

S. Jagir Singh Vs. S. Wasawn Singh

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Court : Delhi

Decided On : Aug-06-1992

Reported in : AIR1992Delhi381; 48(1992)DLT113; 1992(24)DRJ240; 1992RLR424

Judge : Santosh Duggal, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 4(1)

Appeal No. : Second Appeal No. 57 of 1978

Appellant : S. Jagir Singh

Respondent : S. Wasawn Singh

Advocate for Pet/Ap. : Pinki Anand,; B.B. Singh and; Sangeeta Sharma, Advs

Judgement :

Santosh Duggal, J.

(1) In this second appeal filed by the tenant, the question in dispute falls in a very narrow compass. But first brief narration of facts for the disposal of this appeal is essential.

(2) The respondent/landlord S. Wasan Singh Filed an eviction petition against the appellant S. Jagir Singh invoking Clauses (e) and (h) of Provided to section 14(1)

of the [Delhi Rent Control Act, 1958](#) (for short the Act). The grounds pleaded, in so far as section 14(1)(h) is concerned, was that the tenant had built and acquired vacant possession of premises No. 41, Ranjan Road, Adrash Nagar, Delhi. The other is not being noticed because both the courts below have held against the landlord and that has not been agitated. The dispute that survives for consideration is as 'to whether an eviction order could be passed in favor of the landlord under section 14(1)(h) of the Act on the facts and circumstances of the case.

(3) The eviction petition was filed on 3.6.1969 and this happened to be the second petition invoking section 14(1)(h) of the Act. Admittedly, the earlier eviction petition had been filed under section 14(1)(h) after the tenant had built the house which happened to be the same house, with reference to which the second eviction petition was filed. It appears that during pendency of the first eviction petition' the tenant's plea was that he had inducted a tenant in his newly built house. There was then some settlement between the parties as a result of which the tenant surrendered some part of the tenancy premises, agreeing to pay same rent for the remaining portion. He also agreed that the portion of the tenancy premises in occupation of a third person, alleged to be a sub-tenant, could be got vacated by the landlord, and for which the tenant agreed to render all assistance and cooperation. That eviction petition was withdrawn as a result of the understanding reached between the parties, reserving liberty to the landlord to file a fresh eviction petition on the same cause of action.

(4) Pursuant to the withdrawal of the first eviction petition, a rent note was executed setting out the terms of the settlement and the terms immortally agreed to between the parties. This rent note is dated 2.2.1968. The second eviction petition, out of which the present appeal arises, was filed as already noted, on 3.6.1969.

(5) The tenant contested the eviction petition in so far as the ground of section 14(1)(h) was concerned by contending that although he owned a house, as stated in the petition, but that was in occupation of a tenant and the landlord/petitioner could not take recourse to that ground, as he had agreed not to seek eviction of the tenant. on the account of his owning a house, and for that reason was estopped

now from urging that ground.

(6) This contention found favor with the Addl. Rent Controller, who dismissed the eviction petition but on an appeal being filed by the landlord to the Rent Control Tribunal, although the finding of the Addl. Rent Controller with reference to the ground under section 14 (1)(e) was confirmed; the learned Tribunal took the view that the ground under section 14(1)(h) was available to the landlord, and he was entitled to an eviction order on that account.

(7) It is now urged in this second appeal that the Tribunal has taken erroneous view of the matter and that in face of the clear terms of the rent note executed between the parties to the effect that the tenant would surrender vacant possession of the house, the landlord's right to seek eviction by invoking clause (h) of the proviso to section 14 (1) could not be recognised, till the tenant had moved to his own house, and that the Tribunal erred in holding him entitled to an eviction order on that ground.

(8) Ms. Anand has reiterated these objections during hearing of the appeal. Her first contention is that at the time of filing of the second eviction petition, the house of the tenant was not vacant as it is a matter of record that his tenant had not vacated that house by the time the eviction petition was filed, and as such it was not a case of tenant having acquired vacant possession, and that the landlord had given up his right to seek eviction on the ground of tenant having built a house, and that there was thus no cause of action for this second eviction petition, under clause (h) of proviso to section 14(i) and no eviction order could be passed on the basis thereof. She has placed reliance on a judgment of the Supreme Court in support of this contention reported as AIR 1887 Jou 253, Ganpat Ram Sharma & others v. Smt. Gayatri Devi where in the context of section 14(1)(h), the court discussed the import of the expression used in this clause, namely, 'has' or 'Has been' and contended that the cause of action should be complete by way of acquisition of a vacant accommodation, when the eviction petition is brought.

(9) I have given my careful thought to this contention, but I do not find it sustainable. In a very recent judgment in Civil Revision No. 47 of 1992, Subhash Manchanda v. Smt. Maya Devi decided on 29th July, 1992. this question has been

discussed very elaborately with reference to the case law including the judgment cited by the learned counsel.

(10) I have taken clear view after consideration of all the aspects of the matter, that in such a case court is entitled to take notice of subsequent events and in case vacant possession, becomes available to the tenant during the pendency of the eviction proceedings, then the court can certainly take notice of that; and hold that the ground for seeking eviction under section 14(1)(h) had accrued to the landlord. This is what precisely the learned tribunal did in this case and taking not of the subsequent event when admittedly the house of the tenant in this case had been vacated shortly after the eviction petition had been filed, then the learned tribunal rightly held that it was a case where the tenant had acquired vacant possession, and that in such a situation cause of action under section 14(1)(h) had ripened, in favor of the landlord, and he was entitled to take advantage thereof.

(11) At this stage Ms. Anand contended that in those very proceedings it further came on record that the tenant had parted with the possession of his house, by selling the same and that the complete chain of subsequent events should be taken into account. I do not agree. The question is as to whether a cause of action can be deemed to have accrued on subsequent acquisition of vacant possession by the tenant. And the answer is in the affirmative on the strength of the catena of authorities, that have been discussed in the case of Subhash Manchanda referred to above, to the effect that the subsequent events can. be noticed by the court to determine whether the cause of action has accrued or not. The question whether a tenant can be allowed by voluntary act to defeat the rights of the landlord, during the pendency of the proceedings, when once the cause of action had arisen, is altogether different question, and the principle of subsequent events being noticed would not arise.

(12) The next contention urged on behalf of the appellant is that the landlord was estopped from filing the eviction petition. This is both for the reason that the earlier eviction petition filed on the same ground had been withdrawn and secondly in the rent note executed subsequent to the withdrawal of the eviction petition, it was clearly agreed that the vacant possession would be handed over to the landlord in

the event of the tenant shifting to his own house. Insofar as the first aspect is concerned. Bakshi Bikram Singh, counsel for the respondent has contended that this argument is not available to the appellant because the withdrawal was with liberty to the landlord to file a fresh eviction petition, and that the second eviction petition was maintainable for the short reason that leave of the court had been obtained while withdrawing the first eviction petition. This contention thereforee has to be negated.

(13) Coming to the rent note. there is no where a stipulation that the landlord would never seek eviction of the tenant, till he chooses to shift to his house. Even on a plain literal reading of the rent note, all that is recorded is that the tenant would hand over vacant possession in the event of shifting, which means that the tenant bound himself to hand over or surrender vacant possession to the landlord on his shifting or moving to his own house. That undertaking the tenant did not honour because inspire of the admitted fact that his house had fallen vacant, he did not shift to his house but persisted in contesting the landlord's eviction petition. This would not preclude the landlord from resorting to section 14(l)(h), when he had taken care while withdrawing the first petition to reserve his right to file a second eviction petition on the same ground. A reasonable construction of the rent note also leads to this inference, as the courts have to give rational meaning to a document and not such which leads to absurd results. What the appellants contend is that the landlord had bound himself not to come to court to seek eviction, on the grounds of 14(l)(h) until the tenant had chosen at this sweet will to shift to his own house.

(14) This could have never been the intention of the parties because this very rent note stipulates that the rent as agreed was for a period of one year. And when the tenant did not vacate even after one year, the second petition was filed after a gap of some months thereafter,. It is a matter of record, that the tenant did not choose to move to his house even though his house fell vacant. The landlord's right cannot be allowed to be defeated by tenant's act of not shifting to his own house even when it fell vacant, and was available for occupation. A reading of the rent note also. thereforee, does not render any support to the contention of the appellant that the eviction petition was not maintainable.

(15) Ms. Anand, however, argued that the interpretation of a document, being a matter of intention of the parties, the landlord ought to have deposed either in his statement, as to what was the intention of the parties, with reference to the wording employed and expression used, or put that to the tenant in cross-examination. The question however, is totally different, namely, as to whether on a reading of the rent note it could be said that the landlord ha bound himself not to file an eviction on this ground of section 14(1)(h) of the Act. i.e. on account of the tenant having acquired vacant possession of a house, till the letter chose to shift to his house. The interpretation of the document, which is being put forward by the tenant, has to be appreciated by the courts, and in that context, a reasonable construction only can commend to a court of law, and not one that leads to absurd results.

(16) There is no other point involved, I thereforee, do not find any merit in this appeal. The same is, thereforee, dismissed with costs. Counsel fee RS.1000.00 .

(17) On Ms. Anand's request it is, however, ordered that the eviction order shall be executed only after two weeks.