

J.L. Paul Vs. Ranjit Singh

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Court : Delhi

Decided On : Jul-24-1980

Reported in : 1980(1)DRJ94

Judge : Sultan Singh, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 37; [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 226 of 1980

Appellant : J.L. Paul

Respondent : Ranjit Singh

Advocate for Pet/Ap. : B.J. Nayyar and; S.L. Bhatia, Advs

Judgement :

Sultan Singh, J.

(1) This is a petition under section 25B(8) of the [Delhi Rent Control Act, 1958](#) (for short 'the Act') challenging the order dated January 30, 1980 whereby after refusing leave to contest, an order for eviction of the petitioner under Section 14A of the Act, was passed by the Controller, Delhi. The respondent/Landlord filed an application for eviction of the petitioner/tenant under section 14A(1) of the Act. It is alleged that the petitioner is his tenant on the first floor of property at plot N-164,

Greater Kailash-1, New Delhi on a monthly rent of Rs. 800.00 besides electricity and water charges and the premises are residential which were let on April 1, 1973. The respondent further alleges that he is in occupation of residential premises No. M-2766, Netaji, Ngr New Delhi allotted to him by the Central Govt., that he is required the General/Special orders dated September 9, 1975, December 26, 1975 and July 14, 1977 to vacate the said Government allotted premises or in default to pay the license fee at the market rate, because he owns in his own name residential house at plot no. No. N-164, Greater Kailash-1, New Delhi. He further states that originally the license fee was 118.00 per month and the license fee at half the market rate now being paid by him is Rs. 298.00 p.m. He further alleges that the ground floor of No. N-164, Greater Kailash-1, New Delhi is in occupation of another tenant M/s Escorts at a monthly rent of Rs. 1100.00 and that he wants to shift to the first floor i.e. the premises in dispute in occupation of the petitioner.

(2) The application was tried under Chapter Iii A of the Act. The petitioner filed an application for leave to contest. It is alleged that the eviction application under under Section 14A(1) of the Act is not maintainable as the Central Government has withdrawn the notification granting right to the Government employees to seek eviction of tenants under the said provisions of the Act, the eviction application does not disclose any cause of action, the respondent is not the owner of the premises, the eviction application is malafide as he ought to have filed the same against the occupant of the ground floor, that the premises were let for residential-cum-commercial purposes and that he is a dental surgoen having clinic along with his residence in the suit premises.

(3) The respondent/landlord in reply submits that the Government never withdraw the notifications but only modified it; he is covered by the notification and is liable to pay license fee at half the market rate; the eviction petition discloses cause of action; the petitioner is stopped from raising the defense of ownership as he has always accepted him as the owner of the premises; he has a choice to file application for eviction from the premises desired by him. It is denied that the premises were let to the petitioner for residential-cum-commercial purposes. He further alleges that the petitioner has got his clinic at 16A/17 Ajmal Khan Road,

New Delhi.

(4) The Controller rejected the application for leave to contest and passed the eviction order dated January 30, 1980.

(5) The first objection of the petitioner is that the eviction application cannot be tried under the summary procedure detailed in Chapter IIA of the Act because the respondent never made any prayer for trial under the said procedure. The contention is that under Order 37 of the Code of Civil Procedure a plaintiff has to express a desire for trial of his suit under the said order and, therefore, the landlord, who desires to avail the summary procedure detailed in Chapter IIA of the Act, should also make a similar prayer. Section 25B(1) of the Act provides that every application by a landlord for the recovery of possession of any premises on the grounds specified in Section 14A or Section 14(1)(e) of the Act shall be dealt with in accordance with the procedure specified in that Section. This provision is mandatory. There is no requirement that the landlord should make a prayer for trial under summary procedure. Under Order 37 rule 2 (1) of the Code of Civil Procedure, there is specific requirement that a suit may, if so desired by the plaintiff, be tried under Order 37 of the Code of Civil Procedure and for that purpose he has to make an averment that the suit filed by him is under Order 37 of the Code of Civil Procedure. That order further provides what should be the title of the suit. The plaintiff is required to mention in the title of the suit that the suit is to be tried under Order 37. The provisions of Order 37 are entirely different from the provisions contained in Section 25B of the Act. I do not find any force in the objection.

(6) The next objection is that the eviction application does not disclose any cause of action. The eviction application is in the prescribed form. It gives all the particulars and facts necessary to obtain an order for eviction. Under para 18 the petitioner has mentioned, that he is the landlord in occupation of the Government accommodation, he is required by general and special orders to vacate the Government allotted accommodation or in default to pay the licenses at the market rate, the original license fee was Rs. 118.00 per month and subsequently the half market rate is held to be Rs. 298.00 per month. The petitioner described the

premises as residential. A landlord under Section 14A(1) is entitled to recover the possession of the premises let out by him, if he is in occupation of residential premises allotted by the Government and he is required by general or special order to vacate such residential accommodation or in default to incur certain obligations on the ground that he owns a residential accommodation in his own name or in the name of his wife or dependent children. A bare reading of the application shows that all the allegations which consist of the cause of action have been pleaded in the eviction application.

(7) The Act provides that in an application for leave to contest, the allegations must be such which would dis-entitled the landlord to claim eviction if those allegations are deemed to be correct. But it has been held in various judgments of this Court that general denial by the tenant is not denial. He should give in the facts throwing doubt on the landlord's case. (See) Smt. V.L. Kashyap v. R. P. Puri 1977 R.C.R. 449 and Kanwal Kishore Chopra v. O. P. Diwedi and another 1978 Delhi 53. The petitioner/tenant in his application for leave to contest has alleged that the respondent is not the owner of the premises. He has not disclosed as to who is the owner of the suit premises. The plea is vague and has been made only with a view to delay the disposal of the eviction application. Such a plea is not open and leave to contest cannot be granted on this ground.

(8) The next objection of the petitioner is that the petition is malafide because the respondent/landlord has not filed the eviction application against the occupant of the ground floor as he is getting more rent from him than the rent of the suit premises. The petitioner's contractual rent is Rs. 850.00 per month while the rent of the ground floor premises is Rs. 1100.00 per month. This defense is not available to a tenant. It is the primary right of a landlord to decide which accommodation is suitable for him and choose the tenant he would like to evict. (See Manohar Lal V. Mool Chand 1976 R.C.R.236 and Surjit Singh V. I.J.Chawla 1979 R.L.R. 20. The respondent/landlord in this case has chosen to file the eviction application against the petitioner. It is correct that the petitioner is tenant at Rs. 850.00 per month and that the tenant on the ground floor is paying Rs. 1100.00 per month but this is no ground to hold that the application is malafide. Moreover, under Section 14A of the Act there is no question of any malafide or

bonafide on the part of the landlord to claim eviction. If the requirements of Section 14A of the Act are satisfied, a landlord is entitled to an order for eviction irrespective of his bonafidies.

(9) The further objection of the petitioner is that the premises were let for residential-cum-commercial purposes and that he is having his dental clinic in the suit premises along with his residence. This ground is also not available to him. Under Section 14A of the Act what is required is whether the premises in suit is residential accommodation, it is immaterial for what purposes the premises have been let. (See B.N. Mutto and another v. Dr D.K.Nandi, : [1979]2SCR409). The respondent-landlord in para 4 pleads that premises are residential. The petitioner in his application for leave to contest, however, even does not allege the premises to be not residential.

(10) The last objection of the petitioner is that the notifications granting a right to the Government employes to seek eviction under Section 14A of the Act have been withdrawn, that this defense raises a triable issue and. therefore, the Controller ought to have granted leave to contest so that he may produce evidence on record in support of this part of his defense. The right to claim eviction accrues to a landlord under Section 14A of the Act and not under any notification issued by the Government. The Government notification general or special only requires a landlord Government allottee to vacate the accommodation as he owns his house or pay penal rent. The respondent submits that the general notification dated September 9, 1975 and the special order dated December 26, 1975 have never been withdrawn. His contention is that there has been a notification about the rate of rent/license fee to be paid by a Government employee, if he is also owner of his own house at the place of his posting and does not vacate allotted premises. In short his contention is that right of eviction is available to a landlord allottee of Government accommodation if he fulfills the conditions mentioned in Section 14A of the Act. According to him there is modification that if the income of the landlord from his own house does not exceed Rs. 1000.00 per month, he is liable to pay only the normal rent of the Government allotted accommodation, but if his income from his own house exceeds Rs. 1,000.00 and does not exceed Rs. 2,000.00 he is liable to pay half the market rent; in cases where his income from his own house is

above Rs. 2,000.00 per month, he is liable to pay full market rent. The respondent contends that Section 14A of the Act conferring upon a landlord/Government allottee to get his own house vacated has never been repealed. The learned counsel for the respondent further contends that mere assertion of the petitioner that the notifications have been withdrawn is vague and does not give him any right to leave to contest and lead any evidence. Government notifications have always been issued in writing. There has not been any oral notification. If any notification has been withdrawn or cancelled, such an order must be in writing. The petitioner/tenant in his application does not disclose any notification under which the Government notification requiring a landlord/Government employee, to vacate has been withdrawn. The respondent landlord mentioned various notifications namely September 9, 1975, December 26, 1975, July 14, 1977 and September 20, 1977 on the basis of which he claims eviction of the petitioner under Section 14A of the Act. The eviction application was filed on August 23, 1979, Along with copies of notifications dated December 26, 1975, July 14, 1977 and September 20, 1977. On December 11, 1979. The respondent also filed notifications dated September 9, 1975, December 9, 1975 besides other documents. On January 16, 1980 he filed two letters exchanged between the Central Public Works Department and the directorate of Estates. New Delhi dated December 12, 1979 and December 15, 1979. The application for leave to contest was filed on October 9, 1979 and its reply was filed on November 8, 1979. The Controller passed the order rejecting the application for leave to contest on January 30, 1980 Thus it would be seen that all the relevant notifications were available on record, at the time of arguments. The crucial question is whether notification requiring a landlord to vacate allotted premises or incur certain obligations, because he owns a house have been withdrawn.

(11) On September 9, 1975 a general notification was issued by the Ministry of Works and Housing. This notification is in super-session of all previous orders on the subject, further reads as under :

'THIS Government servants, who have already built houses at the place of their posting within the limits of any local or adjoining municipality., whether with or without Government assistance, or who own houses either in their own homes or

in the name of any inembers of their famlies - shall be required to vacate the Government accommodation allotted to them, within three months from the 1st of October 1975. If they do not vacate Government accommodation after that period, they would be charged license fee at market rates.'

(12) After this general notification a special order was issued on December 26, 1975 to the respondent/landlord requiring him to vacate the Government allotted residence namely M-2766 Netaji Nagar, New Delhi by December 31, 1975 falling which he was required to pay market rent with effect from January 1, 1976 at the rates fixed by the Government from time to time. Thus the notification dated September 9, 1975 is in super-session of all previous notifications while the order dated December 26, 1975 is special order addressed to the respondent/landlord. These two orders fulfill the requirements of Section 14A of the Act and thus right to evict accrued to the respondent. The Ministry of Works & Housing, Directorate of Estates, Government of India, however, on July 14, 19/7 issued another notification which is not in super-session of previous notification dated September 9, 1975. It only modifies the restriction on allotment of accommodation to house owning officials with effect from June 1, 1977, and the rate of rent payable by them with effect from June 1, 1977. Para 1 of this notification reads as under :-

'THEundersigned is directed to say that the orders contained in this Ministry's Office Memorandum No. 12031 (1)74 9.9. 1975, as modified from time to times have been reconsidered. Government has decided that the present restrictions on allotment of accommodatn to house owning officers should be modified with effect from 1.6.1977, making house owning officers eligible for Government accommodation, as communicated in this Ministry's Office Memorandum of even number dated the 29th June 1977. It has also been decided that allotment of such accommodation to a house - owning official will be on normal rent if the income from his own house does not exceed Rs. 1,000.00 p.m., on half the market rent if the income exceeds Rs. 1,000.00 p.m. but does not exceed Rs. 2,000.00 p.m. and on full market rent if the income is above Rs. 2,000.00 p.m. Rent will be recovered on the same basis w.e.f. 1.6.1977 also from those house-owning official who are retaining Government accommodation on payment of market rents. These decisions will apply equally whether the house is owned by the officer or his/her

wife/husband or by his/her dependent children.'

(13) From this notification it is apparent that if the income of the landlord Government allottee from his own house is up to Rs. 1000.00 per month, he is liable to pay normal rent of the Government accommodation. Under notification dated September 9, 1975 if a Government allottee owning his house did not vacate the Government accommodation was liable to pay the market rent but under the notification dated July 14, 1977 he is not liable to pay anything above the normal rent if the income from his own house does not exceed Rs. 1,000.00 . He is liable to pay only half the market rent if the income from his house exceeds Rs. 1,000.00 but does not exceed Rs. 2,000.00 per month under notification dated July 14, 1977, while he was liable to pay full market rent under notification dated September 9, 1979. Whether if the income from his own house exceed Rs. 2,000.00 he is liable to pay full market rent under both notifications. In other words, if a Government allottee owning his house does not vacate the Government accommodation and his income from his own house is more than Rs. 1,000.00 he is liable to pay half the market rent depending upon income from his house. Thus the notification dated September 9, 1975 stands modified to the extent as to what rate of rent would be payable by the respondent Government allottee landlord owning his own house, if he retains the allotted premises i.e. if he fails to vacate the Government accommodation in pursuance of the general order dated September 9, 1975 and the special order dated December 26, 1975. The income of the respondent from his own house i.e. suit property no. N-164, Greater Kailash

(14) New Delhi is Rs. 1950.00 per month. He is getting Rs. 850.00 per month from the petitioner occupying first floor and RS.1.00.00 per month from 'Escorts' occupying the ground floor. In accordance with the notification dated July 14, 1977 the respondent/landlord is thus liable to pay half the market rent from June 1, 1977 if he does not vacate the Government allotted accommodation. Intact, after the issue of notification dated July 14, 1977 the respondent has been directed to pay half the market rent by means of an order dated September 20, 1977 issued by the Directorate of Estates, Government of India with effect from June 1, 1977. Inshort, it is certain that there is the general notification dated September 9, 1975 and the allotted order dated December 26, 1975 requiring the respondent landlord

to vacate the Government allotted residential accommodation or in default to half the market rent. In other words he is to incur certain obligations. This liability is on account of the fact that he owns the house in suit the Union Territory of Delhi, his place of posting. These notifications do not require any evidence. Neither any notification has been pleaded nor any has been brought to my notice even now to show that either the general order dated September 9, 1975 or the special order dated December 26, 1975 addressed to the respondent/landlord has since been withdrawn or cancelled. The learned counsel for the respondent has brought to my notice correspondence between the Ministry of Works & Housing and the Directorate of Estates, New Delhi. On December 12, 1979 Directorate of Estates was required to state whether the notification dated September, 1975 stands withdrawn or it was simply modified. The Directorate of Estates in his letter dated December 15, 1979 informed that the memorandum dated September 9, 1975 was not withdrawn but only modified by memorandum dated July 14, 1977. This is an internal correspondence no doubt but it throws light upon the working of the Government whether the notification dated September 9, 1975 or the special order dated December 26, 1975 stands withdrawn or cancelled. As discussed above, I do not find that the general order dated September 9, 1975 issued in supersession of all previous orders on the subject has ever been withdrawn or cancelled by any subsequent notification. This general order mentions that if Government servants have built their houses or own houses are required to vacate the Government accommodation and if they do not vacate, they would be charged license fee at market rates. This notification has been modified by notification dated July 14, 1977 that license fee at half market rate or full market rate would be charged from them if income from their property exceed Rs. 1,000.00 per month. If the income is Rs. 1,000.00 or less he is liable to pay only the normal rent. So if the two notifications dated September 9, 1975 and July 14, 1977 are read together, it appears that there is no cancellation of the earlier notification and that it is only a notification of the rate of rent payable by an allottee owning his own house. Under this notification dated July 14, 1977 it is further provided that with effect from June 1, 1977 rent of allotted premises shall be recovered from the house owning officials retaining the premises at the rates mentioned therein. The respondent is, therefore, liable to pay the rent accordingly and thus liable to incur obligation in

default of vacating the premises.

(15) The learned counsel for the petitioner has brought to my notice the Judgment K.D.Singh V. Mari Babu Karwal, 1980(1) R.C.R. 9. in support of his plea that the notification dated September 9, 1975 stands withdrawn by the notification dated, July 14, 1977. Rajinder Sachar.J. has discussed the two notifications dated September 9, 1975 and July 14,1977. In that case there was no special order against the Government allotted landlord. In the present case there was no special order dated December 26, 1975 and the subsequent order dated September 20, 1977 addressed to the respondent/ landlord. By these two orders the respondent has been directed to vacate the Government allotted accommodation and in default to pay half the market rent because he owns his own house in New Delhi, the place of his posting. Thus, it appears to me that the judgment cited by the learned counsel for the petitioner has drawn my attention to paras 4 and 6 also of notification dated July 14, 1977 which are reproduced below :

'4.Release of house taken on lease. A number of houses offered by house-owning officers have been accepted onlease by Government. Such houses may be released to their owners, on receipt of requests for such release. Officers to whom these leased house were allotted may be provided with alternative accommodation without any restriction of locality, on adhoc basis. Such adhoc allotments will be in their entitled types, if their dated of priority have been covered, otherwise, in the types next below.'

(16) 6. In so far as the general pool is concerned, officers who have already vacated Government accommodation may submit fresh application for allotment of accommodation in the prescribed application form; indicating the details of the houses owned by them or their apouses or dependent children, Along with documentary proof of the income they derived from the house they own House-owning officers, who are continuing in Government accommodation, .should also furnish suitable documentary proof of the income they get from their private houses, to enable the Director of Estates to fix the license fee recoverable from them w.e.f. 1.6.77. All such applications should be routed through their administrative offices.'

(17) Para 4 relates to release of houses belonging to house owning officials taken on lease by the Government and para 6 relates to the procedure for allotment of accommodation to officers who have already vacated Government accommodation. These paras have no relevancy to the facts of the present case. The Government issued general notification dated September 9, 1975 and July 14, 1977 besides special order to individuals officers, in this case order dated December 26, 1975 and September 20, 1977 have been issued to the respondent to vacate Government allotted premises or in default pay half market rent. These orders are still in force. The respondent satisfied the requirement of Section 14A of the Act. There is no defense available to the petitioner against the eviction application under Section 14(1) of the Act. I also find that there is no infirmity in the order of the Controller. The petition has no merit. It is dismissed

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