirement and that this requierment could not be

judged by any abstract standard but has to depend on social and real requirements of the landlord otherwise the whole object of the Act would be frustrated.

(22) It is thus well settled that the bona fide requirement of the landlord was not synonymous with a mere wish, fanciful desire or whim of a landlord to occupy a certain premises but must be an honest need of a reasonable person which, however, is not to be weighed judicially in a fine scale to determine if the honest need of a landlord appears to the Court to be reasonable but even if the need of the landlord is an honest one it does not divest the Court of the power as indeed the duty, to determine if, having regard to the objective conditions including the status of the landlord, the standard of living as other peculiar needs and requirements such as the requirement of health and the objective conditions prevailing in the country, whether an accommodation which may be available for the use of the landlord could be said to be reasonable or not.

(23) In the present case, both the Courts below have returned a concurrent finding that having regard to the old age and the state of health of 'the land lady her need to live on the ground floor was an honest and reasonable' one and learned counsel for the appellant was unable to point out how in arriving at the said conclusion the Courts: have taken into consideration principles or factors, which they were not entitled to or to have failed to take into account principles or factors which they were bound to and that being so, it is not possible for this Court to reappraise the evidence to determine if the need was reasonable and honest and the appellant was unable to point out any infirmity in the finding of the Courts below on this question which may justify any interference with it. Even otherwise, once it is admitted that the Courts have returned a concurrent finding of fact that having regard to her old age and the conditions of her health, the landlady found it difficult and painful to climb the stairs and that being so, it is not possible to characterise the desire of the landlady to live on the ground floor as being mala fide or unreasonable.

(24) The next question that remains to be considered is whether the accommodation made available to the landlady during the pendency of the

proceedings and consisting of one room and a separate portion consisting of a room, a courtyard and a common bath and latrine could be considered to be reasonable for her requirement.

(25) On behalf of the respondent it was contended that the aforesaid accommodation would not be reasonable for her requirement because in the first instance, there is no independent kitchen attached to the said portion and in the second place the two rooms were not contiguous or adjacent but there were other tenants living between the two portions and that the landlady in this age and being afflicted with disease required to be looked after by an attendant who should be available in a contiguous room and to otherwise live in comparative quiet.

(26) It was, however, urged on behalf of the appellant that the accommodation available to the respondent in the ground floor, though not contiguous to each other and interspersed by rooms in the occupation of other tenants and without the facility of independent kitchen, were never the less sufficient for her requirement.

(27) It appears to me that the accommodation available to the landlady on the ground floor could not be considered reasonably suitable for her requirement because in the first instance, it does not constitute one compact unit and there are tenants living in other portion which would obviously cause inconvenience to the landlady, who is admittedly old and has been found to be afflicted with certain ailments. It could also not be considered reasonably suitable because there is no kitchen attached to the said accommodation. On the other hand, the accommodation in the occupation of the appellant is a compact unit consisting of two rooms, courtyard, a kitchen, bath and a common latrine which could certainly be more convenient from the point of view of any occupant particularly an occupant who is old and infirm and suffering from ailments. It may be pointed out that both before the Rent Control Tribunal as indeed before me the accommodation available to the landlady on the ground floor was offered to the appellant in exchange for the accommodation in dispute and at a lesser rent but the offer was turned down on behalf of the appellant on the ground that the said accommodation was not a substitute for the accommodation in dispute. It may be

pointed out that if from the tenant's point of view the accommodation available with the landlady was not a substitute for the accommodation in dispute either because the said accommodation was not a separate unit or lacked the amenity of an independent kitchen, it could not be a substitute for the landlady whose need for an independent unit with essential amenities would be at least the same, if not greater, than that of the tenant. This offer further reinforces the finding that the need of the landlady was both honest) and reasonable.

(28) In the result, the appeal fails and is dismissed with costs. The tenant is allowed three month's time to vacate the premises.

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