

S. Sanyal

Vs

Gian Chand

Civil Appeal No. 853 of 1966

(CJI K. N. Wanchoo, K. S. Hegde J. C. Shah, S. M. Sikri, J. M. Shelat, M. Hidayatullah, V. Bhargava, C. A. Vaidialingam, R. S. Bachawat, G. K. Mitter, V. Ramswami JJ)

14.09.1967

JUDGMENT

SHAH, J. -

The appellant Miss Sanyal has since 1942 been a tenant of a house in Western Extension Area, Karol Bagh, New Delhi, a part of which is used for a Girls' School and the rest for residential purposes. The respondent Gian Chand purchased the house from the owner by a sale deed dated September 19, 1956, and commenced an action in the Court of the Subordinate Judge 1st Class, Delhi, against the appellant for a decree in ejectment in respect of the house. Numerous grounds were set up in the plaint in support of the claim for a decree in ejectment, but the ground that the respondent required the house bona fide for his own residence alone need be considered in this appeal. The Trial Court dismissed the suit and the Senior Subordinate Judge, Delhi dismissed an appeal from that order holding that the house being let for purposes non-residential as well as residential, a decree in ejectment could not be granted under s. 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952. The High Court of Punjab (Delhi Bench) in a revision petition filed by the respondent held that on the finding recorded by the First Appellate Court a decree in ejectment limited to that portion of the house which was used for residential purposes by the tenant could be granted, and remanded the case to the Rent Controller "for demarcating those portions which were being used for residence" and to pass a decree in ejectment from those specified portions of the house. Against that order the tenant has appealed to this Court.

It is necessary in the first instance to read the material provisions of the Delhi & Ajmer Rent Control Act, 1952. The expression "premises" is defined in s. 2(g) of the Act as "any building or part of a building which is, or is intended to be let separately for use as a residence or for commercial use or for any other purpose, and includes. . . ." Section 13 of the Act which grants protection to tenants against eviction provides insofar as it is material :

"(1) Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated) :

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied -

. . . .

(e) that the premises let for residential purposes are required bona fide by the landlord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation;

Explanation. - For the purposes of this clause, 'residential premises' include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes."

It is clear that s. 13(1) imposes a ban upon the exercise of the power of the Court to decree ejectment from premises occupied by a tenant. The ban is removed in certain specific cases, and one such case is where the premises having been let for residential purposes the landlord requires the premises bona fide for occupation as residence for himself or the members of his family and he has no other suitable accommodation. It is plain that if the premises are not let for residential purposes, cl. (e) has no application, nor on the express terms of the statute does the clause apply where the letting is for purposes residential and non-residential.

In the present case the First Appellate Court held that the house was "let out for running a school and for residence". The High Court held that where there is a composite letting, it is open to the Court to disintegrate the contract of tenancy, and if the landlord proves his case of bona fide requirement for his own occupation to pass a decree in ejectment limited to that part which "is being used" by the tenant for residential purposes. In so holding, in our judgment, the High Court erred. The jurisdiction of the Court may be exercised under s. 13(1)(e) of the Act only when the premises are let for residential purposes and not when the premises being let for composite purposes, are used in specific portions for purposes residential and non-residential. The contract of tenancy is a single and indivisible contract, and in the absence of any statutory provision to that effect it is not open to the Court to divide it into two contracts - one of letting for residential purposes, and the other for non-residential purposes, and to grant relief under s. 13(1)(e) of the Act limited to the portion of the demised property which "is being used" for residential purposes.

The learned Judge purported to follow the decision of his Court in *Motilal and another v. Nanak Chand and others* ((1964) Punj. L.R. 179). It was held in that case that in cases governed by the Delhi & Ajmer Rent Control Act, 1952 "if the premises are in well-defined parts and have been let out for residential and commercial purposes together, the rule as to eviction regarding the portion that has been used for residence will govern the residential portion of the same and similarly the rules of eviction regarding the commercial premises will govern the commercial portion of the same as laid down in the Act". In the view of the Court even if there be a single letting for purposes residential and non-residential, if defined portions of the premises let are used for residential and commercial purposes "it must be held that the letting out was of the commercial part of the building separately for commercial purposes and of the residential part of the building for residential purposes". We find no warrant for that view either in the Delhi & Ajmer Rent Control Act or in the general law of landlord and tenant. Attention of the learned Judge in that case was invited to a judgment of this Court in *Dr. Gopal Das Verma v. S. K. Bhardwaj and another* ([1962] 2 S.C.R. 678), but the Court distinguished that judgment on the ground that "the facts of that case disclosed that they had no applicability to the facts of the case" in hand. Now in *Dr. Gopal Das Verma's* ([1962] 2 S.C.R. 678), case the premises in dispute were originally let for residential purposes, but later with the consent of the landlord a portion of the premises was used for non-residential purposes. It was held by this Court that "where premises are let for residential purposes and it is shown that they are used by the tenant incidentally for commercial, professional or other purposes with the consent of the landlord, the landlord is not entitled to eject the tenant even if he proves that

he needs the premises bona fide for his personal use, because the premises have by their user ceased, to be premises let for residential purposes alone". It was, therefore, clearly ruled that if the premises originally let for residential purposes ceased, because of the consent of the landlord, to be premises let for residential purposes alone, the Court had no jurisdiction to decree ejection on the grounds specified in s. 13(1)(e) of the Act. The rule evolved by the Punjab High Court in Motilal's case ((1964) Punj. L.R. 179) is inconsistent with the judgment of this Court in Dr. Gopal Das Verma's ([1962] 2 S.C.R. 678) case.

If in respect of premises originally let for residential purposes a decree in ejection cannot be passed on the grounds mentioned in s. 13(1)(e), if subsequent to the letting, with the consent of the landlord the premises are used both for residential and non-residential purposes, the bar against the jurisdiction of the Court would be more effective when the original letting was for purposes - non-residential as well as residential. It may be recalled that the condition of the applicability of s. 13(1)(e) of the Act is letting of the premises for residential purposes.

In this case the letting not being solely for residential purposes, in our judgment, the Court had no jurisdiction to pass the order appealed from. We may note that a Division Bench of the Punjab High Court in Kunwar Behari v. Smt. Vindhya Devi (A.I.R. 1966 Punjab 481) has held in construing s. 14(i)(3) of the Delhi Rent Control Act 59 of 1958, material part whereof is substantially in the same terms as s. 13(1)(e) of the Delhi & Ajmer Rent Control Act, that "where the building let for residence is the entire premises it is not open to the Court to further sub-divide the premises and order eviction with respect to a part thereof". In our view that judgment of the Punjab High Court was right on the fundamental ground that in the absence of a specific provision incorporated in that statute the Court has no power to break up the unity of the contract of letting and attribute incidents and obligations to a part of the subject-matter of the contract which are not applicable to the rest.

In our view the order passed by the High Court of Punjab remanding the case for determination of the residential portion of the house occupied by the appellant and for passing a decree in ejection in respect of that part is without jurisdiction and must be set aside.

The appeal is allowed and the decree passed by the Senior Subordinate Judge is restored. The appellant in this appeal did not appear before the High Court to assist the Court. In the circumstances there will be no order as to costs of this appeal.

V.P.S.

Appeal allowed.

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