

Pawan Kumar Vs. Krishna Dwivedi

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Court : Delhi

Decided On : Oct-14-2004

Reported in : 114(2004)DLT691

Judge : R.S. Sodhi, J.

Acts : Delhi Rent Control Act - Sections 14; Code of Civil Procedure (CPC) - Order 23, Rules 1 and 3; [Constitution of India](#) - Article 227

Appeal No. : CM(M) 340/2004, CM Appl. Nos. 3343 and 12534-12535/2004

Appellant : Pawan Kumar

Respondent : Krishna Dwivedi

Advocate for Def. : Deepak Gupta and ; B.B. Gupta, Advs.

Advocate for Pet/Ap. : V.K. Shali, Adv

Judgement :

R.S. Sodhi, J.

1. This petition is directed against the order dated 14th January, 2004 of the Additional Rent Control Tribunal (for short 'the Tribunal'), whereby the learned Tribunal has allowed the landlord to withdraw his suit for eviction under Section 14(i)(g) of the Delhi Rent Control Act.

2. The facts of the case are that two petitions were filed by Smt.Krishna Dwivedi under Section 14(i)(g) of the Delhi Rent Control Act against Surinder Kumar and Pawan Kumar with respect to tenanted premises No. 248, Sant Nagar, New Delhi - 65. Both petitions were taken up together and disposed by a common order dated 28th September, 2002, of the Additional Rent Controller (for short 'the Controller'), wherein the Controller has passed an order of eviction directing the landlord to rebuild the premises within four months and in default thereof, to pay Rs.10,000/- per month by way of compensation. Being aggrieved of this order of the Controller, both the parties filed appeals before the Tribunal. The Tribunal has allowed the landlady to withdraw the suit.

3. Surinder Kumar moved this Court against the order dated 14th January, 2004 of the Tribunal by way of a petition being CM(M) 190/2004, which was disposed of as having been withdrawn, thereby the order passed qua Surinder Kumar became final. However, the petitioner herein has challenged the order dated 14th January, 2004 by way of this petition being CM(M) 340/2004.

4. Counsel for the petitioner submits that a valuable right has come into existence and that the only provision under which the Tribunal could have allowed the landlord to withdraw his suit was under Order 23 Rule 3. The conditions therein not being fulfilled, permission to withdraw ought not to have been granted. He relies upon a judgment of the Supreme Court in K.S.Bhoopathy and Ors. v. Kokila and Ors. AIR 2000 SC 2132 .

5. Counsel for the respondent submits that the premises in question has been demolished by the MCD and once the premises is demolished, the Delhi Rent Control Act ceases to have affect, thereforee, the landlady wants to abandon her suit under Section 14(i)(g) of the Delhi Rent Control Act by taking recourse to Order 23 Rule 1 simplicitor.

6. Heard counsel for the parties and have perused the order under challenge. It appears to me that once the premises in question has been demolished by local authorities, the control over the same no longer survives with the tenant or the landlady. Consequently, the direction to re-build within four months has become impossible. The landlady in such a situation was well within her right to abandon

her claim for eviction under Section 14(i)(g) of the Delhi Rent Control Act. No valuable right has come into existence by virtue of the judgment of the Additional Rent Controller, which right could be enforced in view of the demolition by the MCD. The Tribunal it appears was right in permitting the landlady to withdraw her suit under Order 23 Rule 1 CPC and that this is not a case of Order 23 Rule 3 CPC. In that view of the matter, I see no reason why this court should interfere with the order under challenge in its jurisdiction under Article 227 of the [Constitution of India](#). CM(M) 340/2004 and CM APPL.Nos.3343/2004, 12534/2004 and 12535/2004 are dismissed. Interim order, if any, stands vacated.

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