

Mohan Singh

Vs

Subhash Chander Julka

Civil Appeal No. 241 of 1979

(Syed M. Fazal Ali, A.P. Sen JJ)

24.10.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the order of the High Court of Delhi dismissing an application in revision filed by the appellant before the High Court.

2. In the view that we take in the case, it is not necessary to give the facts in detail as they are already contained in the order of the Rent Controller. The plaintiff-respondent had filed the petition for eviction of the appellant on the ground of his bona fide requirement in respect of the premises which consist of two rooms, one store-room, open verandah, courtyard, bathroom, latrine, kitchen on the first floor and barsati on the second floor with open terrace. The eviction was sought for in respect only of the first floor and a portion of the second floor, the ground floor being occupied by the landlord-respondent himself. The property in dispute was originally evacuee property but subsequently the plaintiff-respondent appears to have acquired the property in dispute from the custodian. The appellant filed an application before the Rent Controller for leave to defend the suit under the provisions of Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as the 'Rent Act') but the Rent Controller rejected the application as it found that no arguable points were raised in the defence by the appellants. Against that order, the appellant went up to the High Court in revision which set aside the order of the Rent Controller and the decree for eviction passed by him and remanded the case to the Rent Controller for permitting the appellant to defend the suit. Thereafter, the appellant filed his written statement and took various pleas challenging the title of the respondent as also the bona fide requirement alleged by the landlord. The Rent Controller, after taking the evidence of the parties as required under Section 25-B, found that the plaintiff respondent had proved his case of bona fide requirement and consequently passed a decree for eviction of the appellant. Thereafter, the appellant filed an appeal before the Rent Control Tribunal which having been dismissed, the appellant moved the High Court in revision which also was summarily dismissed and hence this appeal. We might also mention that the respondent before seeking the decree for eviction had moved the competent authority under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter to be referred to as the 'Slums Act') and got the permission from the competent authority for evicting the appellant.

3. In support of the appeal, Mr. V. C. Mahajan, raised two points, one of which he did not press, and, in our opinion, rightly. The first point which was raised by the appellant was regarding the constitutional validity of Section 25-B of the Rent Act. In view of our decision in *Kewal Singh v. Lajwanti* (Now reported at (1980) 1 SCC 290) which has upheld the constitutional validity of the Rent Act, the contention regarding the vires of Section 25-B of the Rent Act does not survive and

was, therefore, given up.

4. The other contention raised by Mr. Mahajan was that the competent authority under the Slums Act had only granted permission with respect to a portion of the premises in dispute and, therefore, a decree for eviction by the Controller could not have been passed for the entire premises. In support of the contention, the learned counsel relied on a decision of this Court in *Lal Chand v. Radha Kishan* (AIR 1977 SC 789, 795 : (1977) 2 SCC 88, 97-8 (para 19)), where this Court observed as follows : (SCC pp. 97-8, para 19)

The authorities under the Slum Clearance Act who are exclusively invested with the power to determine whether a decree for eviction should be permitted to be executed and, if so, to what extent, had finally decided that question, refusing to allow the respondent to execute the decree in respect of the ground floor premises. By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the Slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of *res judicata*.

A perusal of the observations made by this Court would clearly show that the question whether or not a competent authority under Section 19 of the Slums Act could grant partial permission was not at all raised or mooted in the case cited above. In fact, this Court proceeded on the footing that as the subsequent suit before the Controller was filed for a relief which was included in the larger relief for which the application before the competent authority of the Slums Act was made, the suit was barred by the principle of constructive *res judicata*. This point, however, does not arise in the present case because the counsel for the respondent has submitted that Section 19 does not contemplate or authorise a competent authority to grant partial permission. In view, however, of the finding of fact arrived at by the Controller on this question, which does not appear to have been disputed either before the Tribunal or the High Court, it is not necessary for us to go into the question whether or not the competent authority is empowered to give partial permission for eviction.

5. It would appear that the plaintiff-respondent did seek eviction from the entire demised premises and not only from a portion of the premises which were rented out to the appellant, and which has already been described by us in the opening part of this judgment. Furthermore, this point was specially raised before the Controller and negatived by him. In this connection, the Controller observed as follows :

The learned counsel for the respondent argued that no mention about the second floor premises are made in this judgment and therefore it should be presumed that no permission about the second floor is granted. It is not disputed that the permission was sought only for premises in dispute. The petitioner has obtained a photocopy of plan filed before the competent authority (slum) when the clerk of the competent authority (S) produced the relevant file in the court in pursuance to the summons. The photocopy of the plan is Ex. AW 2/1. In this plan, the barsati or the khoka of timber on the second floor is shown. Obviously, the petitioner applied for the permission to evict the respondent from the entire disputed premises including the khoka or barsati. The concluding sentence of the judgment quoted above has merely described the premises in respect of which the permission is granted. The whole judgment does not make any remarks meaning that the permission in respect of the

part of the premises in question is withheld or refused. The omission of mention the barsati on the second floor is merely a clerical omission and it cannot be presumed that by that omission the competent authority (slum) intended to refuse the permission to evict the respondent from the Khoka.

6. The Controller has rightly pointed out that a mere clerical omission of the barsati in the second floor would not have the effect of wiping out the extent of the permission granted by the Controller in respect of the premises in dispute. The Controller has also pointed out that it was not disputed before him that the permission was actually sought before the competent authority only for the premises in dispute. Furthermore, the respondent has filed a plan of the premises in dispute which was filed before the Rent Controller and the one filed before the competent authority under the Slums Act, and on a comparison of the two plans, we find that they are absolutely identical. In these circumstances, therefore, the order of the competent authority has to be read in the light of the pleadings before him and the map filed regarding the premises for which permission for eviction was sought. If the competent authority mentioned in its order that the permission is granted for a portion of the property, what it really meant was that as the ground floor was occupied by the respondent himself, the premises in dispute constituted only a portion of the entire property. The order of the competent authority, therefore, in the circumstances, must be clearly relatable to the premises in dispute which only was for consideration before him and the competent authority did not give any finding that he wanted to confine or restrict his order to a part of the premises by splitting the premises into two parts so as to grant permission in respect of one and not to the other. Thus, in view of the finding of fact given by the Rent Controller which has not been shown to be incorrect before us, it is not possible for us to hold that the competent authority had given permission only for a portion of the premises in dispute and not for the entire premises. In this view of the matter, the contention raised by the appellant must fail and is accordingly overruled.

7. For the reasons given above, the appeal is dismissed but in the circumstances of the case, there will be no order as to costs. The decree of eviction passed by the Controller is upheld. Time till May 31, 1980 is given to the tenant to hand over peaceful and vacant possession to the landlord on filing an undertaking to this Court within a month accompanied by an affidavit that he would do so on the date fixed and shall not induct any other person on the premises. The tenant will, during this period, continue to pay the compensation for wrongful use of the premises equivalent to the amount of the rent and clear all arrears.

In respect of Civil Appeal 241 of 1979 with Civil Miscellaneous Petitions 18539 and 18528 of 1979 and the review petition, decided on December 7, 1979 :

FAZAL ALI, J. –

As the undertaking has not been filed by the appellant as required by Court's Order dated October 24, 1979, the Order granting time stands vacated and the decree becomes executable at once. Civil Miscellaneous Petition No. 18528 of 1979 is dismissed.

2. The review petition is also accordingly dismissed.

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