Ganpat Ram Vs. Gayatri Devi

Ganpat Ram Vs. Gayatri Devi

SooperKanoon Citation : sooperkanoon.com/693340

Court : Delhi

Decided On : Aug-28-1980

Reported in : 19(1981)DLT82; 1980(1)DRJ126

Judge : Sultan Singh, J.

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

Appeal No. : Second Appeal No. 138 of 1979

Appellant : Ganpat Ram

Respondent : Gayatri Devi

Advocate for Pet/Ap. : Maehswar Dayal,; A.C. Mittal and; S.K.Taneja, Advs

Judgement :

Sultan Singh, J.

(1) This judgment will dispose of three appeals, namely, S.A.O. Nos. 138, 139 and 140 of 1979 by three different tenants against their landlady Smt. Gayatri Devi in whose favor the contraller and the Rent Control Tribunal passed an order of eviction on the ground covered by clause (h) of the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') against all the three appellants. It has been held that the three tenants have built ard required vacant possession of residential house No A-6/25 Krishna Nagar, near

Lal Quarter, Delhi. It has also been held that Ganpat Ram, tenant-appellant has been allotted residential quarter No. 3 7,Seelampurlll, Shahdara, Delhi. Learned counsel for the appellant has challenged the judgments of the Controller and the Tribunal on the ground that the three tenants-appellants have neither but nor acquired vacant possession of the residential House No. A-6/25, Krishna Nagar, Near Lal Quarter, Delhi, than in any case the respondent landlady is not entitled to claim eviction under clause (h) on the ground of waiver and lanches. He further submits that Ganpat Ram has not been allotted the quarter at Seelampur and that in any case he is not in possession of the same. He further submits that the Act is not applicable to the quarter alleged to have been allotted to Ganpat Ram, tenant and as sueh ground covered by clause (h) is not available to the landlady. Lastly he submits that all the three ingredients mentioned in clause (h) namely, built, acquired vacant possession of and allot- ment of residence must be fulfilled before an order of eviction can be passed against the tenant.

(2) Clause (h) of the proviso to sub-section (1) of section 14 of the Act is as under :

'S. 14(1) Notwithstanding anything to the contrasy contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or controller in favor of the landlord against a tenant ; Provided that the controller may on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds :- only ; namely :- (h) that the tenant has, whether before of after the commencement of this Act, built acquired vacant possession of, or been allotted, a residence;'

(3) On account of rapid growth of population of Delhi landlords were temped to terminate the tenancies of the existing tenants and ask for their eviction inorder to let out the premises to the new tenants at high rents. Rent Control legislation for Delhi and New Delhi was passed for the first time during the Second World War and since then there has been rent control legislation applicabe to various urban areas in the Union Territory of Delhi. The Rent Control Act is enacted to provide for the control of rents and evictions. The object of clause (h) as reproduced above, in view of shortage of housing possession of the said house at Krishna

Nagar. It has been proved on record that Dev Karan, Kul Bhushan and Kalu Ram admitiedly related to the three tenants are in occupation of house at Krishna Nagar as licenses of the three appellants-tenants. This is a finding of fact and cannot be challenged in the second appeal uilder section 39 of Act.

(4) Learned counsel for the tenants then submits that the landlady is a purchaser of the property from one Dina Nath and she and her vendor have always been aware that the three tenants are owners of the house at Krishna Nagar. On account of this knowledge it is argued that the landlady-respondent waived her rights under clause (h). There is no substance in this argument. There is no plea that the landlady ever waived or was guilty of laches. No evidence was led by any of the parties. The facts are that the respondent- landlady purchased this property from Dina Nath on 9/4/1973 There is nothing an on record to show that Dina Nath was ever aware of the fact abont building or acquiring the house at Krishna Nagir by the three tenants. The landlady on 28/9/1973 tiled application against the three tenants under section 19 of the Slums Area (Improvement & Clearance) Act, 1956 seeking permission to institute eviction proceedings. The required permission was granted by the competent authority on 12/12/1974 and the present state of accommodation in Delhi is that a tenant should not be allowed to have more than one house for residence in Delhi. It provides, that in case a tenant has built a residence, the landlord could get his house vacated. It also provides that if the tenant has acquired vacant possession of of any other residence, he is not protected. Lastly it provides that if residential premises have been allotted to a tenant, he is not entitled to retain the premises taken on rent by him. In this clause there are three causes under which the landlord can claim eviction against the tenant. The three causes are in the alternative. These causes are not joint. If the landlord is successful in proving any of the causes he is entitled to an order of eviction against the tenant. The argument of the counsel for the appellant is that if a tenant builds a house, he must acquire its vacant possession before he can be evicted under clause (h). Similarly he says that if residential accommodation is allotted to a tenant he must obtain vacant possession of the same. A bare reading of the clause shows that the argument of the appellant is untenable. The tenant is liable to eviction if he has built, acqired vacant possession of, or been allotted a resident. The word 'or' shows that these are different circumstances in which a

tenant is liable to be evicted. They are :- (i) if he has buit a new residence ; (ii) if he has acquired vacant possession of it : and (iii) he has been allotted a residence.

(5) The word 'built' and 'allotted' do not mean that after building residence or after allotment of a residence, he must also acquire its possession. If a tenant builds a house and does not occupy it and allows others to occupy the same he is not protected. The Act provides that building of a house by a tenant or as allotment of residence to him is a ground of eviction available to the landlord against his tenant. I am, thereforee, of the view that it is not necessary for a landlord to prove either that the tenant has built and acquired possession of the building or that he has been allotted and taken possession of the allotted premises. The landlady in the eviction application alleges that the tenants have built and acquired vacant possession of a residential house No. A-6/25, Krishna Nagar, Near Lal Quarter, Delhi. It is denied by all the three tenants but the controller and the Tribunal have on the basis of evidence on record concluded that the three tenants have built and have also acquired vacant possession of the said residential premises. It has been held that the relations of these three tenants are in actual physical possession. The applications out of which these three appeals have arisen were filed on 16th April, 1975. There is no question of laches on the part of the landlady. She filed an application for slum permission after six months from the date of the grant of permission by the slum authority.

(6) The landlady claimed eviction of Ganpat Ram appellant-tenant on another ground also, namely, he has been allotted residential quarter bearing No. 317, Seelampur Iii, Shahdara, Delhi. This fact is denied by the tenant A.W, Naresh chand an official of the D.D.A. brought the official record real. ting to the allotment of this quarter. He deposed that the said quarter was allotted to him in 195s and that possession was delivered to him. He further deposes that the quarter is residential in nature. I he argument of the counsel for the appellant is that the same is in possession of Sushila Devi. Sushila Devi appeared as a witness. She admits that the said quarter stood allotted to the tenant Ganpat Ram, appellant. After allotment Ganpat Ram, tenant is entitled to occupy the allotted accommodation and possession was delivered to him according to A.W.I. If he is not now in possession and somebody else is in possession, he cannot now turn

and say that the ground of eviction is not available to the landlady.

(7) Under clauses (h) if once default is committed by the tenant he disentitles himself to protection under the Act. If once residence is allotted to him, he is not entitled to any protection (See : Hem Chand Bail v. Smt. Prem Wati Parekh 1979 (2) T.C.R. 328 and Battoo Mal v. Rameshwar Nath 1970 R.C.R. 532 under this clause when once any of the grounds is available to the landlord and the tenant either alienate the building after constructing it or surrenders the possession of the premises after acquiring the possession thereof or surrenders the residential premises alleted to him, he ceases to have protection under the Rent Control Art. in the present case there is unrebutted evidence that the quarter was allotted to him. There is further evidence that possession was delivered to him. It was not at all necessary to prove that after allotment possession was delivered to him. As soon as the allotment of residence is proved in favor of Ganpat Rain he disentitles himself to protection under the R.ent Act.

(8) The last argument of the learned counsel for the appellant is that Seelampur area known as Seelampur Shahdara where the allotted quarter is situated is not governed by the Act and thereforee ground covered by clause (h) is not available to the landlandy. There no pica in the written statement that the area known as Seelampur Shahdara was included in the limits of the Municipal Committe Delhi Shadara. It is admitted that the Rent Act is applicable to the area included included in the Municipal Committee, Delhi-Shahdara as per item 4 of the First Shedule to the Act. This is the finding given by the Rent Control Tribunal. The said finding is not challenged in the grounds of appeal before this court. The learned counsel further submits that the Rent Control Act was extended to the Seelampur area by means of a notification dated 27/3/1979 S D. 1236 issued by the Ministry of Works and Housing, New Delhi under section 1(2) of the Act published in the Gazettee of India, Part Ii section 3 dated 14/4/1979. This notification refers to a previous notification dated 28/5/1961 issued by the Municipal Corporation of Delhi under which various areas form part of the urban area within the limits of the Municipal Corporation of Delhi. This notification also refers to another notification dated 28/12/1989 under which the village abadi in Seelampur, had already been declared as urban area. The remaining area of Seelampur was declared as urban

area by notification dated 28/5/1966. There is nothing on record to show that the allotted residential house in Seelampur was a part of village Abadi area or the remaining area of Seelampur. These are questions of fact for which no plea was raised. In any case lam of the view that the landlady is entitled to claim eviction under clause (h) as soon as she proves that a residence lias been allotted to a tenant within urban area ofthe Union Territory of Delhi irrespective of the question : Whether the Rent Control Act ts applicable to the allotted residence. There is no mention in the Rent Control Act that the Act must be applicable to the allotted residence. The whole purpose would be frustrated If it is held that the allotted residence within the Union Territory of Delhi must also be governed by the Rent Control Act. The premises belonging to the Government are not governed by the Rent Control Act under section 3 of the Act. It is very we well known that several Government servants are tenants occupying various tenancy premises in the Union Territory of Delhi and they have been allotted Government accommodation i.e. the premises belonging to the Government to which the Rent Control Act is not applicable. If clause (h) means as suggested, the Government servants who are allotted Government accommodation i.e. the premises belonging to the Government would be protected against eviction. In other words, they would continue to occupy the tenancy premises as well as Government allotted premises. This is not the purpose of the Rent Control Act. The intention of clause (h) is that if a tenant has been allotted & residence he is not entitled to be protected under the Rent Act. The learned councel for the. appellant has referred to Budh Ram V. Banwari Lal & another 1971 R.C.J. 828 and says that the landlord should prove that the tenant has built, acquired vacant possession of, or been allotted a residence within the areas to which this Act extends. The facts of that case are not applicable to the present case. In that case the tenant had built a house outside Delhi and it was held that it was not the intention of the Rent Act to confer a right upon a landlord to evict a tenant if he builds a house outside Delhi. It will be correct to say that the allotted house must be within the urban area of the Union Territory of Delhi. There are urban areas within the Union Territory of Delhi to which Rent Act has not been extended as yet but it cannot be said that if a tenant is in occupation of tenancy premises and he builds a house in an urban area in the Union Territory of Delhi to which Rent Act is not applicable he is

entitled to protection under the Rent Act. I am, thereforee, of the view that if a tenant has built, acquired vacant possession of, or been allotted a residence within the urban area of the Union Territory of Delhi, he is not entitled to protection under the Act irrespective of the fact that the area is not governed by Delhi Rent Control Act In other words, the landlord would be entitled to seek eviction of his tenant from the premises governed by the Rent Control Act if he has built, acquired vacant possession of. or been' allotted a residence in any urban area within the Union Territory of Delhi to which the Rent Control Act is not applicable. The entire Seelampur ceased to be rural area and thus became urban area from 28/5/1966 as per notification .of the Municipal Corporation of Delhi referred to in the said notification dated 27/3/1979 S.O. 1236 under section 1(2) of the Act. Ganpat Ram tenant appellant has been thus allotted residence within the meaning of section 14(1)(h) of the Act.

(9) There is no merit in the three appeals. The appeals are dismissed. Incircumstances of the case, there will be no order as to costs.