S. B. Noronah

Vs

Prem Kumari Khanna

Civil Appeal No. 290 of 1979

(V.R. Krishna Iyer, P.N. Shinghal JJ)

16.08.1979

JUDGMENT

KRISHNA IYER, J. –

1. This appeal is symptomatic of a social pathology which afflicts the Justice System at every level with none concerned to cure it.

2. The extraordinary scarcity of accommodation in our country has produced the legislative and litigative phenomena of tenants' protection laws and interminable 'eviction' cases. The situation cried for a social audit of the explosive expansion of ruinous and pathetic 'rent control litigation' and an urgent yet dynamic policy of promoting house construction for the lower brackets of Indian humanity.

3. A landlady let out her premises to another lady several years ago (1968) for a term and, thereafter, from time to time, continued the possession of the tenant on fresh lease and increase in rent. Every time there was homage to the law by grant of sanction by the Rent Controller under Section 21 of the Delhi Rent Control Act 1958 (the Act, for short), as if the letting were of residential accommodation. It is apparent that all these year an elitist 'residential school' is being run in the premises and that is the purpose expressly recited in all but the last lease deed of December 1975. This lease recited blandly that 'the lessee requires a suitable accommodation for residential purpose. The period of the lease having expired the landlady applied for summary eviction by application for execution - a novel procedure enjoyed by the landlords of this capital city which relives them of the need even to file a suit for eviction. The tenant, whose expensive and lucrative school was about to be uprooted for want of habitation, hunted for a legal plea to resist the threat of dispossession. Technicality is the unfailing resource of the Indian litigant and the ingenious defense, among others, was set up that because the application eviction did not mention that the letting was 'in writing' it was fatally flawsome. Better pleas which merited serious consideration were overruled but this little infirmity in the pleading loomed large in the eyes of the Rent Controller who, for that reason alone, rejected the relief.

4. The inevitable appeal to the Tribunal followed. An application for amendment of the pleading, by the way of abundant caution, to make good the verbal deficiency was also made. Furious forensic battles raged and the appellant Tribunal as well as the High court allowed the appeals and the amendments, overruling the further plea of limitation for the application as on the date of the amendment. The worsted tenant has secured leave to appeal and there is an application for revocation of leave.

5. We have been addressed two main arguments plus other points of lesser moment. The first is that the application for execution is defective because in the narration of facts the lease is mentioned but the words 'in writing' are not stated. It is further contended that by the time these words were supplied by the amendment of the application, the period of limitation (six months) had elapsed and that bar prevented entertainment of the proceedings.

6. Pleadings are not statutes and legalism is not verbalism. Common sense should not be kept cold storage when pleadings are construed. It is too plain for words that the petition for eviction referred to the lease between the parties which undoubtedly was in writing. The application, read as a whole, did imply and we are clear that law should not be stultified by courts by sanctifying little omission as fatal flaws. The application for vacant possession suffered from no verbal lacunae and there was no need to amend at all. Parties win or lose on substantial questions, not 'technical tortures' and courts cannot be 'abettors'.

7. The further arguments on limitation when a vital fact creative of a cause of action is brought in by amendment after expiry of limitation is an important question which need not be considered in the view we have taken to the adequacy of the pleading.

8. The next issue is of importance not merely for this lis but also for the sensitive application of Section 21 in its social perspective. The notorious rack-renting and impotence of legislation against unreasonable eviction in the capital city of Delhi (and elsewhere) compels us to take a close look at the facile provision in Section 21, its social purpose and functional distortion, its potential for subversion of the statutory scheme unless, by interpretation, it is canalised and the 'mischief rule' in Heydon's case applied. After all, for the common man, law-in-action is what the court says it is.

9. To maintain the integrity of the law the court must 'suit the action to the word, the word to the action', and so we have to fathom, from the language employed and the economic milieu, what the meaning of Section 21 is and save it from possible exploitation by the unscrupulous landlords for whom 'fair is foul' and foul is fair'.

10. Rent control legislation in Delhi, as elsewhere in the country, is the broadly intended 'to provide for the control of rents and eviction and of the rates of hotels and lodging houses, and for the lease of vacant premises to government, in certain areas in the Union Territory of Delhi.

11. This is understandable where the city population swells and the city accommodation stagnates, the people suffocated for space and landlords' make hay' playing the game of 'each according to his ability to grab'.

12. Parliament has built into the Act restriction on eviction. 'Section 14(1) starts off :

> Notwithstanding anything to the contrary in any other law or contract, no order or decree for the recovery of possession of the 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 only, namely :

13. The scheme of embargo on eviction makes a pragmatic swerve by the time we reach Section 21. We can correctly visualise the scope and sweep of this provision only in its proper social setting. It

carves out a category for special treatment'. While no landlord can evict without compliance with Section 14, 19 and 20, does a liberal eviction policy underlie Section 21 ? Apparently contrary but actually not, once we understand the raison d'etre of the section. Parliament was presumably keen on maximising accommodation available letting, realizing the scarcity crisis. One source of such spare accommodation which is usually shy is potentially vacant building or part thereof which the landlord is able to let out for a strictly limited period provided he has some credible assurance that when he needs he will get it back. If an officer is going on other assignment for a particular period, or the owner has official quarters so that he can let out if he is confident that on his retirement he will be able to re-occupy, such accommodation may add to the total lease-worthy houses. The problem is felt most for residential uses. But no one will part with possession because the lessee will become a statutory tenant and, even if bona fide requirement is made out, the litigative tiers are so many and; the law's delays so tantalising that no realist in his sense will trust the sweet promises of the tenant that he will return the building after the stipulated period. So the law has to make itself creditworthy. The long distance between institution of recovery proceedings and actual dispossession runs often into a decade or more - a factor of despair which can be obviated only by a special procedure.

14. Section 21 is the answer,. The law seeks to persuade the owner of premises available for letting for a particular or limited period by giving him the special assurance that at the expiry of that period the appointed agency will place the landlord in vacant possession. As stated earlier, the critical need was for residential not non-residential housing. Therefore, Section 21 confines this special remedy to letting for residential use only. Parliament had the wholesome fear that if the section were not controlled by many conditions it might open the flood gates for wholesale circumvention of the rent control legislation by ingenious landlords exploiting the agonising need of houseless denizens. Against this back-drop, let us read Section 21 and highlight the essential conditions written into the provision :

> 21. Where a landlord does not required the whole or any part of the premises for a particular period, and the landlord, after obtaining the permission the Controller in the prescribed manner, lets the whole of the premises or part thereof as residence for such period as may be agreed to in waiting between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in the occupation of such premises.

15. We must notice that Section 21 runs counter to the general scheme and, therefore, must be restricted severely to its narrow sphere. Secondly, we must place accent on every condition which attracts the section and if any one of them is absent and the section cannot apply and, therefore, cannot arm the landlord with a resistless eviction process. Thirdly, we must realise that the whole effect of Section 14 can be subverted by ritualistic enforcement of the conditions of sanction under Section 21 or mechanical grant of sanction therein. Section 21 overrides Section 14 precisely because it is otherwise hedged in with drastic limitations and safeguards itself against landlord's abuses.

16. What, then are those conditions and safeguards ? The first condition is that the landlord does not require the demised premises 'for a particular period' only. This means that he must indicate to the

authority before which sanction is sought for letting what is the particular period for which he can spare the accommodation. The Controller must be satisfied that the landlord means what he says that and it is not a case of his not requiring the property indefinitely as distinguished from a specific or particular limited period of say one year, two years or five years. If a man has a house available for letting for an indefinite period and he so lets it, even if he specifies as pretence, a period or term in the lease, section 21 cannot be attracted. On the other hand, if he gives a special reason why he can let out only for a limited period and requires the building at the end of that period, such as that he expects to retire by then or that he is going on a short assignment or on deputation and needs the house when he returns home it is good compliance. The second condition is that the letting must be made for a residential purpose. The house must be made over 'as a residences. If it is let out for a commercial purpose Section 21 will not apply, whether the ritual of a sanction under that provision has been gone through or not. Thirdly, the Controller's permission is obligatory where he specified the particular period for which he gives permission and further qualifies the permission for the use as a residence. The Controller exercise an important regulatory function on behalf of the community. The fact that a landlord and a potential tenant together apply, setting out the formal ingredients of the Section 21, does not relive the controller from the being vigilant to inquire and satisfy himself about the requisites of the landlord's non-requirements 'for a particular period' and the letting itself being 'as a residence". A fraud on the statute cannot be permitted especially because of the grave mischief that may be perpetrated in such event.

17. It is easy to envisage the terrible blow to the rent control law if Section 21 were freely permitted to subvert the scheme of Section 14. Every landlord will insist on a tenant going through the formal exercise of Section 21, making ideal averments in the terms or that section. The consequences will be that the both Civil Procedure Code which prescribes grounds for eviction will be eclipsed by the pervasive operations of Section 21. Neither grounds for eviction nor suits for eviction will thereafter be needed, and if the landlord moves the court for a mere warrant to place the landlord, through the court process, in vacant possession of the premises, he gets it. No court-fee, no decree, no execution petition, no termination tenancy - wish for possession and the court is at your command. Such a horrendous situation will be the negation of the rule of law in this area. So is it that we deem it necessary to lay down the law as implied in Section 21.

18. When an application under the Section 21 is filed by the landlord and/or tenant, the Controller must satisfy himself by such inquiry as he may make, about the compulsive requirements of that provisions. If he makes a mindless order, the court, when challenged at the time execution, will go into the question as to whether the twin conditions for sanction have really been fulfilled. Of course, there will be a presumption in favour of the sanction being regular, but it will still be open to a party to make out his case that in fact and in truth the conditions which make for a valid sanction were not present. We do not agree with the statement of the law by the Delhi High Court striking a contrary note. In this context, we may make special reference' to Kasturi Lal case (1976 RCJ 582), a decision of the Delhi High Court. It is true as Misra, J. in that case, following earlier decisions has observed that the provisions of Section 21 are designed to meet the problem of shortage of housing in Delhi. If the landlord does not need the premises for a limited period, Section 21 permits him to lease it out during that period. Without the facility of Section 21 the landlord might have preferred to keep the premises vacant, but that does not mean that the law surrenders itself to this landlord and releases him from all conditions. That is why the need for sanction and the mandatory conditions for such sanction are specified in the section. It is altogether wrong to import the idea that the tenant having taken advantage of induction into the premises pursuant to the permission, he cannot challenge the legality of the permission. As between unequals the law steps in and as against statutes there is no estoppel, especially where collusion and fraud are made out and high purpose is involved.

19. The doctrine of estoppel cannot be invoked to render valid a proceeding which the legislature has, on grounds of public policy, subjected to mandatory conditions which are shown to be absent :

> Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers. A petitioner in a divorce suit cannot obtain relief simply because the respondent is estopped from denying the charges, as the court has a statutory duty to inquire into the truth of a petition. (HALSBURY'S LAWS OF ENGLAND, Fourth Edition, Vol. 16, para 1515)

20. It is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made be modern law. Even so, "a judgment obtained by fraud or collusion, even, it seems, a judgment of the House of Lords, may be treated as a nullity" (Ibid, para 1553). The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

21. Law that non-performs stultifies the rule of law and so it is that we stress the need for strict compliance. Or else, the sanction is non est. Collusion between the strong and the weak cannot confer validity where the mandatory prescriptions of the law are breached or betrayed. We have said enough to make the point that it is open to the tenant in the present case to plead and prove that the sanction under Section 21 is invalid, and if it is void the executing court is not debarred from holding so.

22. We, therefore, hold on the first point that no question of amendment arises in the present case and the application before the Controller did not suffer from any deficiency. On the second point we hold that it is perfectly open to the Controller to examine whether the sanction under Section 21 is a make-believe, vitiated by fraud and collusion.

23. We make it clear that the Controller is concerned with delivery of possession at the expiry of the lease of 1975 and he will, therefore, examine the position with reference to that lease only. The appellant-tenant urged a further contention that because there was fraud the court could not assist the party in fraud even if both sides were involved in the fraud. He invoked the doctrine of in pari delicto potior est conditio defendantis. We are not inclined to examine these contentions but leave it open to the executing court to go into the such pleas as are permissible at the execution stage. Beyond that he has no jurisdiction but within that he has a duty to decide. On these findings we dismiss the appeal but direct the controller to go into the question of the validity of the sanction and such other objections as may be available in the light of our observations recorded above. The first point raised is untenable and we should have directed costs while dismissing appeal. The second point raised is of great public moment and the appellant has broadly succeeded on that question. The result is that the community has benefited by our declaration of the law and the parties must, therefore, bear their respective costs throughout.

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