

Gian Devi Vs. Jiwan Kumar

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Court : Delhi

Decided On : Oct-11-1979

Reported in : 17(1980)DLT197; 1980RLR28

Judge : M.L. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal No. 8 of 1979

Appellant : Gian Devi

Respondent : Jiwan Kumar

Judgement :

M.L. Jain, J.

(1) Respondents after terminating tenancy of their tenant Wasti Ram by notice, filed an application on 5.9.70 for eviction under S. 14(1) of Delhi Rent Act from shop No. 20, New Market West Patel Nagar on grounds :

(1) that tenant has sub-let the premises on 1.2.70 without obtaining consent in writing,

(2) that premises were let for residence but tenant changed the use to commercial purpose,

(3) that he has caused substantial damage to property by converting veranda into room and by fixing an iron door in the front portion and raising a brick wall in the back portion,

(4) that the petitioners required the premises bona fide for residence, and

(5) that the tenant had not paid the rent at the rate of Rs. 1 10 per month and had only paid at the rate of Rs. 108 per month. The Addl. Rent Controller by his order of May 19, 1975 held that the receipt of notice of termination was admitted, and that the premises were initially let out only for commercial purposes. He rejected the contention that any substantial damage has been caused to the premises. As regards subletting he found that Ashok Shorthand Academy is being run in the premises by the tenant Wasti Ram himself with the help of his grandson Ashok Sethi. Kasturi Lal, father of Ashok Sethi, denied that they were tenants and deposed that his son was only helping his maternal grand-father in running the Shorthand Academy. The learned Addl. Rent Controller held, therefore, that no case of subletting or assignment or parting with possession was proved. The ground of bona fide requirement appears not to have been pressed. The learned Addl. Rent Controller however, found that there has been a default in payment of rent of Rs. 24 from 1.3.1964 to 28.2.1970, which were deducted towards money order fees and of Rs. 90 for September 1970, and of the rent after March 1975. Since the ground of non-payment of rent was made out, he passed an order under S. 15(6) of the Act directing that if the tenant failed to make the payment then the premises shall be vacated after the expiry of one month.

(2) Landlords went in appeal. The tenant filed cross objection. The learned Rent Control Tribunal by its order dated November 9, 1978 allowed the cross-objection and negated the ground of non-payment of rent. It upheld the Controller's decision regarding other grounds except that of subletting. It noticed that during the pendency of the case, an application was made by the respondent on February 20, 1973, for amendment of the written statement in order to take the plea that there was no subletting to Ashok Sethi. Rather there was a partnership since November 7, 1970, between Kasturi Lal, his father and Wasti Ram. That partnership was running the Ashok Shorthand Academy. That amendment was

disallowed and parties could not lead evidence to prove whether there had come about any partnership business in the demised premises. This subsequent event should have been taken into consideration. Thus, the Tribunal gave on finding upon the question of subletting and desired that the Controller should decide this question. It felt that it was all the more necessary because Wasti Ram had died on August 15, 1977, and it was required to be established in whose exclusive possession the demised premises came to be after the death of Wasti Ram. He was survived by the widow and seven children who are already on record. The learned Tribunal therefore, also allowed the appeal of the landlords partly and remanded the case to the Addl. Rent Controller for affording an opportunity to the parties to lead evidence with regard to subsequent events and then to determine whether the shop stood sublet, assigned or its possession was parted with in favor of Ashok Sethi or not. It is against this judgment that this appeal has been filed by the widow of the deceased Wasti Ram. The notice of the appeal was served on March 10, 1970. April 10, 1979, was Sunday. On April 11, 1979, the cross objections were also filed which are in time. The cross objections state that the interest of Wasti Ram having come to an end because of his death, the lower court should have straight away passed a decree of eviction. The learned Tribunal should have reversed the finding that no substantial damage had been caused to the property, it should not have displaced the finding of the Addl. Rent Controller about the non-payment of rent, specially when no appeal was filed against the order of deposit passed under S. 15(1) of the Act. The learned Tribunal committed an error in holding that the tenant was entitled to deduct the money order fee for the rents paid. Its order regarding non-payment of rent was contrary to law. It is being prayed in the cross-objections that the appeal be dismissed and a decree of eviction be passed.

(3) The appeal has been filed by Mst. Gian Devi Anand, widow of the tenant. The other heirs of Wasti Ram have been added as proforma respondents. The sole contestant is the widow. therefore, the appeal and the cross-objections were, with the agreement of the counsel heard even without service upon them. In the appeal and the cross-objections, the substantial question that has arisen is regarding disposal of the eviction application where a statutory tenant died after the filing the application, as in the present case. This court has held that under the amended

definition of a 'tenant' the right of the statutory tenant to remain in occupation does not descend after his heirs if the premises were non-residential premises. therefore, it is urged that the appellant and the other legal heirs of the deceased tenant are not tenants and the landlord has to file a suit for possession against the legal heirs of the statutory tenant still remaining in occupation after the tenant dies at any stage of the eviction proceedings and the Rent Controller cannot proceed to pass an order of eviction. Reliance is placed upon a decision of a 5 Judges Bench of this court in Kedar Nath v. Mohani Devi A. I. R. Del. 171 : 1973 Raj. LR. 701. I have examined this case in great detail. It is observed therein that the legal representatives of the deceased statutory tenant can be and should be substituted in his place even though they are not tenants, not being liable to pay rent on their own behalf and are not entitled to any protection from eviction which the deceased enjoyed under the Act. They have just come into possession of the premises whatever its nature be, not by any over act on their part or under any independent title and they are bound to make over that possession to the landlord. The claim of the landlord for possession of the premises was not extinguished with the death of the tenant. The landlord still can follow his claim for recovery of the premises in the hands of the legal representatives of the deceased tenant. The Rent Controller does not lose jurisdiction and cannot dismiss the application on the death of the statutory tenant by saying that he has ceased to possess jurisdiction. It is the obligation of the deceased tenant that has to be considered and not that of his heirs. That being so, an order for the recovery of premises, if made by the Controller against the legal representatives, can be duly executed. The relief granted by the Controller after the death of the tenant against the legal representatives will not become nugatory. Although, in form, it may appear to be a personal action against the legal representatives, in substance, it is an action continued against them as legal representatives and the extent of their liability is ultimately decided by the extent of the assets or the estate of the deceased held by them. Their liability would therefore extend to their putting the landlord back into possession. The jurisdiction of the Controller remained unaffected. The proceedings under S. 14(1) of the Act will have to be continued against the legal representatives. The legal representatives may put forward such contentions as are appropriate to their representative character but not the contentions which

were personal to the deceased tenant. These observations made in paras 15, 17, 10, 23, 24 and 25 make it vastly clear that the Controller having once acquired jurisdiction would not cease to have it simply because the statutory tenant has died in a case where the defenses which being personal in character were available to the living man, are not available to his survivors.

(4) In *K.C. Malhotra v. Vijay Kumar*, A. I. R. 1973 Del. 265 : 1963. Raj L. R. 366, 972. Raj Lr 366 it was held that where a statutory tenant dies at any stage after the institution of the eviction proceedings, the Controller cannot proceed against his legal representative because the jurisdiction on the death of the statutory tenant changes from that over a tenancy suit to one over a title suit, and an order of eviction based on title, but not on any on the grounds listed in the proviso to S. 14(1) of the Act, cannot therefore, be passed by the Controller against the legal representative of a deceased statutory tenant. *J. C. Chalderji and others v. Sri Kishan Tandon and another* : [1973]1SCR850 , was distinguished by saying that the Rajasthan Act unlike the Delhi Act contemplated a suit for eviction before a civil court and not an application before a Controller, vide paras 8 & 15A. However, in *Kedar Nath (supra)* this court disagreed with the observations in *K.C. Malhotra (supra)*, and held that the Controller does not lose his jurisdiction, but in its summation, while disposing of the appeals pending before it, the Bench observed :

'30.To sum up, the relief the landlord claimed in his applications under Section 14 against tenants, whose tenancies had already been determined and who were alleged to have lost the protection of Section 14 of the 1958 Act, could, thus. be claimed on their death against their legal representatives. The right to sue on the basis of the applications under Section 14 of the 1958 Act, which were pending before the Controller, therefore, survived in favor of the landlord and against the respondents in S. A. O. 6 of 1968 and the respondents Nos. 1 to 4 in S A.O. 54 of 1968, who were rightly held to be the legal representatives of the deceased tenants; and were correctly brought on record as such. The jurisdiction of the Controller to deal with the said applications after the death of the tenants remained unaffected. The proceedings under Section 14(1) of the 1958 Act, therefore, 'have to be continued against the said legal representatives. Since the power of the Controller to pass an order for recovery of possession depends on the

existence of one or more of the conditions specified in clauses (a) to (i) of the proviso to sub-section (1) of Section 14, the landlord has to establish that they do exist. In answer thereto, the legal representatives who have been brought on record, may put forward such contentions as are appropriate to their representative character, but not the contentions which were personal to the deceased tenants. They would, of course, be entitled to support their aforesaid contention by such evidence, as they may be able to adduce. If the Controller finds that one or more of the aforesaid conditions exist, nothing would prevent him from passing an order for the premises in favor of the landlord and against the legal representatives. In case the Controller comes to the finding that the landlord has not been able to establish any of the grounds which are mentioned in clauses (a) to (i) of the proviso to Section 14(1) then he would have no power to pass an order for recovery of possession for the reason that the conditions on which his power to order recovery of possession rests do not exist. The landlord may then file, if so advised, a regular suit for possession in the civil court, which would be on a different cause of action'.

(5) What I understand from these remarks is that where the legal representatives of a deceased statutory tenant are tenants under the definition of a tenant since then amended, can continue to challenge the grounds of eviction and other legal representatives can agitate only such grounds or matter which were not personal to the deceased. But, in my humble view, these remarks are no authority for saying that if the legal representatives have no defense to raise in law, the landlord must be driven to file a suit against them for their eviction. The Bombay High Court in *Govindram Salamatrai and another v. Dharampal Amarnath and another*, : AIR1951 Bom390 , observed that the jurisdiction is normally and ordinarily to be determined at the time of inception of the suit. Jurisdiction is an authority to decide a matter and grant relief. Now, the Controller has jurisdiction to grant appropriate relief between a landlord and the legal representatives of the deceased tenant. The proviso to S. 14(1) does not lay down conditions precedent to the assumption of jurisdiction. On what grounds an order for eviction could be made or refused are not jurisdiction facts but these are conditions imposed upon the rights of the landlord. To refuse relief where the plaintiff discloses no cause of action or the defendant has a valid defense to make, is not the same thing as to

say that the court does not possess or ceases to possess the power to allow or refuse such relief. I am, therefore, inclined to hold that the remarks in para 30 in Kedar Nath (supra) cannot support the argument that the Controller cannot direct recovery of possession against the legal representatives of the deceased statutory tenant to whom the tenancy has not descended. In South Asia Industries Private Ltd. v. S. Sarup Singh and others, : [1965]3SCR829 , where the tenant had become extinct it was held that recovery of possession can be directed against all persons in occupation so that the landlord might without further trouble recover possession. Such an argument, if upheld, will lead to multiplicity of proceedings and barassment of the landlord. The Controller like any other court has to take into consideration the subsequent events. I, therefore, decide this question against the appellant. That makes the question of subletting of no relevance any more and no finding is therefore called for.

(6) Consequently, I reject the appeal, but allow the cross-objections. I set aside the judgment of the court below, allow the eviction petition and direct that the appellant and the respondents Nos. 3 to 10 are liable to and shall vacate the premises within two months hence. The parties shall bear their own costs.

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