

B. N. Mutto and Another

Vs

Dr. T. K. Nandi

Civil Appeal No. 2302 of 1977

(D. A. Desai, P. S. Kailasam, A.D. KoshalJJ)

29.11.1978

JUDGMENT

KAILASAM, J. –

1. This appeal is by special leave by the landlord against the judgment of the High Court of Delhi whereby it allowed a revision of the respondent-tenant and set aside the order of eviction passed by the Rent Controller, Delhi, rejecting the application of the respondent seeking permission to contest the proceedings for eviction filed by the appellants under Section 14A(1) of the Delhi Rent Control Act.

2. The appellant, Shri B. N. Mutto, Inspector-General of Police, leased the property F-9, East of Kailash, New Delhi, to the respondent from September 15, 1972 at a monthly rent of Rs. 2200 exclusive of electricity and water charges. The lease was for the use of the premises for residential and/or professional purposes only and not for commercial purposes. The lease agreement was renewed from time to time and the respondent became a monthly tenant under the Delhi Rent Control Act, 1958. On July 18, 1974 the landlord filed a petition for eviction of the respondent on the grounds of misuser, sub-letting and bona fide requirement. The petition was registered as Suit 182 of 1974 and is still pending.

3. The first appellant, B. N. Mutto, retired as Inspector-General of Police on November 30, 1975. While in office he was occupying premises bearing No. C-II/77 Moti Bagh I, New Delhi, allotted to him by the Government. On September 9, 1975 the Government took a decision that Government servants who own houses in the locality should vacate the Government accommodation allotted to them within 3 months from October 1, 1975. On December 9, 1975 a notice was served on the first appellant by the Deputy Director (Admn.) stating that the Government by its Office Memorandum 12031(1)/74-Pol II dated September 9, 1975 required all Government officials who own houses in Delhi and New Delhi and have also been allotted Government residence to vacate the Government residence before the stipulated date failing which penal rate of licence of market rate shall be charged besides necessary action to evict him from the Government residence. On the same day the appellant filed the present suit for eviction of the respondent. On January 16, 1976 the respondent applied for leave to defend. On March 10, 1976 the Rent Controller refused leave and decreed the suit filed by the landlord. A revision petition was filed by the respondent before the High Court which allowed the revision and set aside the order of the Rent Controller and remanded the proceedings to the Rent Controller for disposal according to law. Against the order of the High Court allowing the revision by the respondent the present appeal has been preferred to this Court by the landlord.

4. The question that arises in this appeal is whether the Rent Controller was right in refusing leave to the respondent to defend the eviction petition filed by the landlord.

5. In order to appreciate the point that arises for consideration it is necessary to refer to the relevant provisions of the Delhi Rent Control Act. Delhi Rent Control Act (Act No. 59 of 1958) came into force on December 31, 1958. By Chapter III the right of the landlord to evict the tenant was restricted. Section 14 prohibited any order or decree for recovery of possession of any of the premises being made by any court in favour of a landlord except under certain circumstances. The landlord was required to make an application to the Controller for recovery of the possession on one of the grounds mentioned in sub-clauses (a) to (1) in Section 14(1). The provisions of Section 14(1) (e) which are relevant may be referred to :

14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant;

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds, namely :-

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held that and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation. - For the purposes of this clause "premises let for residential purposes" 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;

6. By the Delhi Rent Control Act (Amendment) Ordinance (24 of 1975), 1975 the Delhi Rent Control Act was amended. The Ordinance was eventually replaced by the Delhi Rent Control (Amendment) Act 18 of 1976. The amending Act continued the provisions of the Ordinance but extended the summary procedure which was applicable to Section 14(1)(e) to evictions on the ground set out in Section 14A of the Act. The Amending Act came into force on February 9, 1976 but by virtue of sub-section (2) of Section 1 it was deemed to have come into force on December 1, 1975 i.e. on the date on which the Ordinance came into force. Section 14A conferred a right to recover immediate possession of premises to certain persons. The amended Section 14A(1) reads :

(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 immediately possession of any premises let out by him;

7. This section confers on a landlord who owns a residential accommodation in his own name or in the name of his wife, or dependent child in the Union territory of Delhi and was in occupation of any residential premises allotted to him by the Central Government or any local authority and is required by any general or special order made by the Government or the authority to vacate such residential accommodation or in default to incur certain obligations on the ground that he owns a residential accommodation in Delhi either in his own name or in the name of his wife or dependent child, a right shall accrue to such landlord to recover immediate possession of any premises let out by him. Apart from conferring rights under Section 14A a summary procedure for trial of applications made under Section 14(1)(e) and Section 14A is provided under Section 25A, 25B and 25C. Section 25A provides that the provisions of Chapter IIIA which contains Sections 25A, 25B and 25C and any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or any other law for the time being in force. The special procedure for disposal or application for eviction under Section 14(1) and Section 14A is prescribed by Section 25B. The procedure envisaged is that when an application under Section 14(1)(e) or Section 14A is filed by the landlord the Controller shall issue summons in the prescribed form. Sub-section (4) to the tenant shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. In default for eviction and obtains leave from the Controller. In default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid. Sub-section (5) to Section 25B states the conditions under which the Controller shall give leave to the tenant to contest the application. It requires that the affidavit filed by the tenant should disclose such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A. When once the leave is granted to the tenant to contest the application the Controller shall commence hearing of the application as early as practicable.

8. The introduction of Section 14A became necessary as the Government took a decision on September 9, 1975 that the Government servants who own houses in the Union territory of Delhi shall be required to vacate Government accommodation allotted to them within 3 months from October 1, 1975. If they fail to vacate the accommodation they were to be charged licence fee at market rates. The Government servant who were owning houses in the Union territory of Delhi could not get possession of their residential accommodation. It became necessary to confer on them the right to recover immediate possession of their premises and also to prescribe an expeditious procedure for achieving the object. According to the procedure specified in Section 25B it was made incumbent on the tenant to apply for and obtain leave to contest the application for eviction.

9. Coming to the facts of the case the Government took the decision to require the Government officers who have been allotted premises by the Government and who own their own houses in the area specified to vacate the premises allotted by the Government within 3 months from October 1,

1975. Notice of such intention was conveyed to the landlord on December 9, 1975. In the meantime on November 30, 1975 the officer retired from service. Thus on the date on which notice was served on him he had already retired. The petition for eviction was also filed on December 9, 1975 after the officer retired. The main contentions raised by the tenant in the petition for leave to contest were : (1) the landlord cannot invoke the provisions of Section 25B(5) as he was not a Government servant on the date of the petition : (2) the landlord had already filed a petition for eviction which was registered as O.S. 182 of 1974 and was pending before the Additional Rent Controller. As the eviction is sought on the same ground in the present petition it was submitted that this petition could not be entertained; (3) the premises which the respondent is occupying were let for the purpose of residential or professional purposes and therefore the landlord is not entitled to ask for eviction as the premises are not let for residential purposes.

10. The Rent Controller rejected all the contentions put forward by the respondent. He held that the question as to whether the landlord was a Government servant or not on the date when the notice was received and on the date when he filed the petition is irrelevant so long as he satisfied the requirements laid down in Section 14(1) of the Act. On the second contention the Rent Controller found that the ground for eviction under Section 14A is a new cause of action and different from the one that was raised in the previous petitions and hence the present petition is not barred. On the third point the Rent Controller found that it is not necessary for an application under Section 14(1), that the building should have been let for residential purposes as required under Section 14(1)(e) and it is sufficient if the landlord requires the premises for residential accommodation. The Rent Controller held that the grounds on which leave to resist an application can be granted are those that are specified in Section 25B(5) alone.

11. On appeal the High Court allowed the revision by the tenant mainly on the ground that the application for eviction must fail on account of the admitted fact that the landlord had retired from service on November 30, 1975 before the Ordinance came into force and was on that account liable to vacate the premises independently of his ownership of the premises in dispute.

12. The important question that arises for consideration is whether the landlord who retired from service on November 30, 1975 before the Ordinance came into force could avail himself of the provisions of Section 14A(1). A reading of Section 14A disclose that a right to recover immediate possession of premises accrues to certain persons if the requisite conditions are satisfied. The conditions are : (1) the landlord must be in occupation of any residential premises allotted to him by the Central Government or any local authority; (2) such landlord is required by a general or special order made by the 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. If the aforesaid conditions are satisfied a right shall accrue to such a landlord on and from the date of such order to recover immediate possession of any premises let out by him. It may be noted that the section does not require that the person who is in occupation of the premises allotted by the Government should be a Government servant. It is necessary that the person is required by the Government or authority to vacate such accommodation imposing certain consequences in the event of his not vacating. The policy decision taken by the Government on September 9, 1975 only related to Government servants who were in occupation of premises allotted to them by the Government. If the Government servant had another house in the locality he was to vacate within 3 months from October 1, 1975. This general order no doubt relates only to Government servants. After the decisions was taken it was realized that some provisions should be made to enable the persons in occupation of buildings allotted to them by the Government to get possession of the house they own

but have been let to tenants. In order to enable them to get possession of the premises let by them expeditiously Section 14A(1) was enacted and the expeditious procedure under Section 25B was made applicable. It may also be noted that the order served on the landlord on December 9, 1975 mentions that all Government officials who own houses in Delhi and have also been allotted Government residence are to vacate Government accommodation. The general circular dated September 9, 1975 as well as the notice served on the landlord thus support the view that the intention of the Government was to enable only those Government servants who are in occupation of Government accommodation and who own houses to get immediate possession, though Section 14A does not restrict the right to recover immediate possession to Government servants alone. In these circumstances, the conclusion arrived at by the High Court that a Government servant who had retired before the date on which he had filed the application is not entitled to the benefits of Sections 14(1) is understandable. This view was expressed by this Court in *Nihal Chand v. Kalyan Chand Jain* ((1978) 2 SCR 183, 190 : (1978) 1 SCC 49) wherein it was observed : "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" But this Court did not decide the issue because on the facts of the case it was of the view that the landlord was entitled to invoke the provisions of Section 14A(1) notwithstanding the fact that he had retired from Government service with effect from November 30, 1975.

13. In that case the notice was served on the appellant-landlord on September 30, 1975 which was before the date of retirement which was on November 30, 1975. On the ground that the right to evict the tenant accrued to the landlord when he was in service it was held that he was entitled to the rights conferred under Section 14A. In this case the notice was served on December 9, 1975 and the officer had retired on November 30, 1975. On the reasoning in the above case the appellant will not be entitled to the relief. The question therefore squarely arises in this case as to whether a Government servant who retired before the notice was served on him requiring him to quit the Government accommodation is entitled to the benefit of Section 14A(1).

14. It is not clear as to why the right to recover immediate possession is not confined to Government servants alone under Section 14A. It is clear that according to Government's policy statement the intention was only to require the Government servants to vacate, the premises allotted to them by the Government if they had their own houses in the area. It cannot be said that it was by inadvertence that the Legislature mentioned persons instead of Government servants and made the section applicable to persons other than Government servants. It is stated at the Bar that Government accommodation is provided not only to Government servants but also to Members of Parliament and other non-officials who occupy important positions in public life. The Court will not be justified in presuming that when the Government used the word "person" it meant only Government servants. The rule as to construction of the statutes is well-known and had been clearly laid down. *Craies on Statute Law* (6th Ed. p. 66) relying on *Tasmania v. Commonwealth* ((1904) 1 CLR 329) has stated the rule as follows :

The cardinal rule for the constructions of Acts or Parliament is that they should be construed according to the intention expressed in the Acts themselves.

The Court has to determine the intention as expressed by the words used. If the words of statutes are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver. Taking into account the object of the Act intention could be no difficulty

in giving the plain meaning to the word "person" as not being confined to Government servants for it is seen that accommodation has been provided by the Government not only to Government servants but to others also. In the circumstances, the Court cannot help giving the plain and unambiguous meaning to the section. It may be that the retired Government servants as well as others who are in occupation of Government accommodation may become entitled to a special advantage. But the purpose of the legislation being to enable the Government to get possession of accommodation provided by them by enabling the allottees to get immediate possession of the residential accommodation owned but let by them, the Court will not be justified in giving a meaning which the words used will not warrant. On this question therefore we find ourselves unable to concur with the view taken by the High Court.

15. The next question that arises is whether the rights conferred under Section 14A(1) are available to premises that had been let for residential as well as professional purposes. It is admitted that the premises were let for residential as well as professional purposes. Section 14(1)(e) requires that in order to avail the provisions of Section 14(1)(e) the premises should be "let for use as a residence". It has been held that when premises are let for residential as well as commercial or for residential and professional purposes the provisions of Section 14(1) (e) will not apply. This Court in *Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj* ((1962) 2 SCR 678 : AIR 1963 SC 337 : (1961) 2 SCJ 616), in construing Section 13(1)(a) of the Delhi and Ajmer Rent Control Act, 1952 held that premises let for residential purposes but used by the tenant with the consent of the landlord incidentally for commercial, professional or other purposes cease to be premises let for a residential purposes alone and as such the landlord would not be entitled to eject the tenant under Section 13 (1)(e) of the Act. Section 13(1)(e) allowed a decree for ejection to be passed if the Court is satisfied 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. On the facts of the case it was found that right from the commencement of the tenancy a substantial part of the premises was used by respondent 1 for his professional purpose, and they have also found that this has been done obviously with the consent of the landlord. The Court held that the professional use of a substantial part of the premises with the consent of the appellant clearly takes the case outside Section 13(1)(e). The view expressed in the above case was reiterated by this Court in *Kartar Singh v. Chaman Lal* ((1970) 1 SCR 9 : (1969) 1 SCC 760). On the facts it was found that the premises had been taken for residential-cum-business or professional purposes. By the rent deed the owner inducted as a tenant Labha Mal Arora who was a practising advocate. Along with the rent deed a letter was written by the landlord to the tenant stating that he had no objection to the tenant having his professional office along with the residence. After the tenant's death in 1952 the premises were used only for residence by his sons and widow till 1957. In August, 1957 the first respondent who qualified himself as a legal practitioner started having an office in the premises. Another son also started practicing as a lawyer in the same premises some time later. The landlord served a notice on the sons and widow of the deceased for requiring them to vacate the premises. The court two rooms were used by the original tenants as his office, one room by his clerk and the premises had been let for residence-cum-business purposes. The plea that the tenant was only granted a licence to use the premises for residence-cum-profession which was personal to him and which came to an end on his death was not accepted. The court agreed with the view expressed in *Dr. Gopal Dass Verma* case (supra) that a tenant could not be ejected under Section 13(1)(h) because the tenancy of premises let out or used for residence and carrying on of profession could not be terminated merely by showing that the tenant had acquired a suitable residence. The court rejected the contention that the tenant, Labha Mal Arora, had been merely given a permission or licence which was of a personal nature to his office. It also was unable to find

that any test of dominant intention was applied in Dr. Gopal Dass Verma case.

16. It is not necessary for us to go into the question whether the words "let for residential purposes" would exclude premises let predominantly for residential purposes with a licence to use an insignificant part for professional purposes such as lawyer's or doctor's consulting room. The words used in Section 14A are clearly different. Section 14A contemplates the owning by the landlord in the Union territory of Delhi a residential accommodation. If he owns a residential accommodation he has a right to recover immediately possession of any premises let out by him. The emphasis is on residential accommodation. If the premises are one intended for residential accommodation it will not make any difference if the premises are let for residential as well as other purposes. Even though the residential accommodation is let for professional or commercial purposes the premises will not cease to be for residential accommodation. It is common ground that the premises let were put up under the Delhi Development Authority's scheme for residential purposes. The only plea was that though it was put up for residential purposes it was let for residential as well as for professional purposes. The requirement in Section 14(1)(e) that in order to enable the landlord to recover possession the premises ought to have been let for residential purposes is not there in Section 14A(1). In this view we agree with the High Court that it is not necessary in a petition for eviction under Section 14A to satisfy that it was let for residential purposes only. This view has been taken by this Court in *Busching Schmitz Private Ltd. v. P. T. Menghani* ((1977) 3 SCR 312 : (1977) 2 SCC 835).

17. The submission that as a previous application for possession by the landlord was pending this petition would not be permissible cannot be accepted as the grounds on which an application for possession is filed under Section 14A(1) are different and based on special rights conferred on the class of persons who occupied Government accommodation.

18. The only other question that remains to be considered is the scope of the right to contest the suit, that is, on what grounds can the tenant seek leave to resist the suit by the landlord under Section 14A(1). The special procedure prescribed under Section 25B is made applicable in cases where the landlord applies for recovery of possession on any of the grounds specified in clause (e) of the Proviso to sub-section (1) of Section 14 or under Section 14A. Sub-section (5) of Section 25B says that the Controller shall give leave to the tenant to contest if the affidavit filed by the tenant discloses such facts that would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the grounds specified in clause (e) of the Proviso to sub-section (1) of Section 14 or Section 14A. Under Section 14(1)(e) the tenant may resist the application on the grounds specified namely that the premises are not let for residential purposes, that they are not required bona fide etc. So far as the facts which would disentitle the landlord from obtaining an order under Section 14A are concerned they can only be that the landlord is not a person in occupation of residential premises allotted to him by the Central Government or that no general or special order has been made by the Government requiring him to vacate such residential accommodation on the terms specified in the section. Leave to contest an application under Section 14A(1) cannot be said to be analogous to the provisions of grant of leave to defend as envisaged in the Civil Procedure Code. Order 37, Rule 2, sub-rule (3) of the Code of Civil Procedure provides that the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend. Sub-rule (1) of Rule 3 of Order 37 lays down the procedure to obtain leave. Under the provisions leave to appear and defend the suit is to be given if the affidavit discloses such facts as would make incumbent on the holder to prove consideration or such other facts as the court may deem, sufficient to support the application. The scope of Section 25B(5) is very restricted for leave to contest can only be given if the facts are such as would

disentitle the landlord from obtaining an order for recovery of possession on the ground specified in Section 14A.

19. The learned Counsel for tenant submitted that the requirements of Section 14(1)(e) should also be satisfied before the landlord could take advantage of the procedure provided under Section 25B. The learned Counsel drew our attention to Section 25C(1) and Section 25C(2) and submitted that the reading of those two sub-section would indicate that before an eviction could be ordered under an application under Section 14A(1) the requirements of Sections 14(6) and (7) should be satisfied. While Section 14(1) enumerates the grounds on which the landlord can get a decree for recovery of possession against a tenant, sub-sections (2) to (11) place certain restrictions. Sub-section (2) provides restriction as to right for recovery of possession under Section 14(1)(e). Restriction regarding the right to recover possession under clause (3) is laid down in sub-sections (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years has elapsed from the date of the acquisition. Sub-section (7) to Sections 14 lays down that where an order for the recovery of possession of any premises is made on the ground specified in clause (e) of the proviso to sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of the order. Section 25C makes an exception to the requirement of Section 14(6) to the effect that where a landlord is in occupation of any residential premises allotted to him by the Central Government or any local authority and who fulfils the requirements of Section 14A(1) the requirement under Section 14(6) that he would not be entitled to possession unless a period of five years has elapsed from the date of his acquisition of the premises is not applicable. In other words, he can straightway obtain possession without the impediment imposed under Section 14(6). Great stress was laid by the learned counsel for the tenant on Section 25C(2) which provided that in the case of a landlord who, being a person of the category specified in sub-section (1), has obtained, on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A, an order for the eviction of a tenant from any premises, the provisions of sub-section (7) of Section 14 shall have effect as if for the words "six months", occurring therein, the words "two months" were substituted. The contention was that if Section 14A(1) stood by itself and if a landlord applying under Section 14A(1) would straightway get the possession after the tenant cannot contest the suit on the grounds specified in Section 25B(5) there is no need for mentioning the provisions of Section 14(6) and Section 14(7) and prescribing a lesser period for a proscribed period under Section 14(7). In other words, the submission was that an application for possession under Section 14A should also satisfy the requirements of Section 14(1)(e). The provisions of Section 25B and 25C are applicable to both application under Section 14(1)(e) and under Section 14A. Applications under Section 14(1)(e) are governed by Section 14(6) and Section 14(7). By introduction of Section 25C the condition imposed in Section 14(6) is varied. The condition imposed under Section 14(6) is made not applicable to persons who satisfy the requirements under Section 14A meaning thereby that this restriction will be applicable only to an application under Section 14(1)(e). Section 25C(2) makes it clear that not only in the case of an application under Section 14(1)(e) but also under Section 14A the term of six months prescribed in Section 14(7) is reduced to two months. The reason for specifying the period of two months in the case of Section 14A is understandable, for otherwise an applicant under Section 14A would be entitled to possession immediately. By prescribing a specific a specific period of two months under Section 25C(2) it is made clear that even an applicant under Section 14A would have to satisfy the conditions laid down by Section 25C i.e. a period of two months should elapse before the landlord is entitled to a obtain possession from the date of an order for recovery of possession. This submission also fails.

20. In the result we hold that the landlord who retired before the date on which the notice to quit

was given by the Government is also entitled to the benefits of Section 14A and allow the appeal with costs.

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