

Sangat Singh

Vs

Ch. Perma Nand Bahl and Others

Civil Appeal No. 1950 of 1966

(J.C. Shah, K.S. Hegde JJ)

26.11.1969

JUDGMENT

SHAH, J. -

1. For many years before 1955 the appellant was a tenant of the Government in respect of a part of a building which was originally evacuee property. The property was treated as part of the compensation pool and was put up for auction on December 7, 1955. A bid offered by Respondents 1, 2 and 3 in this appeal was accepted by the Government, but no certificate was immediately issued. The Managing Officer addressed a letter to Respondents 1, 2 and 3 on December 8, 1956, informing them that "provisional possession" was "decided to be given of the property subject affidavit executed by them". One of the conditions was that the respondents were 1-3 with effect from December 1956. Pursuant to this direction the respondents collected the rent from the appellant from and after December 4, 1956.

2. The Delhi Rent Control Act (59 of 1958), was brought into force with effect from some time in the year 1958. The first respondent served on the February 21, 1964, a notice on the appellant determining the tenancy and requiring the appellant to deliver possession of the premises in his occupation. He thereafter instituted on August 7, 1964, a suit in the Civil Court at Delhi for an order in ejectment. The suit was resisted by the appellant contending inter alia that under the provisions of Delhi Rent Control Act, 1958, the suit was not maintainable in the Civil Court and that in any event the notice served upon the appellant did not operate to terminate the tenancy. These contentions were rejected by the Trial Court and a decree in ejectment was passed. The decree was confirmed in appeal to the District Court and in Second Appeal to the High Court. By special leave the appellant has appealed to this Court.

3. The principal question which falls to be determined in this appeal is whether the Civil Court had jurisdiction to entertain the suit. The facts may be recalled. The appellant was originally a tenant of the Government; the property was put up for sale by an auction on December 7, 1955 and the bid of the respondents was accepted; till the institution of the suit no certificate of sale or any deed conveying title to the property was executed in favour of the respondents by the Government. Under the Delhi Rent Control Act jurisdiction to entertain a proceeding in ejectment on the ground of termination of tenancy is maintainable not in the Civil Court but before the Rent Controller. But by Section 3 of the Act it is provided :

"Nothing in this Act shall apply -

(a) to any premises belonging to the Government; or

(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned by the Government :

Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any Court or other authority, the provisions of this Act shall apply to such tenancy."

4. The respondents contended that the Civil Court had jurisdiction because the premises belonged to the Government. The appellant contended that the premises at the date of the institution of the suit did not belong to the Government and that in any event they were let to him by the respondents "by virtue of an agreement with the Government or otherwise" within the meaning of the proviso. This Court has held that where evacuee property is put up for sale at an auction and the bid is accepted by the Government and price is received by the Government even in the absence of a sale deed executed or a certificate, the purchaser would be deemed to be an owner and not the Government. See the judgment of this Court in *Bishan Paul v. Mothu Ram*, AIR 1965 SC 1994 and Civil Appeals Nos. 546 of 1966 and 331 to 334 of 1967, *Shiv Nath v. Shri Mela Ram*, decided on April 25, 1969 (SC). But Mr. Misra contended that those cases have no application here for there is no evidence on the record that the price stipulated to be paid was in fact paid by the respondents before the suit was instituted. The question whether the consideration has been paid by the respondents to the Government is one of fact within the special knowledge of the respondents. They have not stated in the plaint nor have they attempted to prove that they have paid the consideration which was agreed to be paid by them. Our attention was invited to some documents which were not before the Trial Court nor before the District Court nor the High Court but were sought to be produced in this Court in support of the plea that the price could not have been paid by the respondents before the suit. We have declined to consider those documents as part of the record. If it was the case of the respondents that the property did belong to the Government and the title was not conveyed to them, it was for them to allege and prove that case. The case therefore does not fall under the terms of Section 3(a) of the Delhi Rent control Act.

5. In any event the case is clearly governed by the proviso to Section 3. This Court has in interpreting the proviso to Section 3 observed in Civil Appeal No. 546 of 1966 (SC) and the companion appeals :

"Even if it were assumed that the premises belonged to Government it would have to be held in the circumstances of the case, that it was lawfully let by the respondent to the appellants inasmuch as the Managing Officer's giving 'provisional possession of the property to the respondent' would really mean delivering symbolical possession of the property to him with the result that a direction on the appellants to pay rent to him would in effect amount to a direction to attorn to him. We are not impressed by the argument that 'letting' within the meaning of the proviso can only apply to a voluntary act on the part of the landlord allowing the former tenant to continue in possession. Acting in pursuance of the direction of the managing officer after the property had been auctioned to the respondent would in law amount to a letting by the respondent to the persons who were tenants under the custodian before."

The fact which gave rise to Shiv Nath's case, Civil Appeals Nos. 546 of 1966 and 331 to 334 of 1967, decided on April 25, 1969 (SC) appear to be identical with the facts of the present case. The provisional possession had been given by the Managing Officer authorising the respondents to

recover the rent and the tenants were directed to attorn to them. There is no dispute that the appellant did attorn to the respondents and according to the decision of this Court in Shiv Nath's case, Civil Appeals Nos. 546 of 1966 and 331 to 334 of 1967, decided on April 25, 1969 (SC), a direction of the Managing Officer after an auction sale, to the tenant to attorn to the purchaser and receipt of the rent by the purchaser constitute letting within the meaning of the proviso to Section 3. In either view of the case the suit was not maintainable in the Civil Court.

6. The appeal is therefore allowed and the plaintiff's suit is dismissed with costs throughout.

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