

Viran Devi Vs. T.N. Sachdeva and ors.

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Court : Delhi

Decided On : Feb-05-1985

Reported in : 27(1985)DLT415; 1985(8)DRJ358; 1985RLR230

Judge : Avadh Behari Rohatgi, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 15

Appeal No. : Second Appeal No. 177 of 1978

Appellant : Viran Devi

Respondent : T.N. Sachdeva and ors.

Advocate for Pet/Ap. : Y.K. Jain and; V.K. Makhija, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) I have heard Mr. Makhija on behalf of the heirs of the respondent T.N. Sachdeva, who died in September, 1983. He was a tenant of Smt, Viran Devi, the appellant. Counsel submits that. without hearing the heirs of the tenant, the order in this appeal could not be passed in favor of Smt. Viran Devi allowing her to withdraw the rent deposited by Sachdeva in his life time. He has advanced two arguments in support of his contention.

(2) In the first place he says that the appeal had become incompetent because the heirs of Sachdeva were not brought on the record in time. In the second place he submits that after the petition was dismissed, the Additional Controller had become functus officio and had no power left in him to order payment of the rent deposited by Sachdeva to the landlady.

(3) In my opinion, both these arguments are devoid of merit. In this case, death of Sachdeva does not affect the right of Smt. Viran Devi, the landlady, to claim that the rent lying in deposit with the Additional Controller be paid to her. Since Sachdeva had deposited the rent and it not being disputed that she was the landlady of Sachdeva, she was clearly entitled to rent. The plea that the Land and Development Officer had forfeited Viran Devi's lease and, therefore, the title to property did not vest in her, was rejected by the Additional Controller and I think in this he was right. The lease was at once restored in her favor. It is admitted by Mr. Makhija that the rent was paid for the subsequent period to Smt. Viran Devi. The only period for which the dispute remains is that period during which the lease had been not restored. If Sachdeva was bound to pay rent to Smt. Viran Devi, as is now clear from the admission of Mr. Makhija, I do not see any reason why she should not be entitled to the rent deposited under the orders of the Additional Controller.

(4) At the hearing of the appeal the other respondent N.C. Keswani was present before me. He stated that he had no objection to payment of rent to Smt. Viran Devi. Sachdeva was given Up.

(5) If the landlady's appeal can be said to have abated against Sachdeva, as is contended before me. I would order in that case that the heirs of Sachdeva be made a party to this appeal. The question of limitation ought not to stand in the way of the appellant because she has a just claim to the rent deposited by the tenant with the Additional Controller.

(6) I am glad that the heirs of Sachdeva have come before me. I have heard them. It is as good as if they had been made parties to the appeal. This opposition to the landlady's right to rent deposited by Sachdeva, the tenant, has, in my opinion, no merit.

(7) I cannot accept the theory of *functus officio* propounded by the Rent Tribunal in this case. The Tribunal held that after the landlady's petition had been dismissed the Additional Controller had become *functus officio* and had no power to order payment of rent lying in deposit with him to the landlady. On the plea of Sachdeva that he was disputing the title of Smt. Viran Devi because her lease had been forfeited by the Land and Development Officer, the Additional Controller made an order under Section 15(4) of the Delhi Rent Control Act (the Act) directing the tenant to deposit the rent. The rent was deposited. Smt. Viran Devi's lease was restored. She is the landlady of Sachdeva. If these premises are correct, as I hold them to be, there is no good reason why Smt. Viran Devi should not get the rent deposited by the tenant.

(8) The theory of *functus officio* has no place within the four corners of Section 15 of the Act. 'Functus Officio' (having discharged his duty), is an expression applied to a judge, magistrate, or arbitrator who has given a decision or made an order or award so that authority is exhausted. (Re : V.G.M. Holdings (1941) 3 All. Er 417) The expression is used of an agent who has performed his task and exhausted his authority and of an arbitrator or judge to whom further resort is incompetent his function being exhausted. Now has the Controller discharged his function? Has he now no power to order payment of rent lying in deposit in his tribunal?

(9) On the theory that the Additional Controller had become *functus officio* the Rent Tribunal ordered that the rent deposited by the tenant be refunded to him. If the theory of *functus officio* is correct then the Rent Tribunal, on the same reasoning, could not hold that the Additional Controller had the power to order refund. If he can order refund to the tenant he can as well order payment to the landlady. The two powers are co-extensive. The Controller under Section 15 is given the power to order the tenant to deposit rent. On the rent being deposited he has then to decide who shall be entitled to get it in case of dispute. Deposit of rent by the tenant and its payment to the rightful landlord are inseparable. The Rent Tribunal went to the length of saying that order under Section 15(4) was without jurisdiction. This is an extreme view, which I cannot accept. The Additional Controller was right when he ordered payment of rent deposited by the tenant, Sachdeva, to the landlady Smt. Viran Devi. He was also right in ordering the

tenant to deposit rent in his tribunal. There is no law in this country, so far as I am aware, under which tenants can live free in other people's houses. Sachdeva was a tenant. He was bound to pay rent. But he raised the plea of forfeiture of landlady's lease. So the Additional Controller ordered him to deposit rent under Section 15(4). This being done the landlady can ask for its payment, her lease having been restored. It is as simple as that.

(10) I would, therefore, straightway reject the theory of *functus officio*. It would frustrate the policy of the Act if it is applied; as was done here. The Act has made special provisions for deposit of rent by the tenants with two objects in view. First the tenants should not be able to evade their liability to pay rent. Second that the landlords should get rents, whatever may be their other disputes with the tenants. The landlord can always resort to the Controller for an order for deposit of rent. This is the theory of the Rent Act. It is a fallacious reasoning that the Controller has no power to pay rent to the landlord simply because the petition for eviction has been dismissed.

(11) Rent deposited by a tenant is for the benefit of the landlord. If it is found, as it has been found in this case, that Smt. Viran Devi is the landlady and her lease has been restored I see no reason why she should not get the rent. This is the order I made on the first hearing of this appeal on 21st January 1985. I held her to be entitled to rent. I adhere to the same view.

(12) This review application is, therefore, dismissed. No costs.