**Subhash Manchanda Vs. Maya Devi**

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**Court** : Delhi

**Decided On :** Jul-29-1992

**Reported in** : 48(1992)DLT449; 1992(24)DRJ94; 1992RLR394

**Judge** : Santosh Duggal, J.

**Acts** : Delhi Rent Control Act, 1958 - Sections 25E(8)

**Appeal No.** : Civil Revision Appeal No. 47 of 1992

**Appellant** : Subhash Manchanda

**Respondent** : Maya Devi

**Advocate for Pet/Ap.** : G.N. Aggarwal and; J.C. Mahindra, Advs

**Judgement** :

**Santosh Duggal, J.**

(1) The issue raised in this civil revision petition under the provisions o,f Section 25-B(8) of the Delhi Rent Control Act, 1958 (for short 'the Act') lies within a very narrow compass and is thus being disposed of at the admission stage itself.

(2) The petitioner is a tenant under the respondent in a portion of the ground floor of house No. 17/12, Shakti Nagar, Delhi. The landlady filed an eviction petition against him in October, 1988, invoking ground (h) of proviso to section 14(1) of the

Act to the effect that the tenant during the pendency of the tenancy had acquired vacant possession of a flat, which was allotted to him by Delhi Development Authority; possession whereof had been offered. Besides alleging that a number of property brokers were visiting the tenant for either letting out the said flat or sale thereof. it was contended that in any case when the respondent had been allotted another residential accommodation, he was liable to be evicted from the tenancy premises let out to him for residential purposes where he was living at the time of institution of the eviction petition.

(3) The petitioner, as respondent in the eviction petition, contested it on a number of grounds to the effect that the premises in his tenancy were not exclusively residential but of residential-cum-commercial nature and had been let out to him for being used as such. Another plea taken was that the eviction petition was defective for being only part of the tenancy premises. It was also contended that the petition was not maintainable inasmuch as the said flat still belonged to the government, and as such the eviction petition was barred under section 3(a) of the Act.

(4) The plea which was pressed most. and which is the subject matter of consideration in the present revision petition, was that the petitioner had no cause of action for bringing an eviction petition under section 14(1)(h) for the reason that the allotment of the flat had not yet been made nor vacant possession handed over, for the reason that the terms and conditions of payment of monthly Installments, as stipulated in the letter of allotment had hot been fulfillled completely and the petition was liable to be dismissed being premature.

(5) He also pleased that the flat allegedly allotted to him was not suitable for him and his family members inasmuch as he was having a shop near the present residence and was a heart patient and it would be difficult for him to traverse the distance from the new house to his shop which was close to the tenanted premises because he has to open it in the early hours and also to work there up to 11 at night, and that his children were studying in schools nearby and his wife was also working as a teacher in a school, close to the tenanted premises.

(6) The plea about the eviction petition being premature, found favor with the Addl. Rent Controller, seized of the matter, on the view that sub-section (h) contemplated a completed event of either the tenant having acquired vacant possession of a residence or the one having been allotted to him, whereas the letter issued to the respondent/tenant by the Dda on 30/31.5.1988 (Ex. PW.1/1) was only in the nature of an offer of allotment, making it a case where neither allotment of a residence in favor of the tenant had taken place, nor acquisition by him of any vacant possession of such residence.

(7) This view was taken inspire of evidence having come on record, that even while the eviction petition was pending; the tenant had been issued an allotment-cum-possession letter on 1.5.1989 proved on record as Ex.PWl/2. It also stood admitted by the respondent that he had taken actual possession of that flat on in August 1989. Nevertheless, the Controller held that at the time the eviction petition was brought, the allotment was not complete nor had vacant possession been acquired, and so the eviction petition was liable to be dismissed as having been filed without accrual of any cause of action.

(8) The landlady took an appeal to the Rent Control Tribunal who endorsed the view taken by the Controller that letter Ex.PW1/1. issued on 30/31.5.1988 did not amount to letter of allotment, but constituted only an offer of allotment and that strictly speaking it could not be said that the tenant had been allotted residence before the filing of the eviction petition, not had he acquired vacant possession of the said flat for the reason that possession letter was issued on 1.5.1989.

(9) The Tribunal discussed at length the other pleas raised by the tenant, namely, that the eviction petition was bad on account of being with reference only to part of the tenancy premises and further that the tenancy premises were not exclusively residential but residential-cum-commercial and let out as such. After a detailed consideration of the vidence, as well as the pleadings, it held both the points against the tenant and gave a clear finding that the tenancy premises consisted of the portion as delineated in the site plan Ex. PW2/2, the correctness of which was admitted by the tenant in cross-examination, and that this admission clinched the issue against him. and that evidence on record as well as admisssions, belied his

plea that the tenancy premises were of residential-cum-commercial nature.

(10) The learned Tribunal then took note of the plea of the landlady that as per admitted facts on record, the tenant had got vacant possession of flat No. BG-3/181, Vikaspuri, New Delhi in August, 1989, and that the court should take notice of the subsequent events and grant appropriate relief. This submission found favor with the Tribunal on the basis of certain judgments, and holding it to be a case where subsequently the offer of allotment had materialised, flat allotted, and possession delivered, and admitted by the respondent himself, and that it would be meaningless to dismiss the eviction petition just because allotment had not matured at the time of filing the eviction petition, thereby compelling the landlady to go for another round of litigation; he found it to be a fit case where notice of subsequent developments be taken into account and ground of eviction as contemplated by section 14(1)(h) of the Act held to be made out. The Tribunal accordingly allowed landlady's appeal, and passed an eviction order against the tenant under section 14(1)(h) of the Act in respect of the portion of the premises bearing No.17/12, Shakti Nagar, Delhi, shown red in the site plan Ex.PW2/2.

(11) The petitioner has challenged the correctness of the approach adopted by the Tribunal in noticing subsequent events and according relief to the landlady on the basis thereof. It is contended that the landlady had nowhere pleaded for the subsequent events to be taken note of, and there is a gross error in allowing the eviction petition on this basis. It is also contended that the Rent Control Legislation was special provision and that each clause of proviso to section 14(1) was quite different, and whereas subsequent events could be relevant in respect to certain grounds: clause (h) was not one of those provisions. The finding .of the Tribunal about the tenancy premises being confined to portion delineated red in the plan Ex.PW2/2 and that these were let exclusively for residential purposes and used as such by the tenant has, however, not been challenged.

(12) During hearing, Mr. G.N.Aggarwal reiterated the contentions, as set out in the revision petition. He repeatedly laid stress on the fact that the expression used in clause (h) was '...acquired vacant possession of or been allotted, a residenced,' which on a plain construction of the language clearly implied that there must be

completed allotment or factum of delivery of possession of alternative residential accommodation had already taken place before the filing of the eviction petition. He argued that in face of the finding by the Tribunal himself that the letter Ex. PW1/ 1, issued on 31.5.1988, was tantamount only to an offer of allotment and that allotment took place and possession delivered only by the second letter issued in August 1989, Ex. PW2/2, there was no justification in holding that this fact of allotment having now taken place and possession having since been taken, was such an event which should be taken note of for purposes of allowing relief to the landlady.

(13) The learned counsel besides laying emphasis on the grammatical meaning of 'has' or 'has been' also placed reliance on certain judgment to 'support his contention.

(14) On a conspectus of the judgment cited by the learned counsel on both sides, which I propose to discuss shortly, there does not seen to be any merit in the contentions raised on behalf of the petitioner. I am of my considered view that though there could be no two opinions that the Rent Control Legislation was meant to be a beneficial legislation for the tenant to protect him against arbitrary hikes in rent, or eviction; the intention of the Legislature to maintain some balance, is manifest from the fact that inspire of the main objective being protection of the tenant, certain limited rights to get possession of tenancy premises in certain given circumstances or contingencies have also been conferred on the landlord which, in the case of Delhi Rent Control Act, 1958, are set out in various clauses of the proviso to section 14(1).

(15) The intention of the legislature that a tenant should not be permitted to embroil the landlord in protracted proceedings on flimsy and frivolous grounds, is further clear from the induction of the provisions of section 25B in the Act. Although that in terms does not apply to the case of an eviction petition under section 14(1)(h), but nevertheless it becomes incumbent upon the court or Tribunal dealing with such cases to ensure that a tenant, is not allowed to exploit the protection afforded to him and deprive the landlord of his legitimate right, to get possession of his property on grounds recognised by law, merely on technical

pleas.

(16) The present seems to be one such typical case where the tenant's resistance to the landlady's prayer for his eviction is glaringly indefensible, by holding on to the tenancy premises even three years after taking possession of the house allotted to him by the Dda, and purchased by him.

(17) There is plethora of judicial authorities in support of the view that the court is certainly entitled, rather duty bound in order to put an end to protracted litigation, to take note of subsequent events, and mould relief accordingly. Mr. Aggarwal's contention that this proposition that the court is within its jurisdiction to take note of subsequent events for the purpose of granting relief cannot apply to cases under rent legislation, is wholly untenable. There are judgments of the Supreme Court where in cases under the Rent Control Acts of various States this principle, entitling the court to take into consideration subsequent events has been recognised without any reservation.

(18) In the case : [1985]2SCR102 . M/s. Variety Emporium v. V.R.M. Mlohd. lbrahim Naina, which was a case under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it was held in unmistakable term that:

'IN appropriate cases, the Court must have regard to events as they present them selves at the time when it is hearing the proceedings before it and mould the relief in the light of those events.'

In this case, notices of subsequent developments was taken, by the Supreme Court while disposing of the civil appeal on the basis of facts that had come on record. That was a case where the landlord had sought eviction of seven tenants by means of seven eviction petitions on the ground of personal requirement. It transpired that by the time the matter was heard by the Supreme Court, the landlord had succeeded in getting an eviction decree, and consequential possession from four tenants at different stages of litigation. It was in this context that the Court observed:

'....THISposition had undoubtedly brought about a change in the state of affairs which existed at the inception of the ejectment proceedings and which existed partly during the pendency of the proceedings before the Appellate Authority. Basing himself on the change in the factual position which had come about after the Appeallate Authority gave its decision, the appellant argued before the High Court that the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the shop premises in possession of the appellant which it would appear, admeasure about 308 square feet. That contention was brushed aside by the High Court with the short order extracted above.'

(19) The contention that this subsequent event should be taken into account had been rejected by the High Court, but the view was reversed by the Supreme Court. While doing so, the Court placed reliance on an earlier judgment : [1981]3SCR605 . Hasmat Rai v. Raghunath Prasad. where it was held:

'.....DURINGthe progress and passage of proceedings from court to court, if subsequent events occur which, if noticed, would non-suit the landlord, the court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the court, including the appellate court. In such a situation, it would be incorrect to say that as a decree or order for eviction is passed against the tenant, he cannot invite the Court to take into consideration subsequent events. The tenant can be precluded from so contending only when a decree or order for eviction has become final.'

(20) Same view has been propounded in an earlier judgment of the Supreme Court . 1975 S.C. 1409, Pasupuleti Venkateswarlu V. The Motor & General Traders, which was a case under the provisions of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, where it was held that even the High Court while hearing the appeal could take note of subsequent events. The following observations are very pertinent:

'WHILE hearing protracted arguments it came to the ken of the Court that certain material events of fatal import to the maintainability of the eviction proceedings

had come to pass and so it decided to mould the relief in the light of these admitted happenings.'

The approach adopted by the High Court in taking note of subsequent events was fully endorsed in this case, by outright rejection of the contention that events which come into being subsequent to the commencement of the proceedings do not merit consideration. The Court held:

'.....IFa fact, arising after the 1is has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances.'

(21) The Court went to the extent of saying that such an approach is not confined to the trial court by holding that:

'....NORcan we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad.'

The Court confirmed the principle in unmistakable terms by holding:

'.....WEaffinn the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events, and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed.'

(22) The Court held in unqualified terms that in case there was any change either in fact or in law, which the court is bound to consider, then that could be taken note of, even when it has supervened after the judgment has been entered, on the

view 'that an appeal was in the nature of rehearing, and in that view of the matter, the courts in this country have in numerous cases recognised that in moulding the relief to be granted, the court of appeal is entitled to take into account the facts and events which have come into existence after the decree appealed against.

(23) In these judgments, no doubt, landlord's right was held to be defeated by virtue of certain developments during the pendency of litigation but even at appellate stage. On parity of reasoning, same principles should apply to cases, where the landlord is able to show that events have occurred at a later stage, which entitle him to relief. There is no reason as to why the court should decline to take notice of such an event, at landlord's instance. In this case, this is more so, because the factum of the tenant having got allotment and vacant possession had come on record on his own admission when evidence was being recorded in the eviction petition, and it was a case of glaring error on the part of the Rent Controller not to have taken note of this fact. The Tribunal by the impugned judgment remedied the wrong, by taking note of subsequent events and no fault can be found with the view he has taken, and the approach he has adopted.

(24) In the present case, as already observed, the subsequent developments had taken place during the pendency of the eviction petition itself and all that the Tribunal has done is to take note of the same while considering the appeal of the landlady by holding that since the event which makes section 14(1)(h) applicable, has taken place and the inchoate right has ripened; an eviction order, on the ground taken could be passed.

(25) This right is so well recognised that in a case : AIR1982 Delhi352 , Begum Hamid 'Ali Khan v. Col. B.H.Saidi and others, this Court allowed subsequent facts to be pleaded by affording opportunity to amend the pleadings. A similar view was expressed by a Division Bench of Calcutta High Court in the case : AIR1977 Cal108 , Ayesha Khatoon v. Durga Sahaya.

(26) In face of preponderance of authorities in support of the view that subsequent events can be taken note of at any stage of proceedings, including appellate or revisional, and certainly when the events took place when the original proceedings were pending, Mr. Aggarwal's insistence that the wording of clause (h)

contemplates a completed event does not retain any justification. For that reason, the authorities cite by him on the point that in order to avail of the provisions of section 14(l)(h) of the Act, the landlord has to show that the tenant had been allotted a residence or had acquired vacant possession thereof, have no bearing on the issue being considered here.

(27) In the case 1975 RLR 340, Gian Singh v. Tarlok Singh. the tenant had surrendered the allotted premises before the eviction petition was brought and it was in that context that 'the Court held that the expression used in clause (h) was 'has' or 'has been' which postulates continuity of the situation and that if by landlord's laches in delaying the institution of the eviction petition after acquiring allotment of residence by the tenant, the latter had, in the meantime, surrendered the premises before the eviction petition was filed, no cause of action survived under section 14(l)(h)of the Act. The question of subsequent events being noticed for moulding relief, did not arise there, for consideration.

(28) The facts of the case : [1987]3SCR539 , Ganpat Ram Sharma and others, v. Smt. Gayatri Devi, were also on different footing, and the proposition laid also has no bearing on the issue raised in the present case, except for the observations that the words 'has acquired' or 'has been allotted' clearly imply that the tenant had an alternative residednce to which he could move, and that on the date of application for his eviction, his right to reside therein exists. The Court was not dealing with the question that whether or not in such a case subsequent events can be taken note of and this was not the point in issue in that case. For the same reason, the observations in the case : [1969]3SCR989 . Goppulal v. Thakurji Shriji Dwarkadheeshji to the effect that the expression 'has sublet' contemplates completed events connected in some way with the present time and would take within its sweep a subletting which was made in the past and continued up to the present time. do not seem to have any direct bearing in the case here because in all those cases what was considered was as to whether an event which entitled the landlord to get an eviction order against the tenant subsisted up to the time the eviction petition was filed, or whether the right to relief survived

(29) The present case is altogether different. Here what is being contended is that inspire of the fact that the allotment in favor of the tenant had taken place and possession delivered by the time the respondents came into the witness box during the pendency of the eviction proceedings, nevertheless on the technical ground that what had been received by the tenant by the time eviction petition was filed, was an offer of allotment, the eviction petition deserved dismissal for want of existence of cause of action. What is under consideration at present is the .view taken by the Tribunal in taking note of the subsequent events, as already observed, which view is fully justified in view of the catena of authorities noted above.

(30) Mr. Aggarwal cited another judgment of the Supreme Court in the case : [1976]1SCR847 , Rameshwar and others v. Jot Ram and others to contend that subsequent events cannot be taken note of to defeat vested rights. Apart from the fact that interestingly the same learned Judge, who wrote, the judgment in this case, was author of the judgment in the case of Pasupuleti (supra) where the view was emphatically and unqualifiedly expressed that subsequent events can be taken note even at appellate or revisional stage in order to grant appropriate relief, otherwise also, in the present case, no vested rights are involved and all that the tenant enjoyed was a statutory protection against eviction unless the landlord could make out a case falling in one of the exceptions recognised by different clauses of the proviso to section 14(1) of the Act.

(31) The facts here are not controverter. It is rather a case of admission by the petitioner as respondent in the eviction petition during his statement that he had received letter of allotment and possession in May 1989 and got delivery of possession also during that period. It is pertinent to note that it is the same house which has finally been allotted and possession delivered as was the subject matter of letter which is being treated as an offer of allotment, (Ex.PW1/1). That letter was issued on 31.5.1988 with a clear intimation that it had been decided to allot house No. BG- 3/181, Vikaspuri, New Delhi to the petitioner as a result of draw of lots held on 1.5.1988, on payment as notified therein. This letter contains stipulation that certain payments by Installments were to be made positively by 29.8.1988 so much so that the failure on the part of the addressee to do so, would entail

automatic cancellation of the allotment. The landlady brought the eviction petition on the basis of this letter in October 1988 i.e. after about two months of the last date by which the petitioner was obliged to make the payment and in the event of failure, run risk of automatic cancellation of allotment.

(32) These were the facts which were apparent on record in so far as this letter, EX.PW.1, issued on 31.5.1988 is concerned and Mr. Mahindroo has rightly argued that the landlady had every justification for presuming that the payment had been made and possession taken. If for any unexplained reason the tenant had not taken possession, and presumably made payment after getting extension from the Dda, he cannot be allowed to take benefit of this delay on his part in not making the payment by the stipulated date, as demanded, and being himself responsible for postponment of the event of formal allotment and delivery of possession. In these circumstances it can as well be a case where it has to be deemed that the tenant had been allotted a residence by the time eviction petition was filed.

(33) I do not, however, feel impelled to dwell at length on this aspect because the position is so unequivocally established, by the judicial authorities to the effect that subsequent events can certainly be taken note of in appropriate cases, and relief granted, rather than drive the parties to fresh round of litigation. The present is an eminently a fit case, where subsequent events ought to be taken note of, and there is no error in the approach adopted, and the view taken by the Tribunal in so doing.

(34) Before parting with the case, I would like to deal with another argument made by Mr. Aggarwal to the effect that there was a plea by the petitioner that the new accommodation was not suitable to him. Apart from the fact, that this plea was neither pursued before the Tribunal nor has been taken up in the grounds of revision petition, and on that account alone, the same does not deserve consideration but otherwise also, it does not carry any conviction because law does not allow any such defense to the tenant inasmuch as the wording of section 14(1)(h) is simply to the effect that the tenant has been allotted a residence or has acquired vacant possession of a residence. It nowhere speaks of a suitable residence. It is pertinent to note that this factor of suitability was recognised in the

earlier Act, namely, Delhi and Ajmer Rent Control Act, 1952 which has been repealed by the present Act of 1958, and this expression suitable has been deleted from the latter Act. The inference is inescapable that in these days of paucity of housing accommodation in Delhi, the real intention is that a tenant should not be allowed to keep two residential houses- one tenanted and the other which he has acquired or got allotted, and all that the landlord has to show is that the tenant does have an alternative accommodation for residence, and it was nowhere in contemplation of law that suitability of that alternative accommodation was also a factor to be reckoned.

(35) Such view was expressed in a judgment 1966 (II) D:L.T. 223 Shyam Sunder v. Khan Chand, where it was held that the tenant becomes liable to ejectment when he acquires vacant possession of a residence and once that liability to ejectment has been incurred, the same cannot be avoided by pleading that the new accommodation was not sufficient or suitable and that it was not necessary for the landlord to show that the new acquired residence was sufficient or suitable. To the same effect is the observation in a recent judgment of the Division Bench of this Court in the case 39 (1989) D.L.T. 877. Indian Cable Co. Ltd. v. Shri Prem Chandra Sharma. where it was held that for the purpose of clause (h) it was not relevant whether the acquired property was suitable or not. As a result, the present revision petition, which is devoid of any merit, must fail. It is dismissed accordingly.

(36) I do not find it to be a case where the tenant is to be given time to hand over vacant possession, because he is not to look for alternative accommodation, but has already acquired possession of the flat bought by him, and has domain over it, where he can shift without any further time being required. The eviction order shall, thereforee, be executable forthwith.

(37) In the circumstances of the case, it is considered apposite that the petitioner bears costs of the present proceedings. Revision petition is, thereforee, dismissed with costs. Counsel fee Rs. 1000.00.