

J.L. Mehta Vs. Hira Devi

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Court : Delhi

Decided On : Aug-03-1970

Reported in : 6(1970)DLT484; 1971RLR70

Judge : Rijinder Sachar, J.

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

Appeal No. : Second Appeal No. 93 of 1970

Appellant : J.L. Mehta

Respondent : Hira Devi

Advocate for Def. : Mr. Dhawan

Advocate for Pet/Ap. : M.L. Rawal and; H.R. Dhawan, Advs

Judgement :

Rajinder Sashar, J.

(1) This is an appeal under Section 39 of the [Delhi Rent Control Act, 1958](#), (hereinafter to be called as the Act) against the Judgment of the Rent Control Tribunal dated 28th May, 1970, by which he affirmed the Judgment of the Additional Rent Controller directing the eviction of the appellant from the premises in dispute.

(2) The respondent landlady filed an application for eviction of the appellant from the premises on the ground floor of house No. A6/10, Rana Partap Bagh, Delhi, on the ground that she required the premises bonafide for herself and for the residence of herself and the members of her family dependant upon her. The appellant contested the applica and pleading that there was no relationship between landlord and tenant between the parties. He further disputed that the respondent-landlady bona fide required the premises for herself and for the members of her family. The learned Additional Rent Controller by his judgment dated 18th October, 1968 found that there existed a relationship of landlord and tenant between the appellant and the respondent and that the respondent is the owner of the property. The Additional Rent Controller also found that the family members of the appellant consisted of : (a) herself, (b) her husband, (c) (i) two married sons with wives; (c) (ii) third son who was not married (c) (iii) two grand children. The landlady had mentioned that her 4th son was living separately in a portion of the house on the upper storey. In calculating the members of the family for the purpose of the petition the requirements of the 4th son was not taken into account by the Additional Rent Controller. The Additional Rent Controller also found that the accommodation with the landlady and the other members of the family consisted of three rooms, one baithak, one small kitchen, bath Wc, two verandahs and some open courtyard on both sides of the premises. But the said accommodation was held not sufficient for the landlady and her family, and he, therefore, found that she needed the accommodation in possession of the appellant bona fide. He, therefore, ordered the eviction of the appellant.

(3) An appeal was filed by the appellant but the same was dismissed by the Rent Control Tribunal and affirmed the finding of the Additional Rent Controller.

(4) Mr. Rawal, the learned counsel for the appellant tenant does not dispute the finding that there exists relations of landlord and tenant between the appellant and the respondent. He also does not dispute the extent of accommodation with the respondent and her members of the family that was found by the courts below. Mr. Rawal also does not seriously dispute that if the requirements of the respondent and her family consisting of herself, her husband, three sons, wives of the two sons and two grand children, was to be taken into account the accommodation

with the respondent landlady could not be held to be sufficient and the findings of the courts below that she bona fide needed it for herself and for her family members dependant upon her cannot be objected to. He, however, has strongly urged that the requirement of statutes is that eviction will only be ordered if the premises are required bona fide by the landlady for occupation as resident for herself or any members of her family dependent upon her. It is the contention of Mr. Rawal that there has been no finding given by the courts below that the three sons were dependant on the landlady and, therefore, he submits that no order of eviction could be passed against the appellant by taking into account the requirements of accommodation for not only the dependent but also her sons. Mr. Rawal does not object to the courts below having taken into account the requirements of the husband as the requirement of the landlady but says that even if the requirement of the respondent and her husband taken into account the present accommodation with them which as already stated consisted of three rooms, one baithak etc. would be sufficient for the requirement of respondent-landlady and no order of eviction could be passed against the appellant. As the arguments proceeds on the interpretation of proviso (e) to sub-section (1) of section 14 of the Act, it would be appropriate to reproduce it here. Proviso (e) to sub section (1) of Section 14 of the Act reads as under :-

'(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 dependant 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;'

The contention of Mr. Rawal is that this proviso (e) provides that the order for eviction will only be passed if the premises are required by the landlord for himself or for any member of the family dependent upon him He submits that no evidence was led in the courts below to show that the three sons were dependant upon the land lady and that. therefore, the findings of the courts below that the premises were bonafide required for the members of the family dependent upon the respondent is not borne by evidence. He has drawn my attention to the judgment of the Addl. Rent Controller where this point was sought to be raised but the same

was negated by it on the ground that the appellant-tenant had not disputed the assertion of the respondent that her three sons, wives of the two sons with two grand children were dependent members of the family. The same point was also sought to be raised before the Rent Control Tribunal and the same was negated again on the finding that the appellant-tenant did not deny the fact that the members of the family were dependent on her and that in these circumstances it must be presumed that the appellant admitted this fact as correct. In para 18(a) of the application for eviction the respondent-landlady stated as follows:-

'THE ground on which the eviction of the tenant is sought: The premises which were let to respondent for residence, are bona fide required by the petitioner who is the owner thereof, for dependent on her and she had no other reasonably suitable sufficient accommodation. Petitioner's family consists of herself, her husband, 3 sons (Om Parkash, Baldev Raj and Dharam Bir) wives of 2 married sons (Om Parkash and Baldev Raj) and 2 grand children (sons of Om Parkash). Besides, there is one separate son who lives separately in portion of upper storey along with his family. Petitioner has only 3 rooms, one baithak and one store in her possession. This accommodation is highly insufficient for need of petitioner and her family.'

'THE appellant-tenant denied the allegations and though he stated that it is further wrong that the premises are required by the petitioner for residence for herself and other family members. She has already sufficient accommodation with her on the ground floor as well as on the first floor and she, therefore does not require the premises bona fide.'

He did not in specific terms controvert the allegations that the respondent-landlady required the premises for her residence and for the members of her family dependent upon her, and did not challenge the statement in the application where it was specifically stated that petitioner's family consists of herself, her husband, three sons two of whom are married and two grand children.

(5) Mr. Dhawan, learned counsel for the respondent admitted that it was clear from the pleadings that the point about the sons being members of the family dependant on the landlady was never disputed and it was for this reason that no

evidence was led and it is not open to the appellant to raise this point, he having not so pleaded specifically. If I was not inclined to dismiss the appeal on the interpretation of the proviso (e) to sub-section (1) of Section 14 of the Act and to hold that the requirement of the three sons in the circumstances of the case can even be considered to be within the requirement of the landlady for herself. I might have remanded the case back to the Rent Controller for deciding on evidence whether the sons were dependant on the landlady and, therefore, the second part of proviso (e) was applicable.

(6) Mr. Rawal, however, strongly contended that the word 'himself' can only be said to include within it either the landlady herself or at the best her husband or may be her minor children, but cannot certainly include the grown up sons who were earning themselves and obviously unless it is proved that they are dependant upon her the requirement of the statute will not be fulfilled. Mr. Dhawan on the other hand, submits that it is a common case that the landlady and her husband and the three sons with wives and grand children are living together and have been living in the same premises all the times. According to him the meaning to be described the word 'dependant' cannot be narrowed to mean as if it was dependance in economical term and therefore, the mere fact that sons are earning would not mean that they cannot be included in the category 'himself' in the first part or even in the second part i. e. for the proviso (e) or, for any member of his family dependant upon him. A number of authorities have dealt with the interpretation of the word 'himself' and 'members of the family dependant upon him'. It would be appropriate stage now to notice them. The first authority is Civil Revision No. 411-D of 1961 decided by G. D. Khosla (C.J. on 20.10. 1961 (Bhagwan Dass V. Shrimati Shmkuntla Devi). This was a petition for eviction filed by the landlady and the objection taken was that the requirements of the husband cannot be taken into account for the purpose of proviso (e) to sub-section (1) of Section 14 of the Act. Dealing with this contention his lordship observed as follows:

'THE contention of the learned counsel for the petitioner is that the plaintiff's husband is not dependant upon her and that he is the earning member of the family, and it also follows from this that none of the five children are dependant

upon the plaintiff, because in reality they are dependant upon her husband. A correct reading of clause (e), however, means that where the land lord (or the landlady as in this case) required the premises for his own use, then 'his own use means the use of himself and the members of his family. The second part of the clause only comes into operation when the landlord does not intend to reside in the house himself but places it at the disposal of a member of his family. In that case it is essential that member must be dependant upon him, otherwise the decree for ejectment will not be made. But as in the present case that landlady will herself reside in the house along with her husband and the members of her family, it is not necessary that those members, who reside with her, should be economically dependant upon her. The family is a unit consisting of a husband, a wife and their children, and in this case, therefore the occupation of the plaintiff will be treated as her sole occupation, because her family and she will be treated as one unit.'

Mr. Rewal tried to distinguish it by submitting that this case deals with the requirement of a husband and did not deal with the case of grown up sons. That on facts is correct but the observation of my lord the Chief Justice G.D. Khosia did not make it restrict the first part of the clause but only the husband or minor children. This decision of Khosla C. J. was followed with approval by I.D. Dua C.J. in the case reported as T. C. Rekhi v. Smt. Usha Gujral Similarly Deshpande J. in the case reported as P.D. Sharma v. Ram Lubhaya followed the decision of Khosla. C.J in BhagwanDassy. Shiimati Shakuntla Devvi. In the case before Desphanda J his lordship observed that the word himself must be construed to include the family of the landlord also and that in each case it would be a fact as to what particular member of the family would be entitled to live with the landlord. In this case his lordship found that the requirement of the sons even though married who was himself a heart patient to live Along with the landlord was necessary.

(7) Mr. Kawal referred to C. L. Diver v. Amir Nath Kapure where Falshaw C J. interpreted the word ('dependant', and observed that it does not mean wholly dependant in the sense of not earning anything at all but must mean as some body not wholly independent or self-supporting and in a position to set up separate residence. His lordship, however, observed that the word 'himself would not

include the member of the family other than the dependant members.

(8) Mr. Rawal also referred to Sultan Singh v. Jui Chand in which Mehar Singh T. (as the then was) took the view that two sons who were indeptndant earning members and their families are living in separate portions cannot be held to be dependant on the landlord.

(9) In my view, however, these two cases do not lay down that in no case the word 'himself be interpreted to mean and include the sons who are earning and who are living together with their parrents. In the case decided by Mehar Singh J. it was found that two of the sons were living in the separata portion of the house and obviously their requirement could be considered to be the requirement of the landlord himself; About the third son also it was found that he was getting a salary of Rs. 1000 and that he was posted at Gaziabad.

(10) Reference has also been made to Jaswant Singh v. Shrimati Pren Kuwari' But in this case it was only held that the eldest son wha was 22 years of age and was studying in B.A. can bs considered to be dspandant on the landlord,

(11) Reference was also made to Vas Dev Dhawan v. Triloki Nath' clause (e) of proviso to sub-section (1} in which Tatachari J. was called upon to decide whether the sons who earning be said to be dependant members of the family of that landlord. After referring to various authorities his lordship cams to the conclusion that that sons even though earning must be held to be dependant on the father as the father required them to live with him as he was an old an j wanted their assistance. His lordship also further held that clause (e) to sub-section (1) of section 14 of-the Act provides that that premises are bonifide required for occpation as residence for himself and that the word 'requirement' could be interpreted to maan that the requirement of the sons should ba taken into consideration as part of the requirenaent of the father even if the sons cannot be regarded as members of the family dependant on the fattier within the meaning of the later partofclause (e)ofp:ovisoto sub-section(l) of Section 14 of the Act. Tatachari J, thereforee, clearly took the view that the requiremant of the sons living with their father should be considered in the first park of clausa (e) of proviso to sub-section (1) of section 4 of the Act'

(12) I think that fallacy in that argument of Mr. Rawal proceeds upon giving a very narrow and restricted meaning to the word 'himself'. According to Mr. Rawal the word 'himself' can in no circumstance be construed as covering any body beyond the wife the husband and the minor children or at the most unmarried daughters. According to him unless it is shown that the grown up son whose earning is not a position to set up an independent house or that because of some serious illness, it is necessary for himself to live with the father or the mother. It could be held that the requirement of the sons cannot be taken into account as a part of the requirement of the landlord. In my view such an interpretation cannot be read into it. The word 'himself' obviously cannot be restricted to the landlord or the landlady alone as the case may be as it would be making it completely unworkable if one was to restrict it in grammatical sense. The question that arises, therefore is as to how far the meaning of the word 'himself' can be stretched to include not only the requirement of the landlord but of others also. In each case, of course, it will have to be seen whether the requirement of the landlord in asking for eviction by claiming the requirement of some other person to live with him is justified by the circumstances so as to be covered by the requirement of the word 'himself'. Reference may be made to a decision of the Division Bench of this court reported as *Shri Gobind. Dass v. Shri Kuldip Singh*,. In this case the eviction was claimed by three brothers on the ground that the accommodation occupied by them was insufficient for the members of their families and themselves. The Rent Tribunal, however, found that there was no joint Hindu family and that the premises belonged to only one of the brothers who was a bachelor and that he had sufficient accommodation for himself and that the requirement of the families of the other two brothers who were independent earning members cannot be considered within the meaning of clause (e) of proviso to sub-section (1) of Section 14 of the Act and therefore, refused the eviction application. The said matter was heard by a Division Bench and it was observed as follows :-

'THE concept of what constitutes a family when a number of persons are related or are living together is not something static or capable of concise definition. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and social customs of the community to which such persons may

belong.'

It was further observed-

'TO our mind this interpretation if accepted, would tend to restrict the meaning of the word 'dependant' to a person being financially dependant. In the socio-religious structure of Hindu society it is common for all the members of a family of brothers to live together while some men folk in the family may go out of town to earn a livelihood and even remit their earnings to the family. One cannot shut one's eyes to this structure of our society and to give a restricted meaning to the word dependant' would be to provide a definition of this word where the legislature has advisedly chosen not to do so. We would therefore, in the circumstances of this case held that the wives of the brothers of Gobind Dass and their children were dependant on Gobind Dass for accommodation specially when it has not been brought on record that the family member owned any other residential premises. That Dewan Chand runs a shop in Chakrata has no relevance to the question of his being dependant upon his elder brother to provide accommodation for his immediate family specially when it is proved on record that he has not taken a house on rent at Chakrata and is probably living in the shop where he carries on his business. Similarly, there is no evidence that Joginder Lal has any other residential accommodation and in these days of high rents and prices it cannot be said that because Dewan Chand and Joginder Lal are earning their livelihood they must leave the family home and find independent accommodation for themselves. Apart from the cost of such accommodation it would be in the fitness of things for such a family to live together particularly when Gobind Dass is a bachelor and would require his kith and kin to look after him.'

This authority, therefore, lays down that even if the house belongs to one brother the requirement of the other brothers and their families is a legitimate consideration under the Act and they must be held to be dependant because of the peculiar set up of our society and traditions. This authority also referred with approval to the observation of Tatchari J., reported as *Vas Dev Diwaan v. Tirloki Nath*.

(13) The word 'himself' occurs in the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, of which Schedule I (h) (i) read as under:-

'A court shall, for the purposes of S. 3 of this Act, have power to make or give an order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or turn the ejectment of a tenant there from without proof of suitable alternative accommodation (where the court considers it reasonable so to do) if..... (h) the dwellinghouse is reasonably required by the landlord.....for (i).himself; fii) any son or daughter of his over eighteen years of age; or (iii) his father or mother : Provided that an order or judgment shall not be made or given on any ground specified in para. (h)..... -if the court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardships would be caused by granting the order or judgment than by refusing to grant it.'

The interpretation of this came up before the Court of Appeal in a case reported as *Smith v. Penny* 1946 2 All. E. R. 672. In this case, the landlord required the premises for his children and a house-keeper though he was not to live therein himself and it was contended that the word 'himself' must be restricted to the occupation for residence by the landlord personally. It was observed as follows :-

'It was contended below, as it has been before us, that the words 'for himself' must be strictly interpreted as meaning occupation for residence by the landlord personally and cannot be interpreted as covering the case of his wanting the house as a family home when he cannot live in it himself, being for instance, obliged for the sake of earning his income to live elsewhere. I think, however, that the latter is the right interpretation. That is shown, I think, by the second of the two purposes mentioned in the paragraph, 'or any son or daughter of his over eighteen years of age.' It is impossible that the legislature could have put in that downward age limitation, unless they had recognised that the word 'himself'-the father and husband necessarily included the children and the mother and wife. I do not think there is any authority directly on the point, and I leave it at that. The family there is of any civilisation. To keep the family together is of high public importance '

(14) In this case it will be seen that the requirement was not only for the children, but of a couple who were required to come and live in the premises so as to be able to look after the children. In these circumstances it was held by the court of Appeal that the requirement for the children and the couple could be said to be the requirement of the landlord himself and that therefore, he reasonably required the accommodation as a residence for himself. Applying this test it seems to me that in our social set up requirement of the landlord to continue to live with his sons even though married in the same premises must be continued as requirement for himself.

(15) In another case in which the word 'himself' came up for interpretation was *Richter v. Wilson*. In this case the landlord wanted to take possession of the upper floor to install there a couple so that they could look after him better. The courts, however, found that the couple who was to be brought to the house was to live as separate household from the landlord and, therefore, it could not be said that the accommodation to be occupied by them should be considered as residence for landlord himself. It will be seen that the basic distinction made was that the couple for whom the accommodation was sought was to rent it as a separate residence. Applying this ratio also the requirement for the 4th son who is living separately has rightly not been taken into account by the courts below as the requirement of the landlady. It is only the requirement of the married sons who are already living with her in the same premises jointly that has been taken into account. In the Court of Appeal case of *Richter v. Wilson* reference is made to *Bloomfield v. Westsly* which is helpful for the interpretation of the word himself. The eviction was sought by the landlady on the ground that she required it for her niece who was to come and live in the premises. The finding by the courts, however, was that the niece was to have her own kitchen and was to have her own separate flat, was going to be in separate occupation of top floor and not as a member of the family of her aunt and it was on this ground that the claim of the landlady was negated. But it was observed that if it was proved that the niece was going to be member of the family and was coming to live with the aunt it would have been a different matter. Lord Denning, M.R. observed as follows :-

'I can understand that there may be cases where a landlord or landlady it may be a young couple who have an addition to their family by way of children, or it may be a couple who want to take in an aged parent could quite reasonably claim an extension to their premises on the ground that the extension was reasonably required as a residence for a member of the family, I quite agree that is a reasonable and a likely way in which this Act, The Rent and Mortgage Interest Restrictions (Amendment) Act, 1963. Sch. 1 para (h) might operate'

Observation of Lord Denning, H.R. shows that if the premises were required for taking aged parent it could be reasonable to claim that the premises were required for landlord himself. It would thus be seen that the word 'himself' cannot be taken to exclude the sons simply on the ground that they are independent and earning their living and are in a position to set up their separate residence. With very great respect I feel that Falshaw G.J. and Mehar Singh 1. have given too restricted an interpretation to the word 'himself, in both cases there is no reference to the English cases which deal directly with the point and contemplate cases of adult members of the family being included in the word 'himself. If the restricted meaning of the word 'himself' was to be accepted it would lead to quite anomalous and undesirable results. It is now well settled that where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. To give an illustration, if a family consisting of father, mother and minor sons was occupying a premises part of which is with the tenant, then later on, on the sons getting married and becoming independent and able to set up separate residence it would mean that they must either remain content with living in unsatisfactory accommodation or face the alternative of splitting up the family. This could obviously not be the purpose of the legislature. When the legislature talked of the eviction being ordered on the ground that the premises are required bona fide by the landlord as a residence for himself, it was contemplating an enquiry to find out the reasons given by the landlord for occupation if the premises were bona fide or not. In that connection if that landlady who has her sons even though married and earning, claims eviction of the tenant on the ground that she bona fide

requires them as residence for herself it cannot be said that this is prohibited by the statute as the word himself cannot necessarily exclude adult and eJ.riing members of the family. As noticed earlier, the English authorities lay down that the test in each case whether the land-lord requires the preinisas for himself is to see whether the person for whom the premises are required is coming to live as a member of the family so as to fulfill the need of the landlord himself. Of course if it could be proved that the sons will be living separately with separate mess from their mother or father than it is possible to say that the requirement of the landlord for the need of his or her sons is not bona fide requirement as a residence for himself. It is in this connection that the traditions and customs of each society have to be taken into account in determining the meaning of the word 'himself. It is true that the joint family system is not so much prevelant and this system is disrupting, but even then our social system has not yet reached a stage where parents and married sons do not live together if it is possible to do so. Rather there is still a bonafide and genuine desire for the parents and the sons to live together in the same house if it is possible to do so. In the present case the landlady obviously has no means of livelihood and the husband is an old man and cannot reasonably look after the comforts of the family. In such a situation if the sons who are now grown up and are married and are in a position to set up residence for themselves were asked to go out of the premises on this ground that their living together with the mother and father was not a bona fide requirement of the landlady, it would be giving a big blow to the relationship between the parents and the children arid in importing the practices which are as yet foreign to our social system'. In our society it is still considered an act .of great piety for sons to look after their parents and to live together even if the suns and the pareats respectively are in a position financially to live separately and have separate residence. Somehow a concept is firmly rooted in our society that the grown up sons and parents form one homogeneous family and living separately is only accepted when it is inevitable, In that view.. thereforee, the meaning to the word 'himself must be constructed in the context of the development of our society and the realities of the situation If that meaning was not to be given to it, it would lead to quite strange and uncalled for development.. Take a case where the premises was let out to tenants when the sons were not married and were minor and. thereforee, there was sufficient

accommodation for every one around. It later on the sons became major and got married and are earning independantly must they be asked to split the family or face the discomfort in the restricted accommodation I cannot persuade myself that the intention of the legislature was to disrupt such a family even when sons and father were genuinely and bona fide wanting to stay together. Similarly take another instance in which a son is landlord and his parents happen to be in an aflent position and able to set up residence, must it mean that the parents must live separately from their son even if he happens to be the sole child. I cannot persuade myself to hold that the only eventuality in which the parents can be permitted to live with their sole child, i.e. the son in the premises which have once been tenanted must be in the circumstances of their being either penirious or in ill-health That. would according to me be laying down the conditions which are neither desirable nor proper. In the present case the landlady who is the owner and the husband who is admittedly old requires the presence of their sons to live with them and it cannot be said that the accommodation required for their sons is not bona fide required by the landlady herself. I can understand that the requirement of the 4th son who is living separately cannot be taken into account but I fail to see why the requirement of three sons even if they are in a position to set up separate residences cannot'be included in the requirement of landlady for the purpose of requiring accommodation for herself in the first part of proviso (e) of sub-section (1) to section 14 of the Act. In my view, thereforee, the courts below came to the correct conclusion and there is no ground for interference with this order.

(16) The result is that the appeal is dismissed, but in the circumstances of the 'case with no order as to costs. I would, however, give six months time to the tenant to vacate the premises.