

D.N. Vohra Vs. Agya Wanti

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Court : Delhi

Decided On : Jul-18-1980

Reported in : 18(1980)DLT268; 1980RLR651

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 21

Appeal No. : Second Appeal No. 106 of 1980

Appellant : D.N. Vohra

Respondent : Agya Wanti

Advocate for Pet/Ap. : J.P. Chopra,; V.B. Andley and; Rajinder Mathur, Advs

Judgement :

Sultan Singh, J.

(1) Smt. Agyawanti, respondent is the landlord of Quarter No. 3 Block No. 1, Lajpat Nagar-1, New Delhi. She let out two rooms, Verandah, Kitchen, bath room and open space on ground floor to D.N. Vohra, Appellant for a fixed period of 22 months with effect from 17/07/1976 for residential purposes after obtaining permission dated 15/07/1976 of the Controller, under section 21 of the [Delhi Rent Control Act, 1958](#) (hereinafter called 'the Act'). The appellant executed the lease deed dated 19/07/1976 in terms of the permission but did not vacate the premises on the expiry of the said period. An execution application was filed for obtaining possession. The appellant filed objections which were dismissed on 12/10/1979 and his appeal was also dismissed by the Rent Control Tribunal vide order dated 21/02/1980. We have come up in second appeal under s. 39 of the Act.

(2) In his objections the appellant pleads that in October 1969 the entire ground floor consisting of three rooms, kitchen, latrine and bath room was let out to him at a monthly rent of Rs. 260/. In 1972 the husband of the respondent was seriously ill and he was not in a position to climb the stairs. On respondent's request he handed over one room out of the three rooms to her temporarily. The rent was reduced to Rs. 250.00 per month. The respondent's husband thereafter died but the said room was never restored. He alleges that the respondent issued only two rent receipts under her signatures without showing therein either the rate of rent or the amount received by her for two months, November and December 1969. He further alleges that the respondent to avoid payment of house tax did not mention the rate of rent in the said two receipts. She did not issue any receipt thereafter. In July, 1976 the respondent threatened that she would recover the entire arrears of rent since 1969 as the appellant was not in possession of receipts showing payment of rent. The appellant was, therefore, prevailed upon to take the premises already in his possession for a fixed period of 22 months under Section 21 of the Act and was assured that she would treat him as a regular tenant even after tenancy under Section 21 of the Act. (Under these circumstances, the respondent made an application under section 21 of the Act to the Controller alleging that she was the owner of property in suit, that at that time she did not require the ground floor portion except one room and that she wanted to let out the same to the appellant for the limited and fixed period of 22 months. The statements of the appellant and the respondent were recorded by the Additional Controller on 15/07/1976. The respondent (landlady) stated as under :-

'Do not require the premises for a period of 22 months from 17/07/1976. The purpose of letting shall be residential only and the premises is shown on site plan Exhibit A 1 in red. The proposed agreement is Exhibit A2.'

THE appellant stated as follows :-

'I have heard the statement of the petitioner and I accept it as correct. I have no objection. I shall vacate the premises after expiry of 22 months with effect from 17/07/1976. The purpose of letting shall be residential.'

THE Additional Controller passed the following order on 15/07/1976:-

'THIS is an application filed under Section 21 of the Act for permission to create a limited tenancy for a period of 22 months from 17/07/1976. The purpose of letting shall be residential only and the premises is shown in site plan Exhibit A I in red. The proposed agreement is Exhibit A2. From the perusal of the statements of the parties, I am satisfied that as at present the petitioner does not require the premises. therefore, limited tenancy is allowed to be created for a period of 22 months from 17/07/1976.'

(3) The appellant further pleads that the facts relating to his possession of the premises as tenant were suppressed and fraud was played on him by the respondent that provisions of Section 21 of the Act were not complied with as he was already a regular tenant, that his tenancy still continued, that on account of his non-possession of rent receipts for a period of more than six years, he was under a fear that the respondent might institute a false suit for recovery of arrears of rent against him, although up to date rent had already been paid by him. He, therefore, alleges that he, as desired by the respondent went through the exercise of making a statement before the Controller and getting the permission under section 21 of the Act and executed lease deed dated 19/07/1976. He alleges that his possession of suit premises since 1969 is proved from ration card, voter list, electricity and water bills, T.V. license, radio license, insurance premium receipts. A notice was sent by him to the respondent informing that the tenancy under Section 21 of the Act was irregular, illegal and invalid and that the same was not in accordance with the provisions of Section 21 of the Act and that the entire responsibility for suppressing the material facts and practicing fraud on him and on the court rested with the respondent. He admits that subsequent to the permission under Section 21 of the Act the respondent issued receipts for the period 17/07/1976 to December 1977 for rents paid by him. The execution of the writing dated 19/07/1976 in pursuance of the permission under Section 21 of the Act is admitted but the same is alleged to be void and illegal and not binding upon him because the same was obtained under the circumstances already mentioned.

(4) The respondent in her pleading controverts all the allegations of the appellant-tenant. She denies, appellant became tenant in October 1969. She pleads that the possession of the premises given to him for a fixed period of 22 months with effect from 17/07/1976 after obtaining Controller's permission, that he made statement before the Additional Controller, that he estopped from alleging otherwise. It is denied that the permission was obtained by fraud or any material facts were suppressed. It is also denied that possession of one room out of the three rooms was ever given to her by the appellant, or she ever threatened to recover arrears of rents. The possession of the appellant from 1969 till the filing of the permission application is also denied. Thus in short the case of the respondent in her pleading is that appellant was never a tenant prior to the permission proceedings under section 21 of the Act and that he came into possession after the grant of permission by the Additional Controller under Section 21 of the Act. No other positive averment was made by the respondent in her reply.

(5) The appellant examined himself and four other witnesses in support of his objections. He, also O.W.1, deposes-he occupied the disputed premises in October 1969, the premises were let to him by the respondent, then it were three rooms, one kitchen, one latrine, both room and the monthly rent was Rs. 260.00, in 1972 one room was taken back since her husband was ill and suffered from heart-attack and the rent was reduced to Rs. 250.00 per month, that except on two occasions receipts were never issued, these receipts are Exhibit O.W.1/1 and Exhibit O.W.1/2. In reply to the question-'Under what circumstances you came to Court Under Section 21 of the Delhi Rent Control Act.' he states 'I was threatened for the recovery of rent entirely because I was not given the receipt and was assured that she will not get me evicted. I am possessing electricity/water bills. The

bill sare Exhibit O.W.1/5 to Exhibit O.W.1/15. I have got the gas connection, thereceipt to which is Exhibit O.W.1/16 and T.V. license.' In cross examination he states that he signed his statement before the Rent Controller, hewas present at the time of permission, he did not object at that time thathe was in possession, he did not make a complaint to the police. He however, states that he has been defrauded and that he gave a notice. He furtherstates that in exhibit A1 i.e. the lease deed correct facts were not mentionedand that he signed the same under duress. During cross examination asuggestion was made that in 1975-76 he left the premises which he had takenearlier. In reply he denies this suggestion. He denies that he ever left the premises. (O.W.2) Mange Ram, is an Officer from the Election Office, Delhi who produced voter list of the suit house showing the name of theappellant and his family members as on 6/12/1974. O.W.3 anOfficer of the Rationing Office, Delhi produce the appellant's ration cardat suit premises for the period July 1974 to 1977. The appellant purchasedration on this card from 1974 to 1977 specially on 7/07/1976 and Jul 29/07/1976. I may mention that the alleged permission under S. 21 of the Act wasobtained on 15/07/1976. This ration card shows that the appellant obtainedthe ration both prior to the permission and after the permission. O.W.4is the record keeper of the House Tax Department of the Municipal Corporation of Delhi who produced a photostat copy of the assessment record bearingthe date 26/10/1971. The appellant's name appears in this recordas one of the tenants in suit premises. The last witness on behalf of theappellant is one Mr. Shiv Shanker, who states that the appellant nevervacated the suit premises. In cross examination it was suggested that theappellant vacated the house in 1975-76 and that he again occupied the sameafter three or four months. The suggestion is denied by him. The respondent appeared as her own witness. She states-the appellant came into possession of the suit premises after the grant of permission by the AdditionalController, the appellant was residing at Jor Bagh, he was tenant under herprior to his shifting to Jor Bagh, there was an interval of four or five monthsbetween his shifting to Jor Bagh and again occupying the premises after thepermission. In cross examination she admits, first tenancy commenced inOctober, 1969, rent was Rs. 260.00 per month, the premises consisted of threerooms, kitchen, bath room, latrine on the ground floor, in 1972 one roomwas taken back from him. She admits her signatures on the receipts ExhibitO.W.I/I for November 1969. She neither admits nor denies her signatureon receipt for December 1269 Exhibit O.W.I/2. Signatures on receiptsExhibits O.W.1/3, O.W.1/4 for the period July 17, 1276 to Jul 31/07/1976and December 1977 are admitted. She denies appellant's possession andoccupation on the date when the permission application under Section 21was made.

(6) As regards documentary evidence various electricity and water bills were produced by the appellant. Electricity bills are Exhibit O. W. 1/5 to Exhibit O.W. 1/11 showing consumption of electricity in suit premises. Meter reading as per these bills is as follows :

Date	Power meter reading	Light meter reading
10.10.1974	2480646026.12.1974	260657024.2.1975
270066608.10.1975	3450714030.12.1975	3620728024.2.1976
3710736026.4.1976	3840747023.6.1976	4030755023.8.1976
4240766025.10.1976		

THESE bills show consumption of electricity for light and power purposes from October, 1974 to October, 1976 specially during the period of about five months prior to permission in July, 1976. Water bills and receipts for payment of water bills are Exhibit O.W. 1/12 to Exhibit O.W. 1/15 showing meter reading as follows :

Date	Water meter reading
4.11.1975	10031.3.1976
15922.5.1976	209 9.9.1976
2931.10.1976	30525.10.1976
330	

THESE reading show consumption of water in suit at all relevant times. Respondent's suggestion that appellant left the premises at any relevant time is falsified by the electricity and water bills. Exhibit O.W. 1/16 is the cash memo dated 7/05/1971 showing payment of gas cylinder charges. This receipt shows the suit premises as the address of the appellant. Exhibit O.W.2/1 is the record of the Election Office pertaining to suit premises showing the names of the appellant and others as voters on 6/12/1974. The ration card also shows that the appellant obtained ration on this card on 7/07/1976 and Jul 29/07/1976 besides on various other dates from 1974 to 1977. The correctness of the documentary evidence produced by the appellant consisting of Exhibit O.W.1/1 to Exhibit O.W. 1/16 is not challenged by the respondent. Not a single question was put to him in cross examination. The appellant was not given receipts for rent paid up to July 1976 i. e. for a period of about 7 years. The respondent has not given the receipts for the period ending 16/07/1974 were given to the appellant. Hewas, therefore, under a fear that he would have to pay the arrears of rents at such rate as may be claimed by the respondent if he had not accepted the suggestion of the respondent to take the tenancy premises under Section 21 and execute the lease deed in accordance with the permission because rate of rent was not mentioned in the receipts for November-December 1969. The conduct of the respondent was a fraud upon the appellant and the Court. She did not accept the appellant's tenancy from October 1969 in her pleading. But when she realised that un rebutted documentary evidence on record has been produced by the appellant she in cross-examination of the appellant came forward with the story that the premises taken on rent previously i. e. in November 1969 were left by him in 1975-76 and again occupied after the permission for 22 months. No such plea was ever taken in her reply to the appellant's objections. In fact, the respondent in her pleading denied her tenancy, possession and occupation during the period October 196 9/07/1976. The premises were already under the tenancy of the appellant. She was never in possession of these premises since October 1969. The premises were not available for letting on the date when the application was made for permission under S. 21 of the Act she suppressed the true facts once a tenancy is created it can be determined be one of the methods mentioned in Section 111 of the Transfer of Property Act and/or under the Rent Control Act. If on tenancy in favor of the appellant stands proved on record, the onus shifts upon the respondent to allege and prove how that tenancy was determined and the premises were available for letting. In the present case there is neither any plea nor any evidence to show determination of tenancy and availability of premises for letting under Section 21 of the Act.

(7) Section 21 of the Act is as under :

'RECOVERY of possession in case of tenancies for limited period. Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises then, notwithstanding anything contained in Section 21 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.'

UNDER this section a landlord must show that the premises are available for letting and he does not require the same for a particular period. He must further give reason for not requiring the premises. The Controller must satisfy himself that the conditions prescribed under Section 21 of the Act existed, before granting the permission. If the premises were already under tenancy, it cannot be said that the same were available with the landlord for letting. If the landlord is not in possession of the premises he must disclose in his application as to how he would be entitled to let out the same after the permission of the Controller. In such circumstances Controller may determine whether the landlord would be entitled to possession of the premises in his own right before creation of tenancy after permission. If landlord is not entitled to possession from the occupant, no permission to let the premises already in occupation of a person other than the landlord can be granted. Further if reasons for not requiring the premises are not mentioned in the application, it would not be possible for the Controller to determine whether the landlord does not require for the particular period and in such circumstances no permission can be granted. If permission has been granted in violation of these requirements it would be void and open to challenge at the time of execution of the permission. The Supreme Court in S.B. Noronah v. Prem Kumari Khanna, 1980(1) Supreme Court Gases 52 held :

'THE first condition is that 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. 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 particular limited period of say one year, two years or five years. If a man has a house available for letting for an indefinite period and he so lets it, even if he specifies a pretence, a period or term in the lease, Section 21 cannot be attracted. On the other hand, if he gives a special reason why he can let out only for a limited period and requires the building at the end of that period, such as that he expects to require by then or that he is going on a short assignment or on deputation and needs the house when he returns home it is good compliance. The second condition is that the letting must be made for a residential purpose. The house must be made over 'as a residence'. If it is let out for a commercial purpose. Section 21 will not apply, whether the ritual of a sanction under that provision has been gone through or not. Thirdly, the Controller's permission is obligatory where he specified the particular period for which he gives permission and further qualifies the permission for use as a residence. The Controller exercises an important regulatory function on behalf of the community. The fact that a landlord and a potential tenant together apply, setting out the formal ingredients of Section 21, does not relieve the Controller from being vigilant to inquire and satisfy himself about the requisites of the landlord's non requirement 'for a particular period' and the letting itself being 'as a residence'. A fraud on the statute cannot be permitted especially because of the grave mischief that may be perpetrated in such event.

xx xx xx WHEN an application under Section 21 is filed by the landlord and/or tenant, the Controller must satisfy himself by such inquiry as he may make, about the compulsive requirements of that provision. If he makes a mindless order, the Court, when challenged at the time of execution, will go into the question as to whether the twin conditions for sanction have really been fulfilled. Of course, there will be a presumption in favor of the sanction being regular, but it will still be open to a party to make out his case that in fact and in truth the conditions which make for a valid sanction were not present. xx xx xx It is altogether wrong to import the idea that the tenant having taken advantage of induction into the premises pursuant to the permission, he cannot challenge the legality of the permission.'

(8) The appellant has challenged the original order of the Controller granting permission under Section 21 of the Act. From the material on record as discussed above, I am satisfied that he has discharged the onus. No reason was disclosed by the respondent why she did not require the premises for the fixed period of 22 months. The premises were also not available for letting. The fact that the premises were already under tenancy of the appellant, was not disclosed by the respondent in her application. The Controller at the time of granting the permission, it appears, did not apply his mind. He ought to have taken into consideration whether the premises were available for letting and what was the reason that the premises were not required by the respondent. It appears that after recording the statement he passed the order in a mechanical way. The oral and documentary evidence on record conclusively proves that the appellant occupied the premises as a tenant in October 1969 consisting of three rooms etc. at Rs. 260.00 per month, that he surrendered one room subsequently and rent was reduced to Rs. 250.00 per month, that he never left the premises, that he continued in occupation and possession of the premises right up to the date of permission under Section 21 of the Act and thereafter.

(9) It was argued on behalf of the respondent that the appellant gave his address as 37 Jor Bagh in the lease deed executed on Jul 19/07/1976 in pursuance of the permission of the Controller. She is not aware of the premises in Jor Bagh. No evidence has been led by her to show that the appellant ever left the suit premises or shifted to Jor Bagh. Giving of the address in the proposed lease agreement or the lease deed dated 19/07/1976 does not mean that the appellant left the premises and went to occupy the premises in Jor Bagh. The appellant while in the witness box stated that he never left the suit premises meaning thereby that he never shifted to any other place for his residence. No question was put to the appellant in cross-examination suggesting that the appellant before permission was residing at Jor Bagh. The respondent showed his ignorance about the alleged Jor Bagh address of the appellant. She could not point out where the appellant used to reside in Jor Bagh. The documentary evidence shows that the appellant remained in occupation of the suit premises.

(10) The Additional Controller and Tribunal were not correct in holding that the appellant was not continuously residing in the premises in dispute. The findings are contrary to un rebutted oral and documentary evidence on record. The further finding that he was not residing at the time of permission under Section 21 of the Act is also contrary to record. They have not taken into consideration that from October 1969/07/1976 receipts for payment of rent except receipts for two months were not granted to the appellant. In the two receipts the rate of rent was also not disclosed. Why? No reason is given even now. The respondent did not disclose to the Rent Controller in her application under Section 21 of the Act that the appellant was tenant and in occupation of the premises. It was an active concealment of a material fact within the knowledge of the respondent. This fact was concealed with intention to induce the appellant to enter into lease agreement under Section 21 of the Act. The conduct of the respondent was nothing but fraud upon the appellant in the Court. The Controller and the Tribunal have further held that the appellant has taken advantage of the permission and, therefore, there was no question of any fraud. I do not agree. The appellant was in difficulty. He had no defense to the demand of the respondent for arrears of rent from 1969 to 1976. He had no alternative but to accept the demand of the respondent and go through the formalities of making the statement before the Controller and thereafter execute the lease deed. The respondent obtained permission and got the lease deed executed by putting the appellant in fear.

(11) It was also argued on behalf of the respondent that under the facts and circumstances of the case it be held that there was implied surrender of the 1969 tenancy and that there was tenancy under Section 21 of the Act in July 1976. It is well-known that parties cannot be allowed to go beyond pleadings. Without any plea of surrender of tenancy, no amount of evidence, if any, on record can be looked into. In fact, there is no evidence on record to hold surrender of tenancy by the appellant in 1975-76 or at any other time. The suggestion is that there was a gap of four to five months between the date when the appellant left the premises and the date he occupied the same after permission under Section 21 of the Act. This suggestion is also false to her knowledge. The electricity and water bills on record conclusively prove that the premises were in occupation and there was consumption of water and electricity also during the period of five months prior to the said permission in July 1976. Thus the suggestion of the respondent at a very late stage at the time of evidence to the appellant that he left the premises for a period of about five months is held to be false. In the present case conditions for the grant of valid permission under Section 21 of the Act were not fulfilled when the application was made by the respondent.

(12) The appeal is, therefore, accepted, the orders of the Additional Controller and Rent Control Tribunal are set aside. The execution application of the respondent in pursuance of the permission dated 15/07/1976 under Section 21 of the Act is dismissed. It is further held that the permission granted on 15/07/1976 is invalid. The respondent shall also pay appellant's costs throughout. Counsel fee Rs. 400.00.