Kanta Goel

Vs

B. P. Pathak and Others

Civil Appeal No. 764 of 1977

(V. R. Krishna Iyer, R. S. Sarkaria, Jaswant Singh JJ)

01.04.1977

JUDGMENT

KRISHNA IYER, J. –

1. So heartening to the judges' bosom is the happy ending of a bitterly fought litigation where the law is declared by the Court and justice is accomplished by the parties settling the differences, assisted by activist judicial suggestions and promoted by constructive counselling by advocates. Such is the pleasing culmination of this case which relates to an ejectment proceeding under Section 14A of the Delhi Rent Control Act, 1958 (Act 59 of 1958). The Controller directed eviction, refusing leave to the tenant to contest the application for eviction. The High Court, in the revision filed by the tenant, went into an elaborate discussion on many matters but somehow missed a plea fatal to the landlord's claim and affirmed the relief of eviction although on different grounds. The aggrieved tenant sought special leave to appeal which was granted and, thanks to the landlord appearing by caveat even at the preliminary hearing, leave was granted and the appeal itself was heard the very next day. Thus at the Supreme Court level quick justice has been meted out and fortunately our judgment has resulted in a re-adjustment between the parties and, hopefully, the healing of the wounds of litigation. A protracted forensic proceeding makes foes of friends, but a settlement of the dispute in accordance with law and justice makes friends of foes.

2. Some facts need to be narrated for getting the hand of the case and the issues of law raised. The respondent is an Under Secretary to Government in the Housing Ministry. He was in occupation of residential premises allotted to him by the Central Government and was required by government order to vacate such residential accommodation on the ground that he owned in Delhi a residential accommodation in his own name. The building we are concerned with is 23/6, Shakti Nagar. It is a two-storeyed house but the litigation centres round part of the first-floor. The whole building belonged to one Pandit Saraswati Dass who let out a portion of the first floor consisting of 4 rooms and a small enclosure somewhere in August 1968 to the appellant. Shri Dass died in 1972 leaving behind the 1st respondent, two other sons (respondents 2 and 3) and a daughter (respondent 4). It may be stated even here that the proceeding before the Controller was started by the 1st respondent and an objection was raised by the appellant that the other heirs of the late Dass were necessary parties they were not impleaded at this stage although the Controller ordered eviction overruling the objection. The High Court however, impleaded the other two sons and the only daughter (respondents 2 to 4) and taking the view that their presence was necessary for the maintainability of the action, the learned Judge decreed eviction.

3. A crucial objection, lethal to the case of the landlord, considered by the Controller but negatived by him, was raised in the revision petition but was not adverted to or adjudicated upon by the High

Court. Before us Shri Nariman has pressed it again and the fate of this case, so far as we are concerned, rests on the validity of that point. The landlord-1st respondent, after receiving the order from government to vacate, as contemplated in Section 14A of the Act, applied for eviction of another tenant who was occupying a three-room tenement on the first floor of the same building. In fact, the first floor of the house consists of two dwelling apartments as it were, one consisting of three rooms and the other of 4 rooms. By definition, 'premises' means any part of a building which is, or is intended to be, let separately for use as a residence. . . . . In the present case the three room tenement being part of a building and let separately to a tenant, fell within the definition of 'premises'. Admittedly, the landlord exercised his right under Section 14A to recover immediately possession of those premises. He succeeded, secured possession and kept it vacant. Even at the present time those premises which are adjacent to the suit premises are in his vacant possession. Shri Nariman's argument is that while it is open to a landlord who is a government servant directed to vacate allotted premises, and clothed with a new right to recover possession of any premises let out by him, to exercise it once, he cannot repeat the exercise ad libitem and go on evicting every tenant of his by using the weapon of Section 14A. He relies on the proviso to Section 14A(1) to reinforce his submission and we will deal with it presently.

4. Two other contentions urged by the appellant are that the first respondent is not his landlord and therefore is disentitled to evict him, under the Act, and secondly, the premises are not in his name and have not been let out by him. In any case, the claim of the first respondent that the building in its entirety had been allotted by the late Shri Dass by his will to the first respondent and his brother the 3rd respondent and that, subsequently, there had been an oral partition between the two whereunder the first floor was allotted in to the 1st respondent making him the sole owner and therefore the exclusive landlord, was contested by the appellant-tenant and this plea should have been allowed to be raised by grant of leave under Section 25B by the Controller. The presence of the co-heirs at the High Court level was inconsequential, according to the appellant, and their absence at the trial stage vitiated the order of the Controller. We will examine these contentions briefly.

5. The scheme of the statute is plain and has been earlier explained by this Court with special reference to Sections 14A and 25B. The government servant who owns his house, lets it out profitably and occupies at lesser rent official quarters has to quit but, for that very purpose to be fulfilled, must be put in quick possession of his premises. The legislative project and purpose turn not on niceties of little verbalism but on the actualities of rugged realism, and so, the construction of Section 14A(1) must be illumined by the goal, though guided by the word. We have, therefore, no hesitation in holding that Section 14A(1) is available as a ground, if the premises are owned by him as inherited from his propositus in whose name the property stood. 'In his name' and 'let out by him', read in the spirit of the provision and without violence to the words of the section, clearly convey the idea that the premises must be owned by him directly and the lease must be under him directly, which is the case where he, as heir, steps into his father's shoes who owned the building in his own name and let it out himself. He represents the former owner and lessor and squarely falls within Section 14A. The accent on 'name' is to pre-empt the common class of benami evasions, not to attach special sanctity to nominalism. Refusing the rule of ritualism we accept the reality of the ownership and landlordism as the touchstone.

6. Nor do we set much store by the submission that the 1st respondent is not a landlord, being only a co-heir and the will in his favour having been disputed. Equally without force in our view is the plea that one co-lessor cannot sue for eviction even if the other co-lessors have no objection. Section 2(e) of the Act defines 'landlord' thus :

2. (e) 'Landlord' means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant.

'Tenant', by definition [Section 2(1)] means any person by whom or on whose account or behalf the rent of any premises is payable. Read in the context of the Rent Control law, the simple sense of the situation is that there should be a building which is let. There must be a landlord who collects rent and a tenant who pays it to the one whom he recognizes as landlord. The complications of estoppel or even the concepts of the Transfer of Property Act need not necessarily or inflexibly be imported into the proceedings under the Rent Control law, tried by special Tribunals under a special statute. In this case, rent was being paid to the late Dass who had let out to the appellant; on the death of the former, the rent was being paid by the 1st respondent who signed his name and added that it was on behalf of the estate of the deceased Dass. At a later the rent was being paid to and the receipts issued by the first respondent in his own name. Not that the little change made in the later receipts makes much of a difference, but the fact remains that the tenant in this case had been paying the rent to the 1st respondent. Therefore, the latter fell within the definition of 'landlord' for the purposes of the Act. We are not impressed with the investigation into the law of real property and estoppel between landlord and tenant, Shri Nariman invited us to make. A fair understanding of the relationship between the parties leaves little room for doubt that the appellant was the tenant of the premises. The 1st respondent, together with the other respondents, constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned, for all practical purposes as the landlord, and was therefore entitled to institute proceedings qua landlord.

7. This Court, in Sri Ram Pasricha (1976 4 SCC 184) clarified that a co-owner is as much an owner of the entire property as any sole owner of the property is : Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property . . . . It is, therefore, not possible to accept the submission that the plaintiff, who is admittedly the landlord and co-owner of the premises, is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a co-owner of the property, being at the same time acknowledged landlord of the defendants. That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner.

8. Shri Nariman urged that the will had not been proved and that he had not been given an opportunity to establish his challenge of the will of Shri Dass. In the High Court the other co-heirs were parties and there is nothing on record to show that they objected to the claim of the 1st respondent to the first floor on the strength of the will from his father. An objection for the sake of an objection which has no realistic foundation, cannot be entertained seriously for the sake of

processual punctiliousness. We do not agree with the contention.

9. The last, and yet the lethal objection which had been lost sight of in the High Court, although raised there, loomed large before this Court, in Sri Nariman's arguments. The admitted fact is that on the same ground of the government's order to vacate, the first respondent had evicted a dwelling house on the first floor and is keeping it vacant. He is again using the same order to vacate passed by the government to evict the appellant's dwelling house. This is obviously contrary to the intendment of Section 14A and is interdicted by the proviso to Section 14A(1). It is true that when an officer is sought to be evicted by the government from its premises he has to be rehabilitated in his own house by an accelerated remedial procedure provided by Section 14A read with Section 25B of the Act. But this emergency provision available merely to put the government servant back into his own residential accommodation cannot be used as a weapon for evicting several tenants if he has many houses let out to various persons. The object of Section 14A is fulfilled once the landlord recovers immediate possession of his premises from one of his tenants. The right is exhausted thereby and is not available for continual applications for eviction against all other tenants holding under him. This is made clear by the proviso which makes plain that the section shall not be construed as conferring a right on a landlord owning two or more dwelling houses to recover possession of more than one dwelling house. Of course it gives him the choice since the proviso states that it shall be lawful for such landlord to indicate the particular dwelling house among a plurality owned by him, possession of which he intends to recover. He can ordinarily recover one dwelling house but no more. In the present case, admittedly he has recovered one dwelling house consisting of a three-room apartment on the first floor by using the precise ground under Section 14A(1). It necessarily follows that he cannot use Section 14A for evicting the tenant-appellant from another dwelling house. On the last ground, therefore, the appeal must be allowed although in the circumstances we direct the parties to bear their cost throughout.

10. Counsel on both sides, on the suggestion by the court, calculated to produce a salutary relationship between the parties, agreed that the three-room dwelling house which lies vacant (having been evicted under Section 14A) will be given possession of to the appellant in exchange for the appellant making over possession of the 4-room apartment - the premises involved in the present case - together with the appurtenant space. The appellant has agreed to pay a sum of Rs. 250 per month by way of rent for the adjacent three-room apartment into which he will move, within one month from today and surrender possession of the 4-room apartment simultaneously. In case the parties are able to adjust their differences and the 1st respondent makes over the additional space attached to the 4-room tenement for the use of the appellant, he will pay an extra sum of Rs. 75 per mensem or other negotiated figure. On these terms agreed to before us by counsel on both sides, after taking instructions from their parties, we direct that the first respondent do make over possession of the three-room dwelling house on the first floor and take in exchange the 4-room dwelling house which is the subject matter of the present eviction proceedings. We record this undertaking as indicated above and with this modification, allow the appeal.

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