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Court : Delhi

Decided On : Nov-08-1995

Reported in : 1995IVAD(Delhi)689; 61(1996)DLT1; 1995(35)DRJ361; 1996RLR36

Judge : Arun Kumar, J.

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

Appeal No. : Second Appeal No. 381 of 1980

Appellant : Anand Gopal Jhingran and ors.

Respondent : K.D. Beri

Advocate for Pet/Ap. : Sanjay Gupta,; Rashmi Sharma and; K.K. Mehra, Advs

Judgement :

Arun Kumar, J.

(1) The eviction petition in the present case was filed in November 1973. The petition was filed jointly by four petitioners who are real brothers being sons of Dr. Anand Gopal Jhingran. The petitioners are the owners of property bearing No.5958, Jawahar Nagar, Delhi. The tenancy premises consists of three rooms, one kitchen and a bath room on the first floor of the said property. The petitioners' case was that the premises was let out for residential purpose and was required

bona fide by them for occupation as residence for themselves and other members of their family dependent on them for purposes of residence. At the time of institution of the eviction petition the petitioners were in possession of three rooms in the said property. In fact around the same time when the present eviction petition was filed, two other eviction petitions were also filed against two other tenants, namely, Arjun Dev and S.N.Kapoor. The eviction orders were passed in all the three petitions by the Addl. Rent Controller on 24th January 1977. The tenants in all the three cases went in appeal to the Rent Control Tribunal against the decision of the Addl. Rent Controller.

(2) The Rent Control Tribunal vide its judgment dated 15th July 1980 allowed two appeals in the cases of K.D.Beri, respondent in the present case and Arjun Dev, another tenant. The judgment was mainly based on the fact that during the pendency of the three appeals before the Tribunal the third tenant, i.e. S.N.Kapoor had vacated four rooms in the same property which had become available to the landlords. The landlords thus got in their possession total seven rooms in all. The Tribunal felt that the seven rooms were sufficient to meet the requirements of the landlords and, therefore, the eviction petitions in both the cases, i.e. K.D.Beri (present respondent) and Arjun Dev were dismissed. The landlords filed second appeals in this Court challenging the said judgment of the Rent Control Tribunal. The appeal filed by the landlords against the other tenant, i.e. Arjun Dev (S.A.O. 382/80) was allowed by this Court by its judgment dated 23rd August 1994. It is not disputed that in pursuance of the said decision of this Court tenant Arjun Dev vacated the portion of the property which was under his tenancy consisting of three rooms and handed over possession thereof to the landlords.

(3) During the pendency of the second appeal in this Court, the appellant filed C.M. No. 1892 of 1991 under Order 41, Rule 27 Civil Procedure Code . for placing certain subsequent events before this Court for its consideration at the time of disposal of the appeal. The landlords pointed out several facts which had emerged during the pendency of present proceedings and which have bearing on the ultimate decision of the case. It was stated that all the facts which were sought to be placed before the Court were not in existence at the time of decision of the Courts below. The appellants sought permission to lead additional evidence with

respect to these facts. By an order passed on 17th September 1992 this Court allowed the said application. The Addl. Rent Controller was directed to record evidence on the facts sought to be brought on record by the appellants. The respondent was given opportunity to produce rebuttal evidence confined to the facts sought to be brought on record by the appellants. The respondent also contended before this Court at the time of passing of the order dated 27th September 1992 that the other tenant Arjun Dev had left the premises in the meanwhile and the possession thereof was likely to become available to the appellants soon. The Court permitted the respondent to lead evidence with regard to this aspect. The Court also gave a right to the appellants to produce rebuttal evidence on this aspect of the case meaning thereby that the appellant could still show that the accommodation available to them in the property in suit even after the possession of portions occupied by Arjun Dev is delivered to them is not sufficient to meet their requirements. In pursuance of the said order the Addl. Rent Controller recorded the evidence of the parties and sent back the record of the case Along with additional evidence so recorded. Two appellants appeared as witnesses to support the case of the appellants for additional accommodation in view of increase in their families.

(4) According to the learned counsel for the appellants the families of the four brothers who are the appellants consist of the following members:-

1.ANAND Gopal - Self, wife, son (aged 23 years), daughter (aged 28 years, married in June 1994).

2.ANADI Gopal - Self, wife, grown up son. Anadi Gopal as per evidence last recorded is working at Ranchi in Bihar. However, his son Mukul is staying in the property in suit. Wife of Anadi Gopal keeps on shuttling between Delhi and Ranchi. The appellants also pleaded a case that she was having certain ailments for which she requires treatment at Delhi.

3.Dr. Vinay Gopal - Self, wife, two grown-up daughters.

4.ACHYUT Gopal - Self, wife and a son.

(5) The accommodation available with the appellants in the property in suit at present consists of total ten rooms. This includes the rooms vacated by tenants S.N.Kapoor as well as Arjun Dev. Besides the ten rooms there is some accommodation available with the appellants for purposes of use as bathrooms, toilets, stores (only two) and kitchens. Learned counsel for the appellants submitted that all the appellants have separate mess and each of them requires at least one independent room to be used as drawing-cum- dining room. He further submitted that appellant No.1 requires at least three bedrooms in addition to a drawing-dining room. The requirement of three bed rooms is stated to be on the basis that one bedroom is required for appellant No.1 and his wife another for his son and third bedroom for visiting married daughter and/or other guests. About appellant No.2 (Anadi Gopal) it is submitted that he requires at least two bedrooms besides a drawing-dining room. One bedroom is required for the son of appellant No.2 who is permanently residing at Delhi while the other bedroom is required for wife of appellant No.2 who keeps on visiting Delhi and for appellant No.2 himself for his occasional visits to Delhi besides a drawing- dining room. About requirement of appellant No.3, the case is set up on the basis that he requires one drawing-dining room, one bedroom for himself and his wife, two bedrooms for his grown-up daughters and one room to be used as study-cum- Library. He is teaching in the University . Thus in all for appellant No.3, requirement is stated to be of atleast five rooms. For Achyut Gopal, appellant No.4, it is urged that he requires at least three rooms - one drawing-dining; one room as bed room for himself and his wife; and one bedroom for his son. On this basis according to the learned counsel for the appellants, the appellants requires at least 15 rooms while they have in their possession ten rooms in the property in suit. The accommodation thus available with the appellants landlords is not sufficient to meet the requirements of their respective families and an eviction order is prayed against the respondent tenant.

(6) The learned counsel for the respondent did not dispute the fact that the families of all the four appellants were having separate mess. He did not dispute the number or family members of each appellant. His only argument was that the case has to be considered on the basis of the pleadings of the parties. In the eviction petition filed by the appellants they had set up a case on a particular basis and this

court cannot go beyond what was pleaded in the eviction petition by the appellants. Further it was stated that in the present appeal the appellants have only sought restoration of the order of the Addl. Rent Controller which means that they could at best have three additional rooms. On the other hand during the pendency of these three eviction petitions the appellants got possession of seven additional rooms in the property which sufficiently meets their requirements as per the case set out in the eviction petition. Secondly it is urged that on the basis of subsequent events this court cannot enlarge the scope of the case set up by the appellants.

(7) I have considered these arguments advanced on behalf of the respondent. I find no merit therein. The argument regarding taking into consideration the subsequent events is not open to the respondent. Firstly, in view of the order of this court dated 17th September 1992 whereby the parties were given opportunity to lead additional evidence and this court directed that the facts as per the evidence will be taken into consideration while deciding the case finally. Secondly, the respondent has himself enjoyed the benefit of subsequent events being taken into consideration when the case was pending before the Tribunal because it was on the basis of the subsequent event of the portion vacated by another tenant S.N.Kapoor falling vacant that the eviction petition was ordered to be dismissed and the present respondent's appeal was accepted by the Tribunal. The respondent cannot now be permitted to contend that subsequent events should not be taken into consideration. It is settled law that subsequent events can be taken into consideration by the court at the time of granting the final relief in view of the provisions of Order 7 Rule 7 of the Code of Civil Procedure.

(8) The Supreme Court in *P.Ventakateswarlu vs . Motor & General Traders*, : [1975]3SCR958 decided the question of consideration of subsequent events by the appellate court. Reference was made to the decision of the Federal Court reported in entitled *Lachmeshwar vs. Keshwar Lal*, which decided the question of consideration of subsequent events by the apellant court. This is particularly so in cases of personal bona fide need under clause (e) of proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act. The facts do not remain static in such cases. In the present case the eviction petition was filed in November 1973 and it

is full 22 years that the case has been pending. There have been births and deaths in the family. There have been additions in the families of the appellants. The children of the appellants have grown up. Some of them have been married and have got children of their own. The families of the four brothers have thus multiplied. The Court cannot shut its eyes to these facts and drive the appellants to another twenty years litigation by confining itself to the facts as they stood at the time of institution of the eviction petition. The Court has to take note of the facts as they exist at present so as to do complete justice.

(9) The only point in controversy in the present case is about bona fide requirement of the appellants. The tenant had disputed the ownership of the appellants. However, both the Courts below have found this fact in their favor. No arguments have been addressed on this point in the present appeal on behalf of the respondent. The letting purpose was never in dispute. There is no plea that appellants have any suitable alternative accommodation available with them. therefore, the only point for decision is about the bona fide requirement of the appellants. In the judgment in Arjun Dev's case given by this Court on 23rd August 1994 in S.A.O. 382/80 this Court held that the appellants' requirement is at least about fourteen rooms. Learned counsel for the respondent submitted that the said finding is not binding on the respondent in the present case. He called the finding collusive. Without going into the controversy as to whether there was collusion or not, I have independently examined the requirement of the appellants and I am of the considered view that the four families of the four appellants require at least 13 to 14 rooms. Proper or sufficient accommodation as the families are situated today would be at least fourteen rooms. The Tribunal has found in para 12 of the judgment that the appellants are men of status. It has also found that a guest room is also required because some of the family members are working outside Delhi. The requirement of 14 rooms as bare minimum is on the basis that each family requires at least three rooms, i.e. one drawing-dining room, one bedroom for the head of the family/wife and one bedroom for children. In case of appellant Nos.1 and 3, one bedroom for the children is not enough because appellant No.1 has a married daughter who would be visiting her parents while appellant No.3 has two grown up daughters who would need separate bedrooms. It is not out of place to mention here that appellant No.3 being an academic person, ought to preferably

have a separate room to be used as study-cum- Library. Thus ten rooms accommodation which the appellant have at present, cannot by any stretch of imagination be said to be sufficient accommodation for the families of the four appellants. Accordingly the appeal is allowed. The impugned judgment dated 15th July 1980 of the Rent Control Tribunal is set aside. An eviction order is passed in favor of the appellants and against the respondent directing the respondent to vacate the tenancy premises as per plan already exhibited in the eviction petition. The appeal is disposed of. No order as to costs.

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