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Court : Delhi

Decided On : Nov-01-1995

Reported in : 1996RLR67

Judge : Arm Kumar, J.

Acts : Delhi Rent Control Act - Sections 14D

Appeal No. : Criminal Revision Appeal No. 1004 of 1994

Appellant : Leila Walla

Respondent : Kartar Kaur

Judgement :

Arm Kumar, J.

(1) This is tenant's petition challenging the order of the Arc dt.31094 whereby the Arc refused to grant leave to contest the eviction petition to the petitioner herein and passed an eviction order regarding the tenancy premises. The eviction petition was filed by the respondent landlady u/S. 14-D of the Delhi Rent Control Act (the Act) on the ground that she is a widow. The tenancy premises was let out by her husband. After the death of her husband, she became the sole owner of the property. Further, it was pleaded that the landlady is residing on the first floor of the premises. She required the tenancy premises which is on ground floor for her

residence. The landlady claimed to be seventy-one years old in May 1993 when the eviction petition was filed and she stated that she is suffering from various ailments including heart disease and she was under medical advice that she should not climb stairs. She also pleaded that she had suffered multiple injuries and a fracture of the upper left knee in an accident and because of that her knee cap was replaced after a major surgery. On account of this accident, it was difficult for her to climb the stairs to the first floor and, therefore, she wanted to reside on the ground floor. It was also stated in the eviction petition that after the death of her husband, the tenant had started paying rent to the landlady.

(2) The respondent tenant sought leave to contest the eviction petition on various grounds. Firstly, it was pleaded that Mehtab Singh, the husband of the landlady left behind other heirs besides the landlady Smt. Kartar Kaur. The petition filed by Smt. Kartar Kaur alone was not maintainable because the other co-owners and co-landlords were not impleaded even as respondent in the eviction petition. A plea was raised that the premises was let out for residential-cum-commercial purposes and the tenant was running a school in the premises besides her residence therein. The tenant also denied the need of the landlady for the tenancy premises. She termed the eviction petition as lacking bona fides. It was stated that she had sufficient accommodation with her on the first floor of the property. Her need to reside on the ground floor on medical grounds was denied.

(3) At this stage, it may be noted that there had been previous litigation between the parties inasmuch as in 1974, Mehtab Singh, husband of the landlady had filed an eviction petition regarding the same premises against the same tenant on the grounds contained in S. 14(1)(e) & (j) of the Act. In the said eviction petition, the need of the landlords to stay on the ground floor of the property had also been pleaded on medical grounds which are the same as pleaded in the present petition. The said eviction petition was finally dismissed on the ground that it was held that the premises had been let for residential cum commercial purposes. In view of the requirement in clause (e) that the letting purpose ought to be residential alone, the eviction petition was dismissed though on the question of bona fide requirement, the Arc found on the basis of the evidence recorded before him that the case for bona fide requirement of the landlord for the ground floor of

the premises was fully made out. In view of the dismissal of the eviction petition, the landlord filed an appeal before the Tribunal which was also dismissed because the finding regarding letting purpose given by the Arc was upheld. The landlord met the same fate in his second appeal before this Court. The Sao No. 205/ 88, was dismissed by this court on 30.3.93. Thus, the previous petition was decided on the basis of the fact that it was held that the suit premises was let for residential-cum- commercial purpose and, therefore, clause (c) was not available to the landlord. The finding of the court in the previous litigation on the question of bona fide need was in favor of the landlord.

(4) On behalf of the tenant, it was urged before the Arc in the present proceedings that the finding regarding bona fide requirement of the landlady cannot be stated to be rest judicata for purposes of present petition because the eviction petition had been dismissed and the tenant had of right of appeal against the judgment of the ARC. The argument is that the tenant had no opportunity to challenge the finding on the aspect of bonafide requirement and, therefore, any finding given on that aspect in previous proceedings cannot be stated to be rest judicata for purposes of present proceedings.

(5) So far as the question of bona fide requirement is concerned, it has to be noted at the outset that u/S. 14-D of the Act, the word bona fide is not used. As against this, u/S. 14(O)(e) of the Act, the word bona fide cannot be imported in the provision contained in Section 14-D of the Act. The Supreme Court has held in *Surjit Singh Kalra vs . U.O.I.* : [1991]1SCR364 that even though the word bona fide is not used in Section 14-D of the Act, every eviction petition has to be bona fide in the sense that a mala fide petition the court will not entertain. In view of this legal position, I do not consider it necessary to go deeply into the question of bona fide requirement. For the same reason whether the finding regarding bona fide requirement in the previous petition is rest judicata for purposes of present case or not need be gone into. This court has just to see that the present petition is not mala fide or in other words that the petition is not lacking in bona fides. So far as this aspect is concerned, I have no reason to hold that the case of the landlady set up in the present petition that she is old and infirm and suffering from various diseases including heart disease and a fracture above her left knee which impairs

her ability to climb the stairs is not genuine or is lacking in bonafide. In the petition, the landlady had stated that she is seventy-one years old. The petition was filed in May 1993. It seems that she is now more than seventy-three years. At this age with such ailments including heart disease and a fracture in the leg is sufficient for me to take a view that the case of the landlady for requirement to stay on the ground floor of the property is not mala fide.

(6) The only other thing which has to be seen in a petition u/S 14-D of the Act is that the landlady is a widow and that the premises was let out by her or by her husband. I have already held the requirement of the landlady for residence on the ground floor portion of the property which constitutes the tenancy premises cannot be said to be mala fide. It is not disputed that premises was let out to the petitioner herein by the husband of the landlady. It is also not disputed that the husband of the landlady has died and she is the widow to whom the tenant had already attorney. thereforee, all the requirements of S. 14-D are met.

(7) There is only one other aspect of the case which needs to be mentioned. The learned counsel for the petitioner tenant submitted that Mehtab Singh husband of the landlady left behind other heirs who have become co-owners of the property in sun ar.d, thereforee, they should have been pleaded in the petition If not as petitioners at least as respondents. This submission I am afraid is no longer tenable in law. Admittedly as per the plea of the tenant herself, the landlady is one of the co-owners of the property and she be reself can maintain the petition. Apart from this legal position, the facts on record show that the landlady raised a plea that she was Realizing the rent of the property after the death of her husband which means that the tenant had attorney to the landlady. There find no substance to this plea raised on behalf of petitioner tenant.

(8) Petition dismissed.

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