

M.M. Lal Vs. Sum Balbir Singh

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Court : Delhi

Decided On : Oct-07-1976

Reported in : 12(1976)DLT365; 1977RLR62

Judge : V.S. Deshpande, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 15

Appeal No. : Second Appeal No. 38 of 1976

Appellant : M.M. Lal

Respondent : Sum Balbir Singh

Advocate for Pet/Ap. : C.S. Vaidhyanathan and; I.C. Jain, Advs

Judgement :

V.S. Deshpande, J.

(1) The question for decision in this appeal is the relationship of sub-section (4) of section 15 of the [Delhi Rent Control Act, 1958](#) with sub-section (1) thereof. This judgment will also dispose of the connected S.A.O. No. 46 of 1976.

(2) The premises were originally leased to the respondent tenant by Smt. Tara Lal. Lt. Col. M. M. Lal is her son. He filed a petition for eviction against the respondent. Two preliminary objections to the said petition were urged by the respondent

namely, (1) that Shri Madan Mohan Lal, another son, and Miss Prema Lat, a daughter of late Mrs. Tara Lal, were co-heirs along with Lt. Col M. M. Lal and the petition for eviction could not be maintained by Lt. Col. M. M. Lal alone, and (2) that the tenant had been deprived of a servant's quarter by the landlord and was, thereforee entitled to a partial abatement of rent, that is, Rs. 75.00 per month out of the total rent of Rs. 900 per month. Initially, the Additional Rent Controller Shri P. K. Jain passed an order under sub-section (1) of section 15 directing the tenant to deposit for payment to the landlord, namely, Lt. Col. M. M. Lal, the arrears as well as the whole amount of the current rent at the rate of Rs. 900.00 per month. Ultimately, the High Court (H. L. Anand, J.) set aside the said order holding inter alia, that if the tenant raises any question as to the maintainability of the petition for eviction or as to his liability to pay rent or a part thereof or claims abatement of rent, then an order under section 15(1) should not be made except in so far as provided in sub-section (3) and sub-section (4) of section 15 of the Act.

(3) Then the case came up before Additional Rent Controller Shri V. S. Aggarwal. He held that the High Court had set aside only an order under section 15(1) of the Act but that decision was no bar to the passing of an order under section 15(4) of the Act for payment of rent of Rs. 825.00 per month. He also held that the amount of rent already paid by the tenant to the landlord was not liable to be refunded by way of restitution. Shri J. D. Jain, the Rent Control Tribunal, however, set aside the first part of the order passed by Shri V. S. Aggarwal and held that the result of the High Court decision was that not only an order under section 15(1) but even an order under section 15(4) could not be passed until the two preliminary issues raised in defense by the tenant were first decided. The Tribunal observed that sub-section (4) of section 15 was only supplemental to sub-section (1) and was designed to meet contingencies where the conditions laid down in sub-section (1) were fulfilled but there still remained some dispute as to the person or persons to whom the rent was payable. The High Court had held that order under sub-section (1) could not be passed because the requirements of sub-section (1) were not fulfilled. For the same reason, the Tribunal held that an order under sub-section (4) also could not be passed. The Tribunal, however, upheld the second part of the order of the Additional Rent Controller refusing the restitution of rent to the tenant. The present appeal is filed by Lt. Col. M. M. Lal against the first part of the

decision of the Tribunal refusing to pass an order under sub-section (4) of section 15 in his favor. The connected appeal is by the tenant against the refusal of the Tribunal to give him the relief of the restitution.

(4) It is well settled by the decisions of the Supreme Court and of this Court that an order under section 15(1) [or under section 15(2)] cannot be passed unless the following requirements thereof are fulfilled, namely :-

(1) The existence of the relationship of landlord and tenant,

(2) The existence of arrears of rent. [Kulwant Kaur v. Jai Singh, 2nd (1972) 1 Del 15
Absence of deprivation of the tenant by the landlord of the whole of the premises or a part thereof, (N. K. Baslas v. Krishan Lal, 1973 R.L.R.14 (2)).

(5) Situations may, however, arise in which even after the fulfillment of the requirements of sub-sections (1) and (2) of section 15. some further dispute arises and an order under sub-section (1) or sub-section (2) of section 15 cannot be passed. For instance, the rate at which the rent is payable may be in dispute irrespective of the question whether arrears are admitted or disputed. Sub-section (3) of section 15 would then be attracted. Similarly, the relationship of landlord and tenant may be admitted in the sense that the tenant does not dispute his status as a tenant- He may, however, dispute the claim of the person who has filed the petition for eviction to the payment of rent. Such a dispute as to the person who is entitled to the payment of rent may arise for different reasons. There may be the question if one of the co-heirs is alone entitled to recover the rent to the exclusion of the other co-heirs of the deceased landlord or the lease may be granted by several co-owners and the question may arise whether one of them alone was entitled to the payment of rent. There may further be a dispute whether a person who claims to be an agent of the landlord is entitled to the payment of rent from the tenant. Lastly, the right to receive rent may be attached by a creditor in execution and this would also give to the question as to the person who is entitled to payment of rent.

(6) Whenever any of these contingencies arises, an order would be appropriate under sub-section (4) of section 15. It cannot be said that one of the requirements,

namely, the existence of the relationship of the landlord and tenant for the applicability of sub-section (1) has not been fulfilled. For, it is after the fulfillment of the said condition that certain further complications may arise. Sub-section (4) has been enacted to provide for meeting such complications. It is difficult to understand the reasoning of the Tribunal that an order under subsection (4) cannot be passed merely because an order under subsection (1) could not be passed in the present case. The contingencies envisaged above would show that even after fulfilling the requirements of sub-section (1) there may be further situations in which an order under sub-section (4) would have to be passed. It is no argument against passing an order under sub-section (4) to say that an order under sub-section (1) could not be passed. There is a difference between the two situations. Firstly, if the requirements of sub-section (1) are not fulfilled, then the question of passing any order under section 15 would not arise. For, the basic requirements of sub-sections (1) and (2) have to be fulfilled before the tenant could be asked to pay rent to the person who has filed a petition for eviction. But merely because the tenant is in doubt as to the person or persons to whom the rent is payable it cannot be said that the relationship of landlord and tenant does not exist between the parties. The relationship as such is not denied but only the right to receive rent has to be clarified. It is precisely this situation which is dealt with in subsection (4). The order of Shri V. S. Aggarwal, Additional Rent Controller, asking the tenant to deposit the rent under sub-section (4) of section 15 was, therefore, the appropriate order and the Tribunal has not given any cogent reasons why an order under sub-section (4) could not be passed merely because an order under sub-section (1) could not be passed. I, therefore, accept the appeal of Lt. Col. M. M. Lal, reverse the order of the Rent Control Tribunal and restore that of Shri V. S. Aggarwal, Additional Rent Controller under sub-section (4) of section 15 of the Act.

(7) What is the effect of the order of the High Court setting aside the unconditional order passed by Shri P. K. Jain, Additional Rent Controller, under sub-section (1) of section 15? The effect was that unless and until the dispute as to the person to whom the rent was payable was decided, an unconditional order for payment of rent to Lt. Col. M. M. Lal could not be passed under sub-section (1) of section 15. This did not mean that a conditional order under subsection (4) of section 15 also

could not be passed. On the other hand, when the tenant does not deny the liability to pay rent but is in doubt as to whom the rent is payable, sub-section (4) provides that he should deposit the rent with the Controller but no person shall be entitled to withdraw the amount in deposit until the Controller decides the dispute and makes an order for payment of the same. The order of the High Court did not disentitle the Controller from passing an order under sub-section (4) after the order under sub-section (1) was set aside. Had the order of the High Court stood alone, the question of Lt. Col. M. M. Lal having to refund the amount of rent withdrawn by him would have arisen. But fortunately for him, Shri V. S. Aggarwal, Additional Rent Controller, passed an order under sub-section (4) of section 15. Reading this order with the order of the High Court it is arguable that even at the very inception when Shri P. K. Jain, Additional Rent Controller, passed an order under sub-section (1) of section 15, the appropriate order to be passed was one under sub-section (4) of section 15. If an order under sub-section (4) would have been passed initially, then Lt. Col. M. M. Lal would not have been able to withdraw the amount of rent deposited by the tenant till the question as to who was entitled to the payment of rent was decided. There is a mention on the record of this case that a no objection certificate signed by the other co-heirs was sent by Lt. Col. M. M. Lal to the tenant. It is also mentioned that Miss Prema Lal had received the rent from this tenant on behalf of Lt. Col. M. M. Lal. The chances, therefore, are that Lt. Col. M. M. Lal was entitled to receive the rent from the tenant. At the most, therefore, Lt. Col. M. M. Lal could have been asked to redeposit the rent withdrawn by him with the Controller so that the final order as to the payment of rent may be passed by the Controller. The relief of restitution could be granted to the tenant only to this extent and not beyond. But in the special circumstances of this case the possibility is that the question as to whom the rent is payable would be decided very soon, I do not think it necessary and equitable therefore to order Lt. Col. M. M. Lal to redeposit the rent received by him with the Controller. Instead, I direct that the Additional Rent Controller shall decide the question as to the person to whom the rent is payable under sub-section (4) of section 15 as soon as possible. The appeal of the tenant (S.A.O. 46 of 1976) is, therefore, dismissed.

(8) The costs of both the appeals shall be borne as incurred.

