

M/s. Jain Malleables

Vs

Bharat Sahay

Civil Appeal No. 1472 October 1980

(V.D. Tulzapurkar, Baharul Islam, A. Varadarajan JJ)

08.12.1981

JUDGMENT

VARADARAJAN, J. –

1. This appeal by special leave is directed against the one-word Order dated February 1, 1980 of the learned Single Judge of the Delhi High Court dismissing Civil Revision Petition No. 122 of 1980 in limine. The tenant who were respondents in the rent control eviction petition, filed the civil revision petition against the Rent Controller's order dated October 30, 1979, declining to permit them to raise certain grounds of defence while granting leave to defend the eviction petition on certain other grounds. Special leave to appeal against the Order of the learned Single Judge of the High Court has been granted by this Court only on the question whether Section 14-A of the Delhi Rent Control Act, 1958 is applicable is not to the facts and circumstances of the case 'in view of the later Circular of 1977'. The 'later Circular of 1977' mentioned in the special leave granted by this Court on August 5, 1980 the Officer Memorandum dated July 14, 1977 of the Joint Secretary to the Government of India, Ministry of Works and Housing Directorate of Estates, hereinafter referred to as the 'second Notification'. The same Joint Secretary to the Government of India in the same Ministry had issued the earlier Memorandum dated September, 9, 1975, hereinafter referred to as the 'first Notification'.

2. The respondent-landlord filed the petition for eviction of the appellants under Section 14-A read with Section 25-B of the Delhi Rent Control Act, 1958, hereinafter referred to as 'the Act'. In the eviction petition the respondent had alleged that by virtue of his being a government servant he has been allotted residential accommodation at No. 83, Lodhi Estate, New Delhi since November 1971. Under the first Notification he is required to vacate the government accommodation and shift to his own house No. 11-B Maharani Bagh, New Delhi, which is now in the occupation of the appellants, and if he failed to do so he is to incur the obligation of paying rent/licence fee of Rs. 1448 per mensem on the ground that he owns a residential buildings in the Union Territory of Delhi and still continues to occupy government accommodation. The appellants have not vacated the premises occupied by them in spite of several assurances given by them since February 1976. The respondent is paying a penal rent of Rs. 1448 per mensem for the government accommodation because he had not vacated that accommodation provided to him by the Government as a government servant.

3. After presentation of the eviction petition and service of notice under Section 25-B of the Act, the appellants filed a petition for grant of leave to defend the main petition. One of the objectives disallowed, with which we are concerned in this appeal, is that in view of the second Notification the respondent is not required to vacate the government accommodation now available to him and that he is, therefore, not entitled to evict the appellants under the provisions of Section 14-A of the Act. The civil revision petition filed by the appellants edginess the order of the Additional Rent

Controller has been dismissed by the learned Single Judge of the High Court as mentioned above. The appellants have, therefore, filed this appeal by special leave against that order.

4. We are concerned in this appeal with Section 14-A (1) of the Act, which reads thus :

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 argue, 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 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 :

Provided that nothing in this section shall be construed as conferring a right on a landlord owning, in the Union Territory of Delhi, two or more dwelling houses, whether in his own name or in the name of his wife or dependent child, to recover the possession of more than one dwelling house and it shall be lawful for such landlord to indicate the dwelling house, possession of which he intends to recover.

5. There is no dispute that the respondent is the owner of the premises in question, namely, 11-B, Maharani Bagh, New Delhi, now occupied by the appellant on a rent of Rs. 2100 per mensem and that he is at present in occupation of government accommodation at No. 83, Lodhi Estate, New Delhi and is obliged to pay penal rent/licence fee of Rs. 1448 per mesne. The relevant portion of the first Notification reads thus :

1. That undersigned is directed to say that the question of allotment of Government residential accommodation to officers owning houses at or near the stations of their posting has been under consideration of Government for some time past. It has now been decided, in supersession of all previous orders on the subject as follows :

(i) These Government servants, who build houses in future at the place of their posting, within the limits of any local or adjoining municipality, whether with or without Government assistance, or who become owners of houses in future - either in their own names or in the names of any members of their families - shall be required to vacate Government accommodation in their occupation from the date their own houses are fit for occupation.

(ii) Those Government servants, who have already built houses at the place of their posting within the limits of any local or adjoining municipality, whether with or without Government assistance, or who own houses - either in their own names or in the names of any members of their families - shall be required to vacate the Government accommodation allotted to them, within three months from October 1, 1975. If they do not vacate Government accommodation after the period, they would be charged licence fee at market rates.

(iii) Hence onward, no Government accommodation should be allotted to an officer owning a house at the place of his posting within the limits of any local or adjoining municipality. A certificate shall be obtained from a prospective allottee that he has no house at the station of his posting within the limits of any local or adjoining municipality - either in his own name or in the name of any member of his family.

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3. The Ministry of Home Affairs, etc. are requested to bring the above decision of Government to the notice of all their attached and subordinate offices, and ensure that the decision is implemented in respect of different pools of Government residence under their control.

4. Insofar as general pool accommodation is concerned, the Ministry of Home Affairs, etc., are requested to bring this to the notice of all Government servants who are eligible for general pool accommodation as well as those who have already been allotted accommodation from the general pool, asking them by October 15, 1975 to indicate whether they have their own houses as covered by these orders. In case they have, a declaration may be obtained from them in the prescribed proforma and forwarded to the Directorate of Estates (Coordination I Section) by November 15, 1975. Other officers who do not own houses should also furnish a declaration to that effect. All official who have been allotted general pool accommodation may be advised that it is their responsibility to inform the Directorate of Estates, when they or any member of their families become owners of houses in future, within one month from the date of becoming such owners. All officers eligible for general pool accommodation may also be warned that serve action will be taken against them in case they furnish any incorrect information.

6. In addition to this general first Notification relating to government accommodation in the occupation of government employees there is a special order dated January 22, 1976 of the Assistant Director of Estates, New Delhi calling upon the respondent to vacate the government accommodation No. 83, Lodhi Estate allotted to him since December 31, 1975, failing which he would be charged market rent with effect from January 1, 1976 at the rate fixed by Government from time to time and informing him that a bill at the market rate of licence fee for the said premises will follow.

7. In the affidavit filed in support of the petition for grant of leave to defend the main eviction petition the appellants have stated that the respondent is occupying a huge, massive and palatial bungalow in the Lodhi Estate, New Delhi built on an area of about two acres and allotted to him by the Government and that whereas he is paying an alleged rent of Rs. 1448 per mensem for that accommodation, he is getting a rent of Rs. 2100 per mensem for his premises occupied by the appellants and he is thereby gaining a sum Rs. 652 per mensem. The appellants have further stated in that affidavit that there is a clear shift in the policy of the Government whereby government accommodation is made available to even those employees who happen to have their own houses at Delhi and that Government have modified the notification relied upon by the respondent whereby house-owning officials have become eligible for allotment of government accommodation at the places of their posting with effect from June 1, 1977.

8. The notification said to modify the first Notification is the second Notification. The relevant portion of that Notification reads thus :

1. The undersigned is directed to say that the orders contained in this Ministry's

Office Memorandum No. 12031(1) /74-Pol. II, dated September 9, 1975, as modified from time to time have been reconsidered. Government has decided that the restrictions on allotment of accommodation to house-owning officers should be modified with effect from June 1, 1977, making house-owning officers eligible for Government accommodation as communicated in this Ministry's Officer Memorandum of even number date June 29, 1977. It has also been decided that allotment of such accommodation to a house-owning official will be on normal rent if the income from his own house does not exceed Rs. 1000 p.m. or half the market rent if the income exceed Rs. 1000 p.m. and does not exceed Rs. 2000 p.m. and on full market rent if the income is above Rs. 2000 p.m. Rent will be recovered on the same basis w.e.f. June 1, 1977 also from house house-owning officials who are retaining Government accommodation on payment of market rents. These decisions will apply equally whether the house is owned by the officer or his/her wife/husband or by his/her dependent children.

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3. Allotment of accommodation to house-owning officers who have already vacated Government accommodation - Such officers will be considered for allotment of accommodation in their turn on the basis of their priority date under the allotment rules. No preference should be shown to them in the matter of allotment in consideration of the fact that they were earlier in occupation of Government accommodation and had vacated it in compliance with the earlier order to which the officers are normally entitled without restriction of any locality or without any reference to the type of accommodation which the officers were occupying previously. As usual, officers eligible for types V and above should also be considered for allotment in the types next below on the basis of their priority for such types. After accepting initial allotment, they will be eligible for change in the normal manner in accordance with the allotment rules.

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6. Insofar as the general pool is concerned officers who have already vacated Government accommodation may submit fresh applications for allotment of accommodation in the prescribed application form, indicating the details of the houses owned by them or their spouses or dependent children, along with documentary proof of the income they derive from the houses they own. House-owning officers, who are continuing in Government accommodation, should also furnish suitable documentary proof of the income by they get from their private houses, to enable the Director of Estates to fix the license fee recoverable from them w.e.f. June 1, 1977.

9. Mr. Madan Bhatia, learned counsel for the appellants, submitted that while under the first Notification the respondent was required to vacate the government accommodation within three months from October 1, 1976 on pain of being liable to pay licence fee at the market rate if he failed to vacate within that time, government employees like the respondent have become eligible for government accommodation under the second Notification and are, therefore, not obliged to vacate the government accommodation and that the respondent is, therefore, not entitled to seek eviction of the appellants from his premises under Section 14-A of the Act though may file a

petition for eviction under Section 14(1) (e) of the Act which is a general provision applicable to all landlords who seek to evict their tenants on the ground that they require the premises for their own bona fide occupation. Section 14(1) (e) reads thus :

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 only, namely :

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(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 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 residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

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10. In support of the contention that in view of the second Notification the respondent is not entitled to have recourse to the previous of Section 14-A of the Act, Mr. Madan Bhatia relied upon the decision of this Court in *Busching Schmitz Private Ltd. v. P. T. Menghani* (1977) 3 SCR 312 : (1977) 2 SCC 835 : AIR 1977 SC 1569, where the Court has observed at SCR page 323 thus : (SCC pp. 845-46, para 22)

Supposing the landlord, after exploiting the easy process of Section 14-A re-lets the premises for a higher rent; the social goal boomerangs because the tenant is ejected and the landlord does not occupy, as he would have been bound to do, if he had sought eviction for bona fide occupation under Section 14(1) (e). Section 19 obligates the landlord in this behalf. In literal terms, that section does not apply to eviction obtained under Section 14-A. But the scheme of that section definitely contemplates a specific representation by the petitioner-landlord to the Controller that, because he has been ordered to vacate the premises he is residing, therefore, he requires immediate possession for his occupation..... Once we grasp this cardinal point, the officer's application for eviction under Section 14-A can be entertained only on his averment that he, having been asked to vacate, must get into possession of his own... The cause of action is not only the government order to vacate, but his consequential urgency to recover his own building.

11. Mr. Madan Bhatia relied also on the decision of learned Single Judge of the Delhi High Court in *K. D. Singh v. Hari Babu Kanwal*, where the learned Judge has observed thus :

At the time when this application was brought in February 1977 the circular of

September 9, 1975 held the filed. Unfortunately for the landlord this position underwent change when the Central Government issued a revised circular date July 14, 1977 by which the orders contained in the earlier circular dated September 9, 1975 were modified after reconsideration... A vital change thus took place by the circular of July 14, 1977, namely, that there is no direction to a person who owns a house and who is in occupation of a residential premises allotted to him by the Central Government to vacate such residential accommodation..... Once therefore, the revised circular of July 14, 1977 has come, the very basis on which the eviction application under Section 14-A of Act was brought has ceased to exist and cannot avail him... It must be realised that Section 14-A was brought in only for a limited purpose to enable the Government servants in getting immediate possession of their houses when they had been directed to vacate the Government accommodation. The special legislation was made to serve special purpose in pursuance of the circular of September 9, 1975. Once that purpose has been modified and the Government has revised its decision and there is no direction to vacate such residential accommodations, it is impermissible in law to allow a Government servant to invoke Section 14-A and frustrate the beneficial Act of the Rent Control legislation like the Delhi Rent Control Act.

12. We do not agree with this view of the learned Judge.

13. It is seen from paragraph 3 of the Order of the Additional Rent Controller, which was sought to be revised by the High Court, that the respondent is paying a rent of Rs. 1448 per mensem for the government accommodation No. 83, Lodhi Estate, New Delhi. In the reply affidavit filed in the special leave petition the respondent has stated that he is liable to pay Rs. 1543 per mensem for the government accommodation as penal rent on account of his failure to vacate the same. The respondent has produced in this Court a communication addressed to him by the Assistant Director of Estates, New Delhi saying that without prejudice to any other action which may be taken in respect of the government accommodation which has been allotted to him, his liability will continue to increase to Rs. 2898 per mesne and three times that rate on the expiry of 15 days from the date of service of orders of eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 till he vacates and restores the premises to the Central Public Department. These facts and the liability of the respondent to pay full market rent for the government accommodation with effect from June 1, 1977 and the second Notification in the light of his getting a rental income exceeding Rs. 2000 per mensem from his own premises who that the respondent has to incur certain obligations on his failure to vacate government accommodation 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. We do not find anything in the second Notification taking away the obligation which has been imposed on the respondent by the first Notification to vacate the government accommodation within three months from October 1, 1975. We are of the opinion that the second Notification, without taking away the obligation imposed by the first Notification on government employees owning houses in their own names or in the name of other member of their families, within the limits of their place of posting, to vacate the government accommodation within three months from October 1, 1975, has given an option to those employees to continue to occupy the government accommodation subject to the obligation mentioned in the second Notification, namely, that the house-owning government employee will have to pay normal rent for the government accommodation if the income from his own house does not exceed Rs. 1000 per mesne or half the market rent if the income from his own house exceeds Rs. 1000 per mesne but does not exceed Rs. 2000 per mesne and full market rent if the income from his house is above Rs. 2000 per

mesne with effect from June 1, 1977. In the present case the market rent/licence fee which the respondent had to pay for the government accommodation occupied by him on the date of institution of eviction petition was Rs. 1448 per mesne and it had been increased to Rs. 1543 per mesne as stated in the counter-affidavit filed by the respondent in the special leave petition and it has been further enhanced to Rs. 2898 per mesne by the letter dated July 17/18, 1981 of the Assistant Director of Estates addressed to the respondent and referred to above. The respondent has thus an option to continue to occupy the government accommodation subject to the said obligation without vacating the government accommodation within a period of three months from October 1, 1975. We are of the opinion that it is not open to the appellants to compel the respondent to exercise his option and continue to occupy the government accommodation in order that they may continue to occupy the premises in question as the tenants. Even apart from the first Notification which is general in nature and has been modified by the second Notification as mentioned above, there is the special order dated January 22, 1976 which required the respondent to vacate the government accommodation by December 31, 1975, failing which he is to pay market rent with effect from January 1, 1976 as mentioned above. In these circumstances it is not possible for us to accept the argument of Mr. Madan Bhatia that the respondent is not entitled to have recourse to Section 14-A of the Act for seeking eviction of the appellants from the premises in question, having regard to first and second Notifications and the special order dated January 22, 1976. Dr. L. M. Singhvi, learned counsel for the respondent invited our attention to the decision of another learned Single Judge of the Delhi High Court in *J. L. Paul v. Ranjit Singh* (1980) 2 SCR 527 : (1980) 2 RCJ 386, where we find the following observations :

The last objection of the petitioner is that the notifications granting a right to the Government employee to seek eviction under Section 14-A of the Act have been withdrawn, that this defence raises a triable issue and therefore, the Controller ought to have granted leave to contest so that he may produce evidence on record in support of this part of his defence. The right to claim eviction accrues to a landlord under Section 14-A of the Act and not under any notification issued by the Government. The Government notification, general or special, only requires a landlord/Government allottee to vacate the accommodation as he owns his house or pay penal rent. The respondent submits that the general notification dated September 9, 1975 and the special order dated December 26, 1975 have never been withdrawn. His contention is that there has been a notification about the rate of rent/licence fee to be paid by a Government employee, if he is also owner of his own house at the place of his posting and does not vacate allotted premises. In short his contention is that right of eviction is available to a landlord allottee of Government accommodation if he fulfils the conditions mentioned in Section 14-A of the Act. According to him there is modification that if the income of the landlord from his own house does not exceed Rs. 1000 per month, he is liable to pay only the normal rent of Government allotted accommodation, but if his income from his own house exceeds Rs. 1000 and does not exceed Rs. 2000 he is liable to pay half the market rent and in cases where his income from his own house is above Rs. 2000 per month; he is liable to pay full market rent. The respondent contends that Section 14-A of the Act conferring upon a landlord/Government allottee (a right) to get his own house vacated has never been repealed. The learned counsel for the respondent further contends that mere assertion of the petitioner that the notification have been withdrawn is vague and does not give him any right to leave to contest and lead any evidence..... If any notification has been withdrawn or cancelled, such an order must be in writing. The petitioner/tenant

in his application does not disclose any notification under which the Government notification requiring a landlord/Government employee, to vacate has been withdrawn.....

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..... Thus the notification dated September 9, 1975 stands modified to the extent as to what rate of rent would be payable by the respondent Government allottee/landlord owning his own house if he retains the allotted premises, that is, if he fails to vacate the Government accommodation in pursuance of the general order dated September 9, 1975 and the special order dated December 26, 1975. The income of the respondent from his own house, that is, suit property No. 164, Greater Kailash-1, New Delhi is Rs. 1950 per month. He is getting Rs. 850 per month from the petitioner occupying first floor and Rs. 1100 per month from 'Escorts' occupying the ground floor. In accordance is thus liable to pay half the market rent from June 1, 1977 if he does not vacate the Government allotted accommodation. In fact after the issue of notification dated July 14, 1977 the respondent has been directed to pay half the market rent by means of an order dated September 20, 1977 issued by the Directorate of Estates, Government of India with effect from June 1, 1977. In short, it is certain that there is the general notification dated September 9, 1975 and the special order dated December 26, 1975 requiring the respondent/landlord to vacate the Government allotted residential accommodation or in default to pay half the market rent. In other words he is to incur certain obligations. The liability is on account of the fact that he owns the house in suit in the Union Territory of Delhi, his place of posting..... On December 12, 1979 Directorate of Estates was required to state whether the notification dated September 9, 1975 stands withdrawn or it was simply modified. The Directorate of Estates in his letter dated December 14, 1979 informed that the memorandum dated September 9, 1975 was not withdrawn but was only modified by the memorandum dated July 14, 1977. ... So if the two notification dated September 9, 1975 and July 14, 1977 are read together, it appears that there is no cancellation of the earlier notification and that it is only a notification of the rate of rent payable by an allottee owning his own house. Under this notification date July 14, 1977 it is further provided that with effect from July 1, 1977 rent of allotted premises shall be recovered from the house-owning officials retaining the premises at the rates mentioned therein. The respondent is, therefore, liable to pay the rent accordingly and thus liable to incur obligation in default of vacating the premises.

..... The respondent satisfies the requirement of Section 14-A of the Act. There is no defence available to the petitioner against the eviction application under Section 14-A (1) of the Act.....

14. In the present case also there is nothing on record to show that the obligation imposed upon respondent by the first Notification to vacate the government accommodation within three months from October 1, 1975 and by the special order dated January 22, 1976 by December 31, 1975 has been withdrawn. The respondent can continue to occupy the government accommodation only subject to certain obligations. We therefore, hold that the respondent is entitled to have recourse to Section 14-A of the Act for the evicting the appellants from the premises in question. Accordingly the appeal fails and is dismissed with costs.

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