

Niranjan Lal Vs. Kanta Devi

Niranjan Lal Vs. Kanta Devi

SooperKanoon Citation : sooperkanoon.com/698538

Court : Delhi

Decided On : Nov-01-1992

Reported in : 49(1993)DLT152

Judge : J.K. Mehra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(I)

Appeal No. : Civil Revision Petition No. 463 of 1990

Appellant : Niranjan Lal

Respondent : Kanta Devi

Advocate for Pet/Ap. : V.K. Srivastava and; D.K. Rustogi, Advs

Judgement :

J.K. Mehra, J.

(1) This civil revision petition is directed against the order of eviction passed by Shri V.K. Shall, Add). Rent Controller, Delhi, asbe then was, in Eviction Case No. 37 of 1986 whereby the Add). Rent Controller after examining the evidence had come to the conclusion that bonafide need of the landladies had been established and had ordered eviction ofthe petitioner from the premises in dispute shown in the plan Ext. A-5 andbad further directed that the decree of eviction shall not be executedfor a period of six months from the date of the order.

(2) The matter was listed for admission before N.N. Goswami, J. on 17/05/1990 when the following order was passed.

'I have heard the learned Counsel for the petitioner and I do not find much merit in the petition. However, the Counsel submit that the petitioner may be asking for some further time to handover vacant possession of the premises. Let notice issue to the respondent to show cause as to why some further time be not allowed to the petitioner. The notice be made returnable for 5/07/1990.'

(3) The matter came up again on 5/07/1990 before the same Judge and on that day it was adjourned to 26/07/1990. The respondents-landladies undertook not to execute the eviction order till the next date of hearing. This undertaking was continued until 22/10/1990 when the Court ordered stay of dispossession till further orders. The petition was admitted on the petitioner submitting that certain subsequent event had intervened as a result whereof additional accommodation had become available to the landladies. The subsequent event was brought on record vide C.M. 1859 of 1990 in reply whereof the respondents admitted that the husband of respondent No. 2 and the younger son of respondent No. 1 owned plot measuring 116 sq. yds, bearing municipal no E-5/3, Krishan Nagar, Delhi.

(4) It is admitted that all the respondents currently are residing with their father-in-law at property bearing No. B-1/5. Krishan Nagar, Delhi. It was also stated that respondent No. 3 as also respondent No. 1 continued to be in dire need of accommodation and that none of them can in their own right occupy the said newly constructed property at E-5/3, Krishan Nagar and they continued to press their claim in respect of property in dispute bearing No. D-4/13, Krishan Nagar, Delhi.

(5) I have heard the learned Counsel for the parties and have also gone through the material on record.

(6) In fact, I am required now to decide only, as to whether in the light of changed conditions the eviction petition can still be sustained or has the need of landladies been fully met by acquisition of additional accommodation. I need not go into the questions which have already been decided in the impugned order and in respect whereof this Court had already held on 17/05/1990 that there was no merit in the

petition. However, a notice was issued on that day to show cause as to why some further time be not allowed to the petitioner (tenant). therefore the fact that the landladies were not occupying any place in B-1/5, Krishan Nagar in their own right as it is owned by their father-in-law or that they had an income of approximately Rs. 1 lac per annum or that the husband and daughter of respondent No. 3-landlady are disabled and need ground floor accommodation. The premises in dispute are stated to be only the ground floor of property No. D-4/13, Krishan Nagar, Delhi owned by all the landladies.

(7) The only factor which has intervened now is the construction of a house by the husband of respondent No. 2 and younger son of respondent no 1. By the husband having acquired reasonably suitable accommodation by constructing a new house, I feel that the need of respondent no. 2 should be deemed to have been fully met. But the same cannot be said of respondents nos. 1 and 3. Respondent No. 1 has asserted her claim to stay in her own property rather than to be dependant on one of the sons while respondent no. 3 has neither acquired any additional accommodation nor has her need for ground floor in any manner diminished or satisfied. It is asserted by Counsel for the respondents that alternate accommodation should become available to the parties in their own right. However, on further question being raised from Court, Counsel conceded on behalf of respondent no. 2 that she could move into that house along with her husband but in respect of respondents 1 and 3 he asserted that the need of these two and the irrespective family in embers except the need of younger son of respondent No. 1 still persisted.

(8) I find that the eviction petition was filed on 4/02/1986 and that more than 6-1/2 years have already gone by in this litigation and that the respondents have not been able to get the possession of the premises even though the Trial Court had passed the order on 17/01/1990 and on admission this Court had issued a show cause notice only to find out as to why some Further time be not allowed to the petitioner.

(9) Learned Counsel for the petitioner has placed reliance on a number of authorities. The case of R.B. Kapoor v. Manek N. Dustur, 1988(1)RCR 246 is

mainly on the question of the Court in revision considering production of additional evidence. That power is not disputed but the question of considering production of any additional evidence in the present case could not arise because of the admitted position of facts. The petitioner has drawn my attention to *Amarjit Singh v. Smt. Khatoon Quamarain*, : [1987]1SCR275 . In this case the ground floor of the house had fallen vacant more than once during the pendency of eviction proceedings but was not occupied by the landlady and it was taking cognizance of this special fact that the Supreme Court had disentitled the landlady from seeking eviction. Further another fact which weighed with the Supreme Court was that the landlady in that case asserted that she must have means to live before she can utilise it to live and for that reason she must let one floor on rent as rental income is the only source of her income. This reason did not prevail with the Supreme Court. I am afraid the facts of this case are different from the one which was before the Hon'ble Supreme Court and do not provide any guidelines for the situation which has come to prevail in the present cases. The next ruling cited by the learned Counsel for the petitioner is *Sushila Devi and Others v. Avinash Chandra Jain and Others* : AIR 1987 SC1150 . In this case the Supreme Court had held that the High Court should objectively apply its mind to landlord's claim for eviction having regard to the object and purpose of the eviction provision as also acute housing shortage in Delhi and satisfy itself that order made by Rent Controller was in accordance with law and that dismissal of the revision on the ground of tenant's long stay of over 40 years in the demised premises was held to amount to non-application of mind. The Court in that case had held that eviction sought on the ground of bona fide personal of the landlord cannot be allowed merely because the tenant was staying in the demised premises for over 40 years. There cannot be any quarrel with this proposition of law for the Court has to come to the conclusion with regard to the bonafide requirement of landlord and not to order eviction on the sole ground that the tenant has already occupied the premises for long.

(10) On the other hand the Hon'ble Supreme Court in *Pratima Devi v. T.V. Krishnan*, 1987 (1) Jt 764 has observed that in considering the availability of alternate accommodation the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such

accommodation. This position of the Supreme Court was followed by this High Court by Single Judge in Anil Kumar Jauhar and Am. v. Atlas Cycle Industries, : 38(1989)DLT233 where the question was as to whether petitioner in that case had a legal right to continue to live in the house owned by his mother and the question was answered in the negative and that it was held that the petitioner did not have a legal right to stay there.

(11) Applying the above law to the facts of the present case I feel that the bona fide requirement of respondent no. 2 has come to an end because it cannot be said that wife has no legal right to stay in the house of her husband. but the same cannot be said for respondents 1 and 3.

(12) The bona fide requirement of respondent No. 1 continues to subsist notwithstanding her younger son having acquired an interest in the house built by the husband of respondent no. 2 while the position in respect of the need of respondent no. 3 has remained unchanged and her need for ground floor premises appears to be urgent in view of the disability of the husband and daughter to climb stairs. Even assuming that the need of respondent no. 2 has come to an end I do not find any justification to interfere with the eviction order passed against the petitioner by the Additional Rent Controller in view of the subsisting need of respondents 1 and 3. In view of the above finding, this petition is dismissed. However, I direct that the decree for eviction shall not be executed for a period of two months from today. Parties are left to bear their own costs,