

Usha BhasIn Vs. Competent Authority

Usha BhasIn Vs. Competent Authority

SooperKanoon Citation : sooperkanoon.com/688594

Court : Delhi

Decided On : Aug-30-1979

Reported in : 17(1980)DLT353; 1980RLR84

Judge : S. Ranganthan, J.

Acts : Slum Area (Improvement and Clearance) Act, 1956 - Sections 19

Appeal No. : Civil Miscellaneous (Main) Appeal No. 170 of 1973

Appellant : Usha Bhasin

Respondent : Competent Authority

Advocate for Pet/Ap. : M.L. Lonial and; K.P. Kapoor, Advs

Judgement :

S. Ranganathan, J.

(1) This is a petition under Article 227 of the Constitution of India seeking to revise an order passed by the Competent Authority on 25-5-1973 under Section 19 of Slum Areas (Improvement & Clearance) Act (hereinafter referred to as the 'Act'), granting permission to the second respondent in the writ petition to institute eviction proceedings against the 4th respondent in respect of the back portion of shop No. 1515/70 Shanker Niwas, Bhagirath Place, Delhi.

(2) The main premises belongs to the Life Insurance Corporation of India, the second respondent in this writ petition (hereinafter referred to as the landlord') had taken the shop on rent from the Life Insurance Corporation of India. It is common ground that the landlord let out the back portion of the premises in 1951 to M/s Bhagwan Dass & Company which was admittedly a partnership firm at the relevant time. On 8-5-1971 the landlord desired to evict the said tenant and hence filed a petition for permission to institute eviction proceedings under Section 19(1)(a) of the Act. In the petition it was alleged that the grounds on which the eviction of the tenant was sought were non-payment of rent since 1-6-1970, sub-lease of the premises by the tenant without the written consent of the landlord and the existence of alternative accommodation as well as means thereforee.

(3) From the order of the Competent Authority it is seen that repeated attempts were made to have the respondent to the above petition duly served. Ultimately substituted service was ordered and notice of the hearing of the petition was published in a newspaper on 7.11.1971. On 15.1.1972 Mrs. Usha Bhasin, the petitioner before this Court filed a written statement in which the various allegations in the petition were denied. The landlord filed a replication reiterating the grounds but also raising a preliminary objection that Mrs. Usha Bhasin had no authority or power of attorney to appear on behalf of the respondents and that her counsel had equally no authority to appear on behalf of the respondents. It was thereforee prayed that ex-parte proceedings should be taken against the respondents. To these preliminary objections a rejoinder was filed on behalf of Mrs. Bhasin who claimed that she was the daughter of Bhagwan Dass who was one of the partners of Bhagwan Dass & Co. the respondent firm and that she had thereforee inherited the tenancy rights along with her brothers and was thereforee entitled to file a written statement and contest the petition. The Competent Authority held that Mrs. Bhasin had no locus standi to defend the case and since the respondents were ex-parte according to him he proceeded to decide the case on the basis of the evidence on file. There being nothing to controvert the allegations in the plaint and that on evidence of the landlord he granted permission to the petitioners to institute recovery proceedings against Bhagwan Dass & Company. It is the correctness of this order that is being challenged in this petition.

(4) Both counsels who appeared before me, were agreed as to the important facts in this case. It is common ground that the petitioner let out the premises in dispute to the firm known as Bhagwan Dass and Co. Though at one stage the landlord stated that this firm only consisted of Raj Kumar and Kamal Kumar the sons of Bhagwan Dass, it is not now in dispute that the firm had eight partners of whom Bhagwan Dass was one. It is also common ground that the firm which was registered on 2.11.1951 with Registrar of Firms was dissolved with effect from 30th September 1967 by a dissolution deed dated 19.9.1967. It is also not in dispute that Bhagwan Dass died in April 1963 leaving behind his wife, two sons and a daughter who is the present petitioner. It is therefore clear that the present petitioner is one of the legal representatives of Bhagwan Das who was a partner of the firm which had rented the premises from the landlord in 1951 but which has subsequently been dissolved.

(5) I am unable to agree with the conclusion of the Competent Authority that Mrs. Bhasin had no locus standi to contest the petition. Though the Competent Authority had made some observations criticising the failure of Mrs. Bhasin to file the partnership deed or the dissolution deed and also to the effect that she had not taken a stand that the firm had been dissolved, the facts are clear and as I said there is no dispute regarding the position set out above. It is well settled that where a property is let out to a firm the real effect is that the partners of the firm become the tenants of the landlord. It is sufficient to refer to the decision of this Court in *Kanahiya Lal Balkishan Dass v. Labhu Ram*, : AIR1971 Delhi219 where Khanna, G.J. (as he then was) observed :

'A firm) it is well known, is a compendious name of the partners constituting the firm, According to Sec. 4 of the Indian Partnership Act, 1932, persons who have entered into partnership with one another are called individually partners and collectively a firm it would therefore follow that when firm Gokal Chand Jagan Nath took the premises in dispute on rent from the defendant Labhu Ram who was one of the partners of the firm became along with other partners a tenant in the premises.'

The learned Judge has also referred to earlier decisions to the above effect. In view of these decisions therefore it is clear that Bhagwan Dass who was a partner of Bhagwan Dass & Go. became one of the tenants of the landlord in respect of the above premises,

(6) The next question is regarding the effect of the dissolution of the firm. The decision already referred also shows that the dissolution of the firm would not absolve the existing partners from their liability to the landlord and they do not cease to be tenants merely because the firm had been dissolved. Again to quote the learned G.J. :

'THE appellants on 1-1-1957 let out the premises to firm Gokal Chand Jagan Nath as such the liability to pay rent of the premises was that of all the partners of the firm. The fact that all the partners mutually decided to dissolve the firm and to allot the premises to Labhu Ram alone would not absolve of their liability for rent vis-a-vis the landlord. There is nothing to show that the landlord gave them consent to the arrangement by which the premises in dispute were allotted to Labhu Ram.'

In other words despite the dissolution of Bhagwan Dass & Co., Bhagwan Dass as one of the partners continued to be a tenant of the premises liable to pay rent to the landlord if asked for, there being nothing to show that on the dissolution of the firm there had been any intimation to the landlord regarding the adjustments between the various partners.

(7) The result of the above position is that Mrs. Bhasin is the daughter of the tenants in the premises. It is not the allegation of the landlord that any notice of termination of the tenancy had been given either to the firm or after its dissolution to any of the partners or their legal representatives. It is settled law that a lease of premises creates heritable rights and that therefore the legal representative of a tenant whose contract of tenancy has not been terminated would be tenants of the landlords. This is indeed settled by a decision of the Supreme Court in Anand Niwas case, : [1964]4SCR892 . In fact that Supreme Court has gone further in Damadi Lal's case : AIR 1976 SC2229 and held that even a statutory tenancy (that is where the original tenancy has been terminated by proper notice under the Transfer of Property Act) creates heritable rights in the legal representatives of the

statutory tenant, though this extension would not apply in Delhi, (vide Haji Mohammad v. Shri Narain Dass, I. L. R. 1979 1 Del. 139) That being so, Usha Bhasin must be taken to be a tenant of the landlords and she is entitled to contest the petition filed under Section 19 of the Act. It is no doubt stated that the landlords were neither aware that Bhagwan Dass was a partner of the firm nor that the present petitioner is one of his legal representatives but this has no relevance to determine the issue in the present case. When a landlord enters into a contract of tenancy with a firm he takes all the partners of the firm as his tenants and by operation of law the rights of each of them in the event of death is inherited by his legal representatives. In these circumstances I set aside the order of the Competent Authority holding that the present petitioner had no locus standi to contest the petition before him.

(8) It appears that so far as the present petitioner was concerned she was asked to file a rejoinder to the preliminary objections of the landlord and that as these preliminary objections were upheld the Competent Authority proceeded to dispose of the application under Section 19 without giving an opportunity to Mrs. Bhasin to contest it on the merits. In view of my conclusion that Mrs. Bhasin had every right to contest the petition and in view of my setting aside this part of the Competent Authority's order, it follows that he will have to afford an opportunity to the petitioner to put forward her objections before disposing of the application on merits. The grant of permission without hearing the petitioner is therefore invalid and the entire order has to be set aside and matter restored to the Competent Authority for proper disposal after hearing present petitioner on merits. I direct accordingly.

(9) On behalf of the respondents two objections were taken to the maintainability of this petition under Article 227. The first was that the petition was instituted in 1973 when the powers of Superintendence of the High Court extended even to tribunals but that in view of the amendment of Article 227 by the Constitution (42nd Amendment Act) deleting the words 'tribunals' from the Article, no relief could be granted to the petitioner. The petitioner tried to answer this objection by reference to the decisions in : AIR1977 Bom384 (384 (F. B.) and Ajudhw Pershad v. Chief Commissioner etc. 1979 P. L. R. 107. It is however unnecessary to refer to these

decision because the Constitution (44th Amendment) Act 1978 has restored the original language of Article 227 and this amendment came into force with effect from 1st August, 1979. Sub-clause (5) of the Article introduced by the 42nd Amendment imposing certain restrictions on the powers of the High Court under this Article has also been deleted by the 44th Amendment. This objection of the respondents cannot therefore prevail.

(10) The second contention of the learned counsel for the respondents was that the petitioner had a right of appeal to the Administrator from the order of the Competent Authority under Section 30 of the Act and that therefore this Court should not interfere with the order by invoking the powers under Art. 227. This objection also is not sustainable. Section 30 provides for an appeal by any person aggrieved by a notice, order or direction issued or given by the Competent Authority but this is subject to an important qualification because of the opening words of Section 30(1) :-except as otherwise expressly provided in this Act' Section 20 of the Act specifically deals with subject-matter of appeals from orders passed under Section 19. It lays down that any person aggrieved by an order of the Competent Authority refusing to grant permission referred to in Section 19(1) could prefer an appeal to the Administrator. In other words it is only the landlord who is likely to be aggrieved by the order refusing permission that can appeal to the Administrator, and Section 20 does not provide for an appeal by the tenant against an order granting permission to the landlord. Section 20 and Section 30 have to be construed harmoniously. It cannot be said that Section 20 has provided for an appeal to the landlord from an order Section 19(1) adverse to him but that the tenant may appeal under Section 30(I). Such an interpretation would be contrary to the opening words of Section 30. It would also be a very farfetched construction because if the Act had intended to confer on the tenant also a right of appeal from an order granting permission to the landlord that would have been incorporated in Section 20 itself. It would not be correct to interpret the statute in the manner suggested by the learned counsel for the respondents. The more reasonable construction appears to be that Section 20 impliedly prohibited an appeal by the tenant where the order of the Competent Authority under Section 19 is adverse to him and that Section 30 only covers either notice, order or directions that may be issued or given by the Competent Authority. This objection also is

thereforee overruled.

(11) The learned counsel for the respondents also referred to the provisions of Order 30 of the C.P.G. which enable a partnership firm to be sued in its firm name but I am unable to see how these provisions are relevant in the present case. The present petitioner is not contending that the institution of proceedings under Section 19 of the Act against a firm was not correct or that the partners should have been sued in their individual capacity. Her only plea is that since the firm has been dissolved and since she is legal representative of one of the partners and desires to contest the application she should be allowed to do so even though the other partners or their successors in interest may not be interested in resisting the application. For reasons I have already mentioned this contention in my opinion has to be upheld.

(12) In the result I set aside the order of the Competent Authority dated 25-5-70 and restore the case to his file with the directions to him to dispose of the application under Section 19 preferred by the landlord after giving Mrs. Usha Bhasin an opportunity to put forward her contentions and to contest the application.

--- *** ---