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**Jitender Kumar Vs. Krishan Chopra**

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**Court** : Delhi

**Decided On :** Dec-19-1985

**Reported in** : 1986RLR188

**Judge** : Yogeshwar Dayal, J.

**Acts** : Delhi Rent Control Act - Sections 21

**Appeal No.** : Civil Miscellaneous (Main) Appeal No. 50 of 1985

**Appellant** : Jitender Kumar

**Respondent** : Krishan Chopra

**Advocate for Pet/Ap.** : Ishawar Sahai and; K.P. Kapur, Advs

**Judgement** :

**Yogeshwar Dayal, J.**

(1) This is a petition filed by Sh. Jitender Kumar Jauhar, landlord, for quashing an order dated 18.1.85 whereby the learned Additional Controller, after noticing the objections which were filed in execution of an order dated 26.4.79 passed u/s 21 of the Delhi Rent Control Act, 1958 'the Act' held that the objections to the execution application u/s 21 of the Act cannot be decided without evidence and directed that the evidence of the objector be produced on 12.4.85.

(2) The petition itself has been filed under Article 227 of the Constitution of India inter alias on the ground that the objections filed by the tenant did not make out fraud and/or collusion or any plea open in execution to the executability of the order within the test laid down by Krishna lyer, J. in S. B. Noronah v. Prem Kumari Khanna . and as explained and law laid down by Tulzapurkar, J in J.R. Vohra v. M/s India Export House 1985 (1) RCJ. 368

(3) To appreciate the submissions of learned counsel for the parties it is necessary to recapitulate the facts of the case. The landlord is occupying two bed rooms along with drawing-cum-dining room and kitchen on the front portion of the ground floor of his house No. S-B Housing Society, N.D.S.E. Par-I, New Delhi. On 25.4.79 he filed an application u/s 21 of the Act for letting out the back portion of the same floor consisting of two rooms, drawing-cum-dining, kitchen and bath @ Rs. 500.00 P.M. for purely residential purposes for a fixed period of 5 years. It was inter alias stated in this a application that landlord does not require this portion for next 5 years and thereafter he will be requiring the same for the need of his growing up children. Along with this application the landlord file a plan of the portion in his occupation as well as the plan relating to the portion which was sought to be let out u/s 21 of the Act. The landlord also filed a copy of the agreement which contains various terms on which he had proposed to let out the premises. This agreement stated that the letting was for a specific period of 5 years and was to be only for residential purposes at an agreed rent of Rs. 530.00 p.m. This agreement also recited in clause (6) thereof that the tenant has agreed to take the said premises for residential purposes and shall not misuse the said premises for commercial purposes or for any other purposes other than for residential only. [In paras 4 and 5, Statements of parties and Court's Order is reproduced].

(4) It will be noticed from this order that the order was passed on the basis of the statements of the parties and it expressly recited the accommodation which has been let out and also the fact that it was being let out for a limited period of five years with effect from 28.4.79 for residential purposes.

(5) Five years period expired on or about 26.4.84. It appears that before the period expired, the tenant took no steps to challenge the order dated 26.4.79 whereby the

permission was granted to let the premises u/s 21 of the Act. I am saying so because a few days before the expiry of the period, the landlord intact filed a suit against the tenant for permanent injunction restraining him from miss-using the premises from residential purposes to a commercial purposes. This suit was filed on or about 23.4.84 which was preceded by two notices dated 22.3.84 and 7.4.84 requesting the tenant to stop the miss-user of the premises for commercial purposes. But since the tenant refused to change the user, the suit was filed.

(6) Along with the suit the landlord applied for ad interim order to restrain the tenant from using the premises for commercial purposes. Both the trial court and the lower appellate court on appeal refused to grant temporary injunction in favor of the landlord and against the tenant. The landlord being dissatisfied came up to this court and Sultan Singh, J. by order dated 11.1.85 restrained the tenant from using the tenanted premises for purposes of workshop and using/consuming or storing gas cylinders, oxygen cylinders, welding cylinders refrigeration cylinders and any other inflame Mable gaseous material or using the premises for any non-residential purpose till further orders. This order was made absolute after notice to the tenant on 12.2.85 during the pendency of the revision petition, which is still pending.

(7) The tenant despite the interim order being passed and served on him had the audacity to flout it and was convicted for contempt of the order of this court by order dated 4.9.H5 and was imposed a fine of Rs. 2,000.00.

(8) Coming back to the proceedings u/s 21 of the Act, it will be noticed that the period of letting expired on 26.4.84, and on the very next date the landlord filed the application for possession. The Additional Controller instead of of issuing straightaway the warrants of possession thought it fit to issue notice to the tenant and the tenant on receipt of the notice, filed objections dated 27.7.84. It is these objections, which are now the subject matter of consideration before me whether there is any plea which can be raised before an executing court as spelt out by Krishna lyer. J, in S.B. Noronah (supra) or by Tulzapurkar, J. in J.R. Vohra (supra) and/or even as spelt out by Goswamy, J. in 1985 (2) R.C.J. 339 Ramesh Khuruna v. Inder Mohan Lal.

(9) Before I go into this question of law and jurisdiction of the Rent Controller, it will be appropriate to reproduce the objections which the tenant has filed to the execution application filed by the landlord. These objections are contained in main para 1 of the objection petition divided into sub-paras (1) to (iv). I may straightway say that the objection itself is contained in main paragraph 1 itself which is to the effect that the execution application is not maintainable as the order u/s 21 of the Act for creating limited tenancy for 5 years was procured by the landlord by playing fraud on the court and also on the tenant by making active concealment of the facts while obtaining the grant of permission u/s 21 of the Act and the grounds thereof are contained in sub-paras (i to iv). The ground contained in sub-para (iii) is not relevant as it deals with certain other premises situate on the first, second and third floors of the building being vacated by some tenants and let out for running a Girls Hostel. I am saying this for the simple reason that the application for getting back possession is in the nature of execution proceedings and the executing court is not supposed to go into the subsequent developments. If the authority for this proposition is required, the reference may conveniently be made to the decision of the Supreme Court in AIR 1981 S.C.1924 Syed Asadullah Kazmi v. A.D.J.

(10) It will be noticed that in both the cases namely Noronha's case and J. R. Vohra's case, the Supreme Court has spoken with one voice that the proceedings for getting back posses ion are in the nature of execution proceedings and that is why I find that the ground of fraud as motioned in sub-paragraph (iii) is irrelevant.

(11) I may now deal with three other grounds of fraud given in sub-paragraphs (i), (ii) and (iv). Analysis of ground No. (i) shows that the objections regarding concealment inter alias are : (a) that the landlord did not give correct description of the premises in his possession, (b) that the accommodation in possession of the landlord at the time of letting was more than sufficient ; (c) that the statement of the tenant was got recorded under coercion : (d) that the reasons given by the landlord for letting out the premises at the time of grant of permission was absolutely false and (e) that the landlord had told the tenant that he will not let out the premises in question in case he did not agree to give the statement in the court as per his desire.

(12) Analysis of ground No. (ii) are ; (a) that the premises were let for commercial purposes and since the very inception they are being used as such within the knowledge of the landlord and (b) that the tenant is residing at T-247, Subhash Nagar, Faiz Road, Karol Bagh, New Delhi, for ihe last 24 years and this fact was within the knowledge of the landlord. I may deal with the objection in sub-paragraph (ii) first.

(13) It will be noticed there is an agreement in writing signed by both the parties filed before the Additional Controller which specified the purpose of letting in writing and also contained a negative covenant that it will not be used for any other purpose other than the residential purposes. If this be an agreement in writing, no amount. of evidence can be led to the contrary. It will be barred by the Provisions of section 91 and 92 of the Evidence Act. There is no plea that there was any subsequent agreement which varied the written agreement.

(14) It will also be preposterous to imagine that the landlord, who is residing himself in the front part of the premises will permit any such business, which will be most dangerous, to be carried out by the tenant behind in his premises. This objection to say the least, apart from being not open to the tenant to plead, is a mis-use of the process of court. If there was any such thing, nothing stopped the tenant from filing objections soon after the permission was granted to the landlord to let the premises u/s 21 of the Act.

(15) So far as tenant's having another house in Karol Bagh, is concerned, it will be noticed that no such thing was disclosed either in the agreement or in the statement made before the Controller. In fact the tenant gave his address as Proprietor of M/s Associated Eng. 48-C, Connaught Place. Neither the landlord nor the court was informed that the tenant is residing in Karol Bagh for the past 24 years, as alleged. The case of the landlord in reply to this objection was the tenant had approached the landlord with his wife who the tenant had introduced as Sheel Chopra. The said wife of the tenant had given birth to a baby girl on 17.10.82 at A.I.I M.S. The medical records show the address of the tenant as of the premises in dispute and the said wife with the newly born female child are residing in the premises in dispute, along with the tenant. The tenant is a member of the

Residents Welfare Association of the colony which is meant for the residents of the colony and in ther record also the tenant is showing himself as residing in the disputed premises for 1982-83. The election list compiled during the month of August, 1983 by enumerators shows the name of the tenant and the alleged wife at SL. No.s 471 and 472 with the address of the disputed premises. The tenant with intention to further play fraud on the court and the abuse of the process of court has stated that he is residing in Karol Bagh within the knowledge of the landlord. However, I need not go into the merits of the controversy whether Sheel Chopra is his wife or the employee of the tenant, whom the tenant claims to be his employee. In any case it is not a case of any fraud by the landlord on the tenant. If at all it appears to be suppression of material facts by a would-be tenant to his prospective landlord.

(16) Coming now to the grounds contained in sub-para (i) and spelt out above, it will be noticed that what was the description which was given or disclosed by landlord is not spelt out in the objections. It is common case that when the permission was granted a complete plan of the premises in occupation of the landlord and the premises which were spare and which the landlord wanted to let out to the tenant was filed. There is no allegation that the plan is incorrect or suppresses any particular accommodation being let out or spare with the landlord. Without any particulars of description this objection is again mafia flied and has no basis. Even today nothing is brought to my notice as to what and how the plan filed by the landlord while obtaining permission was wrong factually.

(17) Coming to the second part of sub- para (i) this objection is meaningless. In this part of the objection the tenant is admitting that the accommodation with the landlord was spare. It is only when the landlord does not require the premises for a definite period that he can apply for permission to let out the premises u/s 21 of the Act. So this part of essential requirement u/s 21 is in fact observed.

(18) Another part of the objection is that the reasons given by the landlord at the time of grant of permission was absolutely false. It is again not disclosed how it was false. It is not stated that the reasons given in the application, namely that the landlord does not require the premises at the present and will be requiring after

five years for the growing up of their children are false. One does not understand what is false. It is not even specifically alleged that the premises would be required for the growing up children after five years is a false reason. The objection is kept in the realm of surmises and conjectures which again appears to be with ulterior motive of being used used as and when it suits the tenant while leading evidence, if any.

(19) The last part of sub para (i) of the objection is that the landlord had told the tenant that he would not let out the premises otherwise but u/s 21, if he (tenant) does not agree to make the statement in court. This is again not fraud or concealment. It was openly told by the landlord to the tenant that he will not let out the premises except u/s 21 of the Act. It is the right of the landlord to let out the premises or not to let out. It is the choice of the tenant to accept the letting or not. If the conditions precedent for applicability of S. 21 of the Act are available to the landlord, he can certainly exercise his choice of letting out the premises u/s 21 of the Act. It cannot be called as a fraud. In fact it appears to me that the attitude of the tenant in filing the objections is fraud on the landlord. He never intended to comply with the solemn agreement made before the court.

(20) There is thus no fraud on the court or on the tenant/respondent as contemplated by the decisions of the Supreme Court in Noronah's case or J. R. Vohra's case.

(21) Mr. Justice Goswamy in the aforesaid decision of Ramesh Khurana vs. Inder Mohan Lal. spelt put the four conditions which should be fulfillled by the landlord before the Rent Controller who grants permission. These are : '1. The landlord does not require the demised premises for a particular period only. This means that he must indicate to the Authority before which sanction is sought for letting what is the particular period for which he can spare the accommodation : 2. The Controller must be satisfied that the landlord means, what he says and it is not a case of his not requiring the property indefinitely as distinguished from a specific or a particular limited period of say one year or two year or five years ; (3) If a man has a house available for letting for an indefinite period and he so lets it even if he specified as a pretence a period or term in he lease, section 21 cannot be

attracted. On the other hand if he gives a special reason why the can let out only for a limited period and requires the building at the end of that period such as he expects to retire by then or that he is going on a short assignment or on deputation and needs the house when he returns home, it is a good compliance ; (4) The letting must be made for residential purpose as section 21 will not apply where the letting is for commercial purpose.'

(22) It will be noticed that in this particular case all the four conditions as spelt out by Goswamy J. which is a very concise analysis of the decision of Krishna lyer, J. in the aforesaid case of Noronah's are fulfillled before the permission was granted. The tenancy was for a specific period; the premises were let for a definte period. The case of Govt. servants retiring or going on deputation were illustrations given by Krishna lyer, J. while deciding case of Noronah's These illustrations are not exhaustive. It could not be said that S. 21 is meant for Govt. servants only. It is meant for all classes of landlords and all classes of landlords are entitled to avail of the benefit or otherwise of S. 21. It was enacted with the idea that the landlord should not keep the premises locked even when he can spare it merely because of the fear of court delays in getting back possession. If any other interpretation is given to S. 21, the landlords would be discouraged to let out the premises even when they can spare it for a limited period, This would defeat the object of S. 21 of the Act. There is thus no fraud on the Rent Controller or on the respondent/tenant.

(23) Another objection taken is that the landlord has a room in the basement, which was not disclosed. Basement is not a living room/accommodation. It is generally built by the landlord's in Delhi for having extra income by letting it out as a godown or by using it as a personal godown. In any case it is not even alleged in the objections that the basement was being used as a residence by the landlord at the time premises in dispute were let out. What is alleged is that it is now being used as a guest house. To say the least this type of objection is an after thought and wholly irrelevant.

(24) The last objection is contained in paragraph I (iv) of the objections-petition. Here the plea is that the landlord had, after filing the execution application, also filed an eviction application under the provisos (b), (c), (h),(j), and (k) of S. 14(1) of

the Act. Proviso (b) deals with the case of sub-letting ; (c) deals with the case of misuse by the tenants ; proviso (h) deals with the cases where the tenant has acquired or built the premises and has got alternative accommodation after the the letting of the premises; proviso (j) deals with the cases where the tenant causes substantial damage to the premises and proviso (k) deals with the cases where the tenant uses the premises contrary to the terms of the headlease, if any,, granted to the landlord. It is submitted that because of the filing of this petition, the tenant has become a contractual tenant and he ceases to be the tenant for the purpose of Section 21 only.

(25) It will be noticed that even in this eviction application it has been mentioned that proceedings have already been started for recovery of possession u/s 21 of the Act. There is no provision in the Act which confers any such right on the tenant except in the case where the landlord fails to apply for execution within the period prescribed by S. 21 of the Act. If the landlord fails to apply for execution for recovering back possession of the premises within six months from the date the period expired, recourse cannot be had to the summary provisions of eviction of the tenant u/s 21 of the Act. Once the recourse has been had to S2 1, there is no other provision by which the tenant can become a tenant who ceases to be governed by S 21 of the Act. There is thus no merit in this objection also to the non-executability of the order dated 26.4.84.

(26) Before I part with the case, it will be useful to examine the decision of Krishan lyer, J. in Norona's case. It was a peculiar case on its own facts. So far as the facts can be ascertained from the judgment, the premises had been let out in 1968 for a term and thereafter from time to time possession of the tenant was continued by fresh leases and increase in rents. Every time recourse was taken to grant of sanction by the Rent Controller u/s 21 of the Act as if the letting was for residential accommodation. The Supreme Court found that for all these years a (residential) school was being run in the premises and that was the purpose expressed and recited in all the earlier leases but for the last lease-deed of December, 1975 when the purpose for which the lessee took the premises described as residential. It was on these facts that Krishan lyer, J. took pains to explain the essential ingredients of S. 21 of the Act before the Controller grants permission as contemplated by the

aforesaid provision. The Supreme Court pointed out various conditions which must be satisfied before grant of permission by Rent Controller. The Supreme Court noticed that S. 21 of the Act runs counter to the general scheme of the Act. It also noticed that the Controller must be satisfied on every condition which attracts S. 21 & if any of them is absent Section cannot apply. The Supreme Court also noticed that S. 21 over-rides S. 14, and thereforee, the Controller should not pass a mindless order. What it meant by the expression 'mindless' order was that the Controller should satisfy himself about all the conditions before granting permission and it should not grant the permission in a mechanical fashion. The conditions spelt out by the Supreme Court, while interpreting S. 21 of the Act, were ; (i) that the landlord does not require the demised premises for a particular period only. This means that he has to indicate to the authority before which sanction is sought for letting as to what is the particular period for which the landlord can spare the accommodation ; (ii) that the letting must be for a residential purpose i.e. the house must be made over as a residence If it is let for a commercial purpose, S. 21 of the Act will not apply; (iii) that the Controller's permission is obligatory where he is specifying the particular period for which he gives permission and further qualifies the permission for use as a residence. The Rent Controller has to satisfy himself that these conditions are fulfillled before he grants permission u/s 21 of the Act.

(27) Thereafter Krishna Iyer, J. examined the scope of inquiry at the stage when the landlord applies for delivery of possession of the premises on the expiry of the lease period. Krishna Iyer,.J. held that at that stage the Controller is acting as an executing court and it will be open to the executing court to go into such pleas as are permissible at the execution stage and beyond that he has not jurisdiction but within that he has the duty to decide.

(28) Tulzapurkar, J. in J.R. Vohra's case had to decide as to what is the duty of the Controller when the landlord applies fot delivery back of the possession and in this light he held that no notice is necessary to the tenant and the Controller in such a situation should straightaway issue warrants of possession. While deciding this question, Tujzapurkar, J. observed. 'What then is the remedy available to the tenant in a case where there was in fact a mere ritualistic observance of the

procedure while granting permission for the creation of a limited tenancy or where such permission was procured by fraud practiced by the landlord or was a result of collusion between the strong and the weak? Must the tenant in such case be unceremoniously evicted without his plea being inquired into? The answer is obviously in the negative. At the same time must he be per mitted to protract the delivery of possession of the leased premises to the landlord on a false plea of fraud or collusion or that there was a mechanical grant of permission and thus defeat the very object of the special procedure provided for the benefit of the landlord in Section

(29) The answer must again be in the negative. In our view these two competing claims must be harmonised and the solution lies not in insisting upon service of a prior notice on the tenant before the issuance of the warrant of possession to evict him but the insisting upon his approaching the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to vitiate ab initio the initial grant of permission. Either it is a mechanical grant of permission or it is procured py fraud practiced by the landlord or it is the result of collusion between two unequals but in case there is no reason for the tenant to wait till the landlord makes his application for recovery of possession after the expiry of the fixed period under Section 21 but there is every reason why the tenant should make an immediate approach to the Rent Controller to have his pleas adjudicated by him as soon as facts and circumstances giving rise to such pleas come to his knowledge or are discovered by him with due diligence. The special procedure provided for the benefit of the landlord in section 21 warrants such immediate approach on the part of the tenant. Of course if the tenant aliunde comes to know about landlord's application for recovery of possession and puts forth his plea of fraud or collusion etc. at that stage the Rent Controller would inquire into such plea but he may run the risk of setting it rejected as an after thought. There is however no need to imply any obligation on the part of the Rent Controller to serve a notice on the tenant inviting him to file his objections before issuing the warrant of possession in favor of the landlord,

(30) It will thus be noticed that no objection was filed by the tenant soon after the letting or during the period of which the premises were jet u/s 21 of the Act. It was

only after the landlord applied for delivery of possession and notice issued to the tenant that he (tenant) came up with the aforesaid objections. I have no doubt in my mind that these objections are an after thought but I am nor going on that basis as that may have to be decided on evidence But what is clear is that no case of fraud on the Controller or on the tenant. respondent is at all made out in the objections/ If these pleas do not make out a case of fraud, which is alleged in the objections, there is no need of recording evidence. What will the evidence be recorded on Thus it is a clear case of material irregularity and illegality in the exercise of jurisdiction by the learned Add. Controller and in fact it is a case excess of jurisdiction in that behalf in fixing the objections for evidence of the parties. I have, thereforee no option but to quash the impugned order dated 18.1.85.

(31) The result is that the petition succeeds, the impugned order dated 18th January. 1985 is quashed and the objections filed by the tenant purporting to be u/s 21 are dismissed. The learned Add. Controller is directed to issue warrants of possession of the premises in dispute forthwith.

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