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Nihal Singh Vs. Dalip Singh Lamba

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Court : Delhi

Decided On : Aug-08-1994

Reported in : 1994IIIAD(Delhi)1057; AIR1995Delhi340; 56(1994)DLT92; 1994(30)DRJ543; 1994RLR468

Judge : Sat Pal, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : Civil Miscellaneous Appeal No. 1056 of 1994 and Civil Miscellaneous (Main) Appeal No. 249 of 1994

Appellant : Nihal Singh

Respondent : Dalip Singh Lamba

Advocate for Pet/Ap. : D.L. Dhingra and; Y.K. Kapoor, Advs

Judgement :

Sat Pal, J.

(1) This petition has been filed on behalf of Shri Nihal Singh (hereinafter referred to as the tenant) under Article 227 of the Constitution of India and in this petition it has been prayed that the orders dated 2.4.1994 passed by the learned Rent Control Tribunal in R.C. Appeal No.626/91 be set-aside. By the said order the learned Rent Control Tribunal accepted the appeal of Shri Dalip Singh Lamba,

respondent herein, (hereinafter referred to as the landlord) and passed the order of eviction under Section 14(1)(h) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) against the tenant.

(2) Briefly stated, the facts of the case are that landlord had let out a portion of premises No.20-B/96-B, Tilak Nagar, New Delhi comprising of two rooms, a kitchen, bath, latrine and common backyard and front courtyard, common front and back barandah on the ground floor. On 31st January, 1989 the landlord filed an eviction petition against the tenant under Section 14(1)(h) of the Act on the ground that the tenant through his wife had acquired vacant possession of house No.RU-371, Pitampura, Delhi from the Delhi Development Authority. The tenant admitted the allotment of the said flat in the name of his wife, but stated that his wife had obtained the said flat with her own independent income. The tenant also contended before the Additional Rent Controller that the premises were let out for residential-cum-commercial purpose and as such the ground under Section 14(1)(h) of the Act was not available to the landlord. The learned Rent Controller by his order dated 24th August, 1991 rejected the contention of the tenant that the tenanted premises were let out to him for residential-cum-commercial purpose. He, however, held that he had no right of residence in the flat allotted to his wife nor the tenant could stop his wife from selling the flat which was actually sold by her and on this ground he dismissed the eviction petition filed by the landlord.

(3) Aggrieved by the order dated 24th August, 1991 passed by the learned Additional Rent Controller, the landlord filed an appeal bearing No.RCA 626/91 before the Rent Control Tribunal. The learned Rent Control Tribunal by her order dated 2nd April, 1994 accepted the appeal of the landlord, set-aside the order dated 24.8.91 passed by the learned Additional Rent Controller and passed the order of eviction under Section 14(l)(h) of the Act in favor of the landlord and against the tenant with respect to the suit premises. The aforesaid order dated 2nd April, 1994 passed by the learned Rent Control Tribunal has been challenged by the tenant in this petition.

(4) Mr. Dhingra, learned counsel appearing on behalf of the tenant submitted that acquisition of the Dda Mig Flat No.371, Block/pocket Ru, Pitampura, Delhi by the

wife of the tenant would not amount to acquisition of the said flat by the tenant as the said flat was purchased by the wife of the tenant with her own funds and the wife was also living in Patiala and not with the tenant. He, thereforee, contended that the tenant could not be made to lose his tenancy because of the acquisition of the said flat by his wife. In support of this contention, learned counsel placed reliance on a judgment of the Supreme Court in the case of B.R. Mehta Vs . Smt. Atma Devi & Ors., : [1987]3SCR1184 .

(5) Learned counsel for the tenant further submitted that the words 'has' or 'have' in clause (h) of the Act meant that the tenant must have the possession of the property which was alleged to have been acquired by him. on the date, the application for eviction was filed by the landlord. He further submitted that in the present case the application for eviction was filed on 31st January, 1989 and prior to this date the wife of the tenant had already sold the Dda flat mentioned hereinabove. He, thereforee, contended that the landlord had no cause of action to file the eviction petition against the tenant. In support of his submission, learned counsel placed reliance on a judgment of this court in the case of Gian Singh v. Tarlok Singh (1975) 2 Del 215.

(6) Finally learned counsel for the tenant submitted that wife of the tenant had taken possession of the Dda flat on 14.9.86 but the eviction petition was filed on 31st January, 1989 i.e. after the lapse of more than 28 months. He, thereforee, submitted that the landlord in the present case had not been quick in taking action after the accrual of cause of action and by his inaction he allowed the Dda flat allotted to the wife of the tenant to go out of her hands and as such the landlord himself had to be blamed and not the tenant. In support of this submission, he placed reliance on a judgment of the Supreme Court in the case Ganpat Ram Sharma & Ors. VS . Smt. Gayatri Devi, : [1987]3SCR539 .

(7) Mr. Kapur, learned counsel appearing on behalf of the landlord submitted that the judgment of the Supreme Court in the case of B.R. Mehta (supra) was not applicable to the facts of the present case as in the present case, the Dda Flat in question could be allotted to a person whose income was within the range of Rs.7201.00 to Rs.l8,000.00 per annum. He drew my attention to the affidavit dated

2nd September, 1986 of the tenant (EX.AW I/I) which was submitted by the tenant to the Dda and in this affidavit it was stated that the wife of the tenant was dependant on him and was living with him and his yearly income in the year 1978-79 was Rs.9,000.00 . It was also stated that his wife was a domestic lady and was not doing any job or work. He also drew my attention to the statement of the wife of the tenant wherein she had stated that when she got the Pitampura house, she was staying in Delhi and she had also admitted that her relations with her husband were good. Relying on these facts, learned counsel submitted that in the present case the tenant had acquired the Dda flat through his wife and since the Dda flat was purchased through the income of the tenant, the same was available to the tenant and as such the present case was covered by a recent judgment of this court in the case of N.K. Rastogi v. Karori Lal, 1993 Rlr 358.

(8) Learned counsel for the landlord further submitted that the fact that tenant had lost the possession of the property acquired by him on the date when eviction petition was filed, would not protect the tenant against Section 14(1)(h) of the Act. In support of this submission, he placed reliance on a judgment of the Supreme Court in the case of Smt. Mohini Bhadwar Vs . Raghunandan Saran Ashok Saran, : [1989]2SCR748 . Dealing with the contentions of learned counsel for the tenant that the landlord was not quick in taking action after the accrual of cause of action, learned counsel drew my attention to the statement of the landlord wherein he had stated that he came to know of Pitampura residence in the year 1988 and the eviction petition was filed on 31st January, 1989. He, thereforee, submitted that there was no delay on the part of the landlord in filing the eviction petition.

(9) I have given my thoughtful consideration to the submissions made by learned counsel for the parties and have perused the records. From the registration Scheme for the year 1978-79 of the Dda copy of which is on record, I find that the Mig flats were offered to the persons whose income ranged between Rs.7201.00 to Rs.l8,000.00 per annum. AW-I, an official from Dda, in her evidence has stated that as per record of the Dda, the wife of the tenant Smt. Sarup Kaur was allotted flat No.371, Block/Pocket Ru at Pitampura and she had taken possession of the said flat on 14.9.86. The said official has also proved the affidavit dated 2nd September, 1986 of the tenant submitted by him to the Dda in connection with the

allotment of the said flat and in this affidavit it was stated by the tenant that his wife was a domestic lady and was not doing any job or work and she had dependant on him and was living with him. It was further stated by the tenant that his yearly income in the year 1978-79 was Rs.9,000.00 from his business. From this affidavit it becomes clear that the wife of the tenant became entitled to acquire the Dda flat only because of the income of the tenant and it is further evident that the wife was dependant on the tenant and was living with him. The wife of the tenant in her statement has also admitted that when she acquired the Dda flat, she was living in Delhi. From these facts, it is clear that the wife of the tenant had acquired the Dda flat with the income of the tenant and that flat was available to the family including the tenant at the time when it was acquired by his wife. The wife of the tenant has also admitted in her statement that her relations with the tenant were cordial.

(10) In view of the facts mentioned herein above, the ratio of the judgment in the case of B.R. Mehta (Supra) is not applicable to the facts of the present case. On the contrary, the present case is covered by another judgment of the Supreme Court in the case of Prem Chand v. Sher Singh, Air 1981 Drj 287. In the case of Prem Chand (supra) the wife had purchased a flat in Saket and that flat was available to her husband and it was held that there was acquisition of vacant possession of a residence by the tenant through his wife and as such Section 14(1)(h) of the Act would be attracted. The facts of the present case are almost similar to the facts in the case of N.K. Rastogi (supra). In N.K. Rastogi's case the flat was acquired by the wife and the husband had contributed amount for acquisition of the flat from DDA. Accordingly, in the said case a learned Single Judge of this Court held that since the husband/tenant had contributed amount for acquisition of the flat, the said flat became available to the family including the tenant and he was thus liable to be evicted under Section 14(1)(h) of the Act.

(11) I do not find any merit in the contention of learned counsel of the tenant that since the wife of the tenant had already sold the Dda flat before the application for eviction was filed by the landlord, the tenant was not liable to be evicted. The Supreme Court in the case of Smt. Mohini Bhadwar (supra) has clearly held that the fact that the tenant lost possession on the date when the eviction petition was filed would not protect the tenant against Section 14(l)(h) of the Act. The judgment

of this court in the case of Gian Singh (supra) will not be of any assistance to the tenant in view of the law laid down by the Supreme Court in the case of Smt. Mohini Bhadwar (supra).

(12) I do not find any merit also in the contention urged by the learned counsel for the tenant that the landlord was not quick in taking action against the tenant after the accrual of cause of action. 'The landlord in his statement has clearly stated that he came to know of Pitampura residence of the tenant in the year 1988. Admittedly, the eviction petition was filed by him on 31st January, 1989. Thus there was no delay on the part of the landlord in filing the eviction petition. The judgment of the Supreme Court in the 'Ganpat Ram Sharma's (supra) case is, thereforee, not of any assistance to the tenant in the present case.

(13) In view of the above discussion, I do not find any merit in this petition and the same is dismissed. However, keeping in view the facts and circumstances of the case I grant time up to 31st December, 1994 to the petitioner/tenant to vacate the suit premises subject to the condition that he files an undertaking in the shape of affidavit within one week from today to the effect that he shall handover the vacant and peaceful possession of the suit premises to the landlord or on or before 31st December, 1994. With this order, both the CM(M) 249/94 and Cm 1056/94 stand disposed of. The parties are, however, left to bear their own costs. List the case for direction on 17th August, 1994.

(14) Lower court records be sent back forthwith.

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