

Probal Roy Vs. S.K. Bhowal

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Court : Delhi

Decided On : Dec-08-1998

Reported in : 1999IAD(Delhi)644; 77(1999)DLT229; 1999(48)DRJ95; 1999RLR180

Judge : C.M. Nayar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 25-B

Appeal No. : C.R. No. 219 of 1997 & C.M. No. 832 of 1997

Appellant : Probal Roy

Respondent : S.K. Bhowal

Advocate for Def. : Mr. S.D. Sharma, Adv.

Advocate for Pet/Ap. : Mr. Pawan Mathur, Adv

Judgement :

C.M. Nayar, J.

1. The present petition is directed against the Order dated 21st January, 1997 passed by the Additional Rent Controller, Delhi allowing the petition of the respondent under Section 14(1)(e) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as the 'Act') and dismissing the objections of the petitioner under

Section 25-B of the Act. The learned Additional Rent Controller assessed the bona fide requirement of the respondent by taking into consideration the family of the respondent which comprised of the respondent his wife, two sons aged 29 and 21 years respectively. The respondent was residing in tenanted premises and required his own premises for use of his residence as well as residence of the family members dependent upon him and no other reasonably suitable accommodation was available. The learned Counsel for the petitioner has vehemently argued that the premises were let out not by the respondent but by one person namely Shri B.K. Kundu who also had become owner of the property in the year 1992 when the respondent allegedly executed power of attorney in his favour. This plea is also incorporated in the application for leave to contest in paragraph 5 which reads as follows.

'5. That the respondent had been inducted as a tenant with respect to the entire House No. B-181, Chittaranjan Park, New Delhi by Shri B.K. Kundu, as Attorney of the petitioner herein and had received the rent from Shri Probal Roy and had also taken Security from the respondent and had issued a receipt for the same to the respondent. The possession of the tenanted premises had been delivered to Shri Probal Roy by Shri B.K. Kundu in 1979 at the time of the letting of the tenanted premises even though the petitioner was present in Delhi when the possession was delivered as had been admitted by the petitioner in his cross examination in petition No. 14 of 1992.'

2. The premises, as would be clear, were originally let out on behalf of the respondent by Shri B.K. Kundu as an attorney and the subsequent averment that Mr. B.K. Kundu became the owner of the premises in the year 1992 has been raised. The learned Additional Rent Controller assessed the material on record and came to the specific finding that the petitioner did not disclose as to what mode of transfer, if any, had been used by the respondent to transfer the premises in the name of Shri B.K. Kundu. The argument, therefore, in this regard was rejected. In any case the premises are still held to be in the name of the respondent who is the owner and landlord and in other proceedings under Section 25-B of the Act initiated in the Court of Shri Babu Lal, Additional Rent Controller, Delhi the respondent was held to be the owner of the property as the objections

were filed by the respondent on the ground that the body known as Public Enterprises Centre for Continuing Education who had initially hired the premises was the actual tenant and not the petitioner. The Additional Rent Controller in his Order dated February 17, 1996 came to the conclusion that the petitioner was a tenant under the respondent. In this background the plea now raised that the premises have been parted with possession in favor of one Mr. B.K Kundu does not carry any conviction. The finding of the Additional Rent Controller in this regard is unassailable. The other plea which has been raised by the learned Counsel for the petitioner is that the premises were let out for composite tenancy for residential and commercial purposes. This has also been correctly rejected as the accommodation was being used by the petitioner for residential purposes and are situated in a residential colony. The mere incidental use for doing some office work in the premises will not convert the ordinary residential tenancy into a composite tenancy for commercial and residential purposes. This plea is also liable to be rejected.

3. In view of the above the present petition is devoid of merit and is dismissed in limine. There will be no order as to costs.