

Nihal Chand

Vs

Kalyan Chand Jain

Civil Appeal No. 743 Of 1977

(M. Fazal Ali, P. S. Kailasam, N. L. Untwalia, V. D. Tulzapurkar JJ )

15.11.1977

JUDGMENT

TULZAPURKAR, J. -

1. This appeal by special leave is directed against the judgement and order dated December 6, 1976 of the Delhi High Court dismissing the appellant-landlord's application for eviction under Section 14A(1) read with Section 25B of the Delhi Rent Control Act, 1958, which provisions were inserted therein by Delhi Rent Control (Amendment) Ordinance, 1975 (24 of 1975) subsequently replaced by the Delhi Rent Control (Amendment) Act 18 of 1976.

2. The appellant-landlord being a Government servant was at the material time in occupation of a residential accommodation bearing No. B-11/791, situated at Lodhi Colony, New Delhi, the same having been allotted to him by the Central Government. It appears that he owns a two and a half storied residential house bearing No. F-43, Green Park, New Delhi, in his own name. In 1968 the appellant-landlord let out the first floor of his said house of the respondent for residential purposes on a monthly rent of Rs. 300 which was later on increased to Rs. 400 per month, exclusive of electricity and water charges. By a general order dated September 9, 1975, the Government of India, Ministry of Works and Housing, Directorate of Estates, took a decision, in supersession of all previous orders on the subject that Government servants who have or own houses at the place of their posting, within the limits of any local or adjoining municipality, should be required to vacate Government accommodation allotted to them, within three months from October 1, 1975 and that in default of their vacating Government accommodation by December 31, 1975, they should be charged enhanced licence fee at the market rates. Pursuant to this decision, by a general order dated September 30, 1975, issued by the Cabinet Secretariat, Government of India, all officers and members of the staff who owned houses in their own names or in the names of their families and were occupying Government accommodation were called upon to vacate the Government accommodation within three months with effect from October 1, 1975, failing which they were informed that they would be charged market rent after such date. Copies of this order were circulated to all Offices and Branches at Headquarters and all outstation Offices for information and in particular a copy was also forwarded to the appellant-landlord who happened to be the Accounts Officer, Pay and Accounts Office, Department of Supply, Government of India. In view of this order dated September 30, 1975, the appellant-landlord on December 19, 1975 filed an application under Section 14A(1) read with Section 25B of the Delhi Rent Control (Amendment) Ordinance, 1975 (24 of 1975) for eviction of the respondent-tenant from the first floor of house No. F-43, Green Park, New Delhi, on the ground that he had been asked to vacate the Government accommodation on account of his owning a house in the Union Territory of Delhi and had incurred an obligation to pay penal licence fee in default. In response to the summons served upon him in

accordance with the Third Schedule under Section 25B(2) of the said Ordinance the respondent-tenant filed on January 16, 1976 an application supported by a detailed affidavit seeking leave to contest and defend the case on several grounds. First, it was contended that the summary procedure provided under Section 25B was available not for an application filed under Section 14A(1) but only for an application seeking eviction on ground of personal bona fide requirement under Section 14(1)(e) of the Delhi Rent Control Act. Secondly, it was contended that even otherwise since according to the landlord's own showing he had retired from Government service on November 30, 1975 and was, therefore, liable to vacate the Government accommodation, the application under Section 14A(1) was not maintainable, in other words, Section 14A(1) was not meant for a retired Government servant or a Government servant who was transferred outside Delhi. Thirdly, it was contended that the application seeking his eviction was not filed bona fide inasmuch as the appellant-landlord had earlier filed an application 497 of 1975 seeking respondent's eviction from the premises on the ground of bona fide personal requirement under Section 14(1)(e) which had been dismissed by the Additional Rent Controller on December 17, 1975 inasmuch as his requirement could not be considered to be bona fide. Fourthly, it was contended that the application for eviction was wholly mala fide because the premises were let out initially at a rent of Rs. 300 per month which was increased to Rs. 350 per month with effect from October 1, 1971 and thereafter it was further increased to Rs. 400 per month and further because when the ground-floor premises of the house in question had fallen vacant on two occasions prior to the filing of the landlord instead of himself occupying the said premises, had let out the same at higher rents. The appellant-landlord refuted these contentions and explained the circumstances why he had let out portions of his houses after these had fallen vacant during the pendency of his earlier eviction-application and prior to his filing the instant application.

3. By his order dated August 11, 1976, Shri R. K. Sain, Rent Controller, Delhi negatived all the contentions that were urged by the respondent-tenant, rejected his prayer for granting leave to contest and defend the proceedings and passed an order for eviction against him under Section 14A of the Act directing the respondent to deliver vacant possession of the premises in his occupation to the appellant-landlord within two months from the date of the order. The Rent Controller took the view that the summary procedure under Section 25B had been made applicable to application under Section 14A when Ordinance 24 of 1975 was replaced by Amending Act 18 of 1975 with retrospective effect, that Section 14A(1) was available to the appellant-landlord notwithstanding his retirement from service on November 30, 1975 inasmuch as the documents on record clearly showed that he had been called upon to vacate the Government accommodation not because of his retirement but on the ground of his owning a house in the Union Territory of Delhi and that the cause of action accrued to him on September 30, 1975 when he was served with the general order of that date. He also took the view that the dismissal of the earlier petition under Section 14(1)(e) had no bearing on the instant application for eviction because the instant application was based on a different cause of action requiring different set of facts to be proved which the appellant-landlord had proved in the case and according to him further the circumstances put forward by appellant-landlord explaining why he had let out portions of the house in question prior to the coming into force of the Ordinance and prior to his filing the instant application had no bearing on the issue involved in the case. Since according to him the appellant-landlord had satisfied or fulfilled all the conditions of Section 14A and since the respondent-tenant had not made out any case for the grant of leave to contest the proceedings, the Rent Controller refused leave to contest the case to the respondent and passed the eviction order in favour of the appellant-landlord.

4. Feeling aggrieved by the Rent Controller's order the respondent-tenant preferred a Revisional Application (C.R.A. 562 of 1976) to the Delhi High Court. This revisional application was heard

along with a group of other similar revisional applications and all these were disposed of by a common judgement by the High Court on December 6, 1976 since they raised certain common questions, particularly the question as to the circumstances in which leave should be granted to a tenant under sub-section (5) of Section 25B of the Delhi Rent Control Act, 1958 as amended by Act 18 of 1976. So far as the respondent's revisional application was concerned, the only contention urged on his behalf and which found favour with the High Court was that Section 14A(1) would not be available to a landlord who was an allottee of the Government accommodation and whose allotment was liable to be cancelled by virtue of his retirement from service or transfer outside Delhi. The High Court pointed out that the provision of Section 14A(1) as also the summary procedure provided under Section 25B of the Act were extraordinary provisions intended to ensure expeditious eviction of tenants who were in occupation of residential accommodation owned by such allottees of Government accommodation who were required to vacate by virtue of their ownership of such accommodation, that these provisions were intended to deal with hard cases and that no landlord should be permitted to take undue advantage thereof if he was required to vacate Government accommodation by virtue of his retirement or transfer. On the facts of the case, the High Court took the view that the appellant was not entitled to invoke the provision of Section 14A(1) of the Act inasmuch as even before the application for eviction was filed he had already retired from service and was on that account liable to vacate the Government accommodation. In this view of the matter, the High Court allowed the revisional application, set aside the Rent Controller's order and dismissed the application for eviction filed by the appellant-landlord, leaving the parties to bear the respective costs throughout. It is this order passed by the High Court on December 6, 1976 that has been challenged by the appellant-landlord before us.

5. Mr. Saharya, Counsel for the appellant-landlord raised two or three contentions before us in support of the appeal. In the first place he contended that Section 14A(1) merely speaks of "a landlord, who being a person in occupation of any residential premises allotted to him by Central Government or any local authority and as such it covers the case of a non-Government servant, as for instance a Law Officer, being in occupation of Government accommodation and in whose case the concept of retirement from service or transfer outside Delhi would be inappropriate and irrelevant and, therefore, it cannot be said that cases of Government servants required to vacate Government accommodation on account of retirement or transfer would be outside the purview of the section. Secondly, he urged that the view taken by the High Court that Government servants who are required to vacate the Government accommodation on account of retirement or transfer would be outside the purview of the section is unwarranted and unsustainable on a proper construction of the section. Thirdly, he contended that on the facts in the present case, the appellant-landlord though he retired from service on November 30, 1975 was in terms called upon to vacate the Government accommodation not on account of his retirement but on the ground that he owned in his own name a residential accommodation in the Union Territory of Delhi and that he was called upon to pay, and he did pay for some time, the penal licence fee for retaining the Government accommodation beyond December 31, 1975 and as such it should have been held that Section 14A(1) was available to him and had been properly availed of by him. He urged that the Rent Controller was right in his view that the appellant-landlord had satisfied all the requirements and conditions of Section 14A(1) and was entitled to an eviction order in his favour.

6. On the other hand, Mr. Makhija, Counsel for the respondent-tenant, supported the view taken by the High Court for the reasons indicated by it in its judgment. Relying upon a letter dated September 9, 1976, addressed by the Assistant Director of Estates to the Assistant Director, Cabinet Secretariat, copy of which was forwarded to the appellant-landlord (being Annexure 'D' to appellant's affidavit filed in support of the special leave petition appearing at page 94 of Vol I of the record) he

contended that the allotment of Government accommodation in favour of the appellant-landlord had been cancelled with effect from January 31, 1976 after the expiry of the concessional period of two months admissible to him under the rules on his retirement from service on November 30, 1975 and, therefore, it could be said that the appellant was required to vacate Government accommodation on the ground of his owning residential accommodation in the Union Territory of Delhi pursuant to the order dated September 30, 1975 under which his allotment would have been cancelled with effect from December 31, 1975. He, therefore, urged that the Rent Controller's view had been rightly reversed by the High Court.

7. Since the question raised before us primarily pertains to proper construction of the provision contained in Section 14A(1), it would be desirable to set out the said provision which runs thus :

14A. Right to recover immediate possession of premises to accrue to certain person. - (1) Where a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required by, or in pursuance of, any general or special order made by that Government or authority, to vacate such residential accommodation, or in default, to incur certain obligations, on the ground that he owns, in the Union Territory of Delhi, a residential accommodation either in his own name or in the name of his wife or dependent child, there shall accrue, on and from the date of such order, to such landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary, a right to recover immediate possession of any premises let out by him :

8. At the outset it may be stated that initially the aforesaid provision as also Chapter III-A, comprising Sections 25A to 25C dealing with summary trial of certain applications were introduced in the Delhi Rent Control Act, 1958 by means of Delhi Rent Control (Amendment) Ordinance 24 of 1975, which came into force on December 1, 1975. Subsequently, the said Ordinance was replaced by the Delhi Rent Control (Amendment) Act 18 of 1976. This Amending Act was put on the statute book on February 9, 1976 but by virtue of sub-section (1) it "shall be deemed to have come into force on December 1, 1975", i.e. the date of the enforcement of the Ordinance. The Statement of Objects and Reasons accompanying the Amending Bill (XII OF 1976) clearly brings out the fact that the said amendment was necessitated because of the Central Government's decision taken on September 9, 1975 that a person who owns a house in his place of work should vacate the Government accommodation allotted to him on or before December 31, 1975, in other words, a speedy and expeditious remedy was provided to such a person to evict a tenant from his own house if he was required to vacate Government accommodation by or pursuant to a general or special order of the Government on the ground of his owning a residential accommodation in the Union Territory of Delhi. The object of Section 14A is thus to confer a right on certain landlords to recover "immediate possession of the premises" belonging to them and which are in possession of their tenants provided they are required to vacate Government accommodation in their occupation by a general or special order. On a plain reading of the section it will appear clear that such a right is "to accrue" to a landlord on his satisfying the following conditions : (a) such a landlord must be in occupation of a residential accommodation allotted to him by the Central Government or any local authority; and (b) such a landlord must have been required to vacate such residential accommodation or in default to incur certain obligations by any general or special order made by that Government or

authority on the ground that he owns in the Union Territory of Delhi a residential accommodation either in his own name or in the name of his wife or dependent child. It is also clear that, to such a landlord, who satisfies the aforesaid conditions, the right to evict his tenant accrues "on or from the date of such order" (meaning the general or special order by which he is required to vacate or in default he incurs certain obligations). The crucial words are "on or from the date of such order" with the result that the cause of action accrues to the landlord on the date when he is served with the general or special order requiring him to vacate or incur obligations, though the speedy remedy to secure possession on that cause of action could be said to have been made available to him only with the coming into force of the Ordinance 24 of 1975. It is in the light of these provisions that we will have to consider whether on the facts of the instant case the appellant-landlord was entitled to invoke Section 14A of the Act or not.

9. Mr. Makhija, appearing for the respondent-tenant, urged that on a plain reading of Section 14A(1) it would be clear that only if the landlord was required to vacate Government accommodation "on the ground that he owns in the Union Territory of Delhi a residential accommodation", he would be entitled to eject a tenant and recover immediate possession of the premises belonging to him which are in the occupation of the tenant but if such a landlord who is in occupation of Government accommodation is liable to vacate Government accommodation either on account of his retirement or transfer, both of which might have taken place before he has sought eviction of the tenant, such a case would be beyond the purview of Section 14A(1) of the Act, for, according to him, reading Section 14A(1) and Section 25A to 25C alongwith Government's decision dated September 9, 1975, which necessitated the insertion of the provisions in the enactment, it would be clear that these provisions were not intended to be used by a landlord who has either retired from service or is transferred outside Delhi before December 1, 1975 and must vacate the Government accommodation on that account. He pointed out that in the instant case the appellant-landlord has retired on November 30, 1975 long prior to the coming into force of Ordinance 24 of 1975 and as such he had to vacate the Government accommodation on account of his retirement. He further pointed out that even the application for eviction had been filed by the appellant against the respondent on December 19, 1975 long after he had retired from Government service and had incurred the obligation on vacate the Government accommodation on account of such retirement. He also pointed out that if the letter dated September 9, 1976, being Annexure 'D' to appellant's affidavit filed in support of the special leave petition (appearing at page 94 of Vol.I), is seen, it will appear clear that the allotment of Government premises to the appellant had been cancelled with effect from January 31, 1976 after allowing concessional period of two months admissible to him under the rules on his retirement from Government service on November 30, 1975. He, therefore, urged that Section 14A(1) would not be available to such a landlord.

10. There appears to be some force in the view taken by the High Court that the provision of Section 14A(1) was not intended for Government servants who have retired from Government service or who have been transferred outside Delhi and the provision substantially was intended for the benefit of such landlords who continue in Government service in the Union Territory of Delhi and who are required to vacate Government accommodation in their occupation or in default to incur certain obligations on account of their owning residential accommodations in their own names or in the names of their wives or dependent children, but having regard to the peculiar facts which obtain in the instant case it is unnecessary for us to go into such larger question. On the facts obtaining here we are clearly of the view that the appellant-landlord is entitled to invoke the provisions of Section 14A(1) notwithstanding the fact that he had retired from service with effect

from November 30, 1975. In the first place, it cannot be disputed that he satisfies all the requirement of Section 14A(1) in the sense that he is a landlord who is in occupation of a residential accommodation allotted to him by the Central Government and that long before his retirement on November 30, 1975, he was, by general order dated September 30, 1975, issued by the Government required to vacate that accommodation on or before December 31, 1975 or in default to incur an obligation by way of payment of penal licence fee on the ground that he is owning a residential accommodation in his own name in the Union Territory of Delhi. It is true that the provisions of Section 14A(1) and the speedy remedy available under Section 25B came to be inserted in the Delhi Rent Control Act, 1958 with effect from December 1, 1975 and naturally, therefore, he made an application for eviction on December 19, 1975, but as pointed out earlier, to a landlord who satisfies the requirements of Section 14A(1) the cause of action arises or the right to evict his tenant accrues 'on or from the date of the order' that may be served upon him whereby he is required to vacate the Government accommodation or in default to incur the liability to pay higher penal licence fee on the ground that he owns a residential accommodation in his own name in the Union Territory of Delhi. In the instant case, admittedly, pursuant to Central Government's decision taken in that behalf on September 9, 1975, a general order, requiring him to vacate the Government accommodation or in default to incur obligation of payment of penal licence fee on the ground that he owns residential accommodation in his own name in the Union Territory of Delhi, was served upon the appellant-landlord on September 30, 1975, which was much before his retirement, which took place on November 30, 1975. In other words when the cause of action arose or the right to evict his tenant accrued to him the appellant-landlord was very much in service. This is not a case where the right to evict has accrued to a Government servant landlord simultaneously with or after his retirement. It is thus clear that upon service of such general order dated September 30, 1975, upon the appellant-landlord, a right accrued to him under Section 14A of the Act, though, as said earlier, the speedy remedy contemplated under Section 25B, became available to him after the Ordinance 24 of 1975 came into force. Apart from service of this general order, it was not disputed before us that by letter dated January 14, 1976 enhanced licence fee at the market rate, namely, at the rate of Rs. 520 per month in place of Rs. 64 per month, which was payable by the appellant-landlord to the Government upto December 31, 1975, was actually demanded by the Government from the appellant-landlord and the appellant-landlord has not only incurred this obligation but has fulfilled this obligation for a few months by paying the licence fee at the enhanced market rate. The letter dated September 9, 1976, on which strong reliance was placed by Mr. Makhija, contains rather contradictory averments. It is true that in this letter it has been stated that the allotment of the Government accommodation in favour of the appellant-landlord shall be deemed to have been cancelled with effect from January 31, 1976, that is to say, after allowing the concessional period of two months admissible to him under the rules after his retirement from Government service on November 30, 1975, but by the same letter the appellant-landlord has been informed that he is liable to pay enhanced market licence fee "with effect from January 1, 1976 being a house-owner". In other words, even by this letter dated September 9, 1976 enhanced market licence fee is claimed from the appellant-landlord with effect from January 1, 1976, which could only be on the basis that he was called upon to vacate the premises on or before December 31, 1975 pursuant to the general order dated September 30, 1975 which was served upon him. It was faintly argued by Mr. Makhija that the demand for enhanced licence fee with effect from January 1, 1976 made by the Government by this letter must be by mistake because in the main body of the letter it has been recited that the allotment of the Government premises in favour of the appellant is deemed to have been cancelled with effect from January 31, 1976. It is not possible to accept this contention of Mr. Makhija and it appears to us that the reference to deemed cancellation of the allotment of the appellant with effects from January 31, 1976 is a mistake in view of the Government's decision of September 9, 1975 and

the contents of the general order dated September 30, 1975. In any case the letter dated September 9, 1976 on which reliance has been placed by Mr. Makhija is self-contradictory and can be of no avail to show that the appellant was required to vacate the premises on account of retirement and not on ground of his owning residential accommodation in the Union Territory of Delhi, especially, in view of the general order dated September 30, 1975 that was served upon the appellant-landlord.

11. Having regard to the above discussion we are clearly of the view that the appellant-landlord was entitled to invoke the provision of Section 14A of the Act and, therefore, the decision of the Rent Controller was right. We accordingly allow the appeal and set aside the order of the High Court and restore that of the Rent Controller. In the circumstances of the case there will be no order as to the costs.

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