

V. S. Rahi and Another

Vs

Smt. Ram Chambeli

Civil Appeal No. 2800 of 1982

(R. B. Mishra, E. S. Venkataramiah JJ)

03.01.1984

JUDGMENT

VENKATARAMIAH, J. -

1. This is an appeal by special leave against the judgment of the High Court of Delhi dated August 23, 1982 in S. A. O. No. 277 of 1982 dismissing the appeal filed by the appellants.
2. The respondent Smt. Ram Chambeli leased out the premises in question to the appellants under an order dated December 22, 1977 passed by the Additional Rent Controller in suit No. M/798/77 under Section 21 of the Delhi Rent Control Act, 1958 (Act 59 of 1958) (hereinafter referred to as 'the Act') the relevant part of which reads thus :

Statement of Smt. Ram Chambeli w/o Shri. G. L. Gandhi :

I am the owner-landlord of premises No. 637, Double-Storey, New Rajinder Nagar, New Delhi. The entire premises comprising of two rooms, kitchen, bath, latrine shown in the plan Exhibit 1-A is surplus with me for a limited period of 3 years which I want to let out to the respondent for residential purposes for the said period at rupees 425 p. m. which is mentioned in Mark B with effect from the date of permission. I have never let out the portion to anybody earlier to it. My son and my mother were living in the said premises. My mother has not been feeling well. My son is studying in ninth class. After about three years my mother will be alright and my son will grow up and for them I shall require the premises after three years,

#RO & AC ARC##

Statement of Shri V. S. Rahi, son of Sh. Thakur Gopal Singh, 45 years, teacher and Smt. Santosh Rahi w/o Shri V. S. Rahi, aged 45 years, teacher, resident of 33/52, Prabhat Road, Karol Bagh, New Delhi :

We want the premises for three years for the residential purposes from the date of permission. We are not in possession of the premises nor were we tenants in it.

#RO & AC ARC##

ORDER

This order will dispose of application under Section 21 DRC Act filed by Smt. Ram Chambeli

applicant seeking permission to let out first floor of her premises No. 637, Double Storey, New Rajinder Nagar, New Delhi. It is stated that the first floor of the said premises comprising of two living rooms, kitchen, bath and latrine detailed in plan Exhibit A-1 is surplus with her for a limited period of three years and she will required it after the said period of three years. The petitioner and respondent have made statement on oath in this connection. In view of the statement of the parties, permission under Section 21 of DRC Act is granted to Smt. Ram Chambeli, wife of Shri G. L. Gandhi applicant to let out first floor of her premises No. 637, Double Storey, New Rajinder Nagar, New Delhi to Shri V. S. Rahi and Smt. Santosh Rahi respondents for residential purposes for the said period of three years with effect from the date of the order

J. D. Kapoor, Additional Rent Controller##

3. On the expiry of the period of three years mentioned in the above order the respondent filed an application before the Additional Rent Controller for possession of the premises. The appellants filed objections to the said application stating that the respondent was comfortably living with her husband and son in the ground floor of the building; that she was not in need of the first floor of the building which had been leased out in their favour; that the statement that her mother was living with her was not true; that her son was studying in the seventh class in 1977 and not in the ninth class as stated by her before the Rent Controller in 1977 and that the Rent Controller had permitted the leasing out of the building under Section 21 of the Act without applying his mind. It was further pleaded that the application had been filed with a view to extracting higher rent. The appellants also stated that the statement of the respondent that she had not leased out the building earlier to anybody else was not true. After going through the affidavits filed by the parties in support of their cases the Additional Rent Controller held that the respondent had obtained the permission under Section 21 of the Act by making wrong statements and accordingly revoked the said permission. Consequently the appellants could not be evicted under that section. Aggrieved by the order of the Additional Rent Controller, the respondent filed an appeal before the Rent Control Tribunal. The Tribunal allowed the appeal and directed the eviction of the appellants. The Tribunal observed that when the Controller had been informed by the respondent right at the time when the permission was granted under Section 21 of the Act that the property was not required by her for a period of three years but would be needed after that period for the use of her son and her mother who was unwell at that time, there was no ground to hold that the transaction was not genuine. The second appeal filed by the appellants against the order of the Tribunal was dismissed by the High Court. This appeal by special leave is filed against the judgment of the High Court.

4. Section 21 of the Act reads :

21. Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing 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 occupation of such premises.

5. When Section 21 of the Act was enacted in was believed that it would encourage landlords, who

would not ordinarily be willing to lease out a building as a residence for a short time even though they might not be in need of it during that period, to lease it out for such short period because of the summary remedy provided by that section to recover possession of the building quickly from the tenant instead of the usual eviction proceedings which would take a long time to terminate.

6. It was not perhaps fully realised at the time of the enactment of Section 21 of the Act that many unscrupulous landlords would enter into arrangements purporting to be those under that section but in reality were ordinary leases and would utilise the threat of the summary remedy available under that section to realise higher rents or for any other purpose considered to be contrary to the benign purposes sought to be achieved by the Act. When one such case in which the genuineness of a transaction entered into under Section 21 of the Act came before this Court in *S. B. Noronah v. Prem Kumari Khanna* ((1980) 1 SCR 281 : (1980) 1 SCC 52 : AIR 1980 SC 193), Krishan Iyer, J. observed :

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 terms of that section. The consequence will be that both the Civil Procedure Code which prescribes suits for recovery of possession and the Delhi Rent Control Act which prescribes grounds for eviction will be eclipsed by the pervasive operation 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 of 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 it is that we deem it necessary to lay down the law as implied in Section 21.

When an application under 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 requirement of that provision. If he makes a mindless order, the Court, when challenged at the time of execution, will go into the question as to whether the twin conditions for sanction have really been fulfilled.

7. The appeal before us has to be considered against the above background.

8. It is urged by the appellants that the order passed under Section 21 of the Act in this case having been obtained on the basis of statement which were wrong, the application for eviction should be dismissed.

9. While it is true that the Court should proceed with the initial presumption that the order under Section 21 of the Act was a regular one, the Court should still examine the material placed before it by the tenant inducted under that provision in order to satisfy itself that there has not been any misuse of the said provision by the landlord taking advantage of the helpless situation in which the tenant was placed at the time when such order was obtained.

10. In the instant case it is seen that there were three wrong statements made by the respondent when she approached the Additional Rent Controller seeking permission under Section 21 of the Act to lease out the property. First, it is not true that the building had not been leased out earlier. Now it is admitted before us that there was one Kataria occupying the building as a tenant on a

monthly rent of Rs. 100 only and he had vacated the same about four or five months before the date on which the order was made under Section 21 while it is true that he had been there as a tenant even before the respondent purchased the building in the years 1972. After he vacated the building, it was leased out to the appellants on a rent of Rs. 425 per mensem. Secondly, it is admitted that the respondent's mother was not living with her. It is now admitted before us that the woman who is more than 75 years old described as the mother of the respondent in the statement of the respondent recorded by the Additional Rent Controller when permission was given under Section 21 is the sister of the respondent's father although in the course of the proceedings before the Additional Rent Controller out of which this appeal arises she was described as the adoptive mother of the respondent. It is now stated that she is the foster mother of the respondent and that she came with the respondent to the residence of her husband after her marriage. It is stated that she was suffering from cataract in her eyes; that it was not ripe for being treated in 1977 when the order was passed under Section 21 of the Act and that it was expected that after the cataract was removed she would need the building in the occupation of the appellants which is equal in size of the ground floor in the occupation of the respondent. Thirdly, the son of the respondent was a young boy studying in the seventh class in 1977 and not in the ninth class. From the foregoing it is obvious that the respondent had suppressed that there was a tenant in the building who had vacated only a few months before the date of the application under Section 21 a of the Act; had made false statement about the relationship with her so-called foster mother; had not disclosed the nature of her sickness which was expected to be cured in three years; had stated that her son was studying in the ninth class to make it appear that he would be sufficiently old at the end of the period of three years and that he would be in need of extra accommodation. These statements which were in the nature of half-truths were apparently made in order to make good the plea that there was only a temporary necessity to lease out the building for a short period and that the respondent bona fide anticipated that there would be pressing necessity to reoccupy the premises at the end for the period which are the two crucial factors governing an order under Section 21 of the Act. The reasons given in this case are quite unconvincing. We are to satisfied that the respondent honestly believed when she applied for permission under Section 21 of the Act that she would be in need of the premises in question at the end of the stipulated period. On a consideration of the material before him, the Additional Rent Controller was right in holding that the permission under Section 21 of the Act had been obtained by the respondent on the basis of wrong statements but for which the permission would not have been accorded.

11. It is, however, urged that the appellants who had colluded with the respondent when permission was granted under Section 21 of the Act should not be now allowed to resile from the stand they had taken then. It is true that the appellants who were the weaker of the two parties did not question the truth of the statements made by the respondent when the permission was granted. But such collusion, if any, between the two unequal parties does not confer any sanctity on the transaction in question. In cases of this nature it is always open to the weaker of the two parties to establish that the transaction was only a camouflage used to cover its true nature. Collusion implies the existence of two or more parties who can deal with each other independently with the object of entering into an arrangement which may serve as a cloak to cover up the real state of affairs. When one party can dominate over the will of the other, it would not be a case of collusion but one of compulsion. The above view is fully in consonance with the spirit behind the rule of oppression which is recognised as an exception to the doctrine that a party cannot recover what he has given to the other party under an illegal contract. 'It can never be predicated as *pari delicto* where one holds the rod and the other bows to it'. (Per Lord Ellenborough in *Smith v. Cuff* ((1817) 6 M&S 160, 165)). Cases which call for appropriate relief to be given to an innocent party where 'one has the power to dictate, the other

has no alternative but to submit' are not uncommon. Cheshire and Fifoot's Law of Contract (10th Edn.) refers to another type of case belonging to this category. At page 338 of that treatise is the following passage :

Another type of case where the parties are not regarded as equally delictual is where the contract is rendered illegal by a statute, the object of which is to protect one class of persons from the machinations of another class, as for example where it forbids a landlord to take a premium from a prospective tenant. Here, the duty of observing the law is placed squarely upon the shoulders of the landlord, and the protected person, the tenant, may recover an illegal premium in an action for money had and received, even if the statute omits to afford him this remedy either expressly or by implication. In the words of Lord Mansfield :

Where contracts or transactions are prohibited by positive statutes, for the sake of protecting one set of men from another set of men; the one from their situation and condition being liable to be oppressed and imposed upon by the other; there the parties are not in pari delicto; and in furtherance of these statutes, the person injured after the transaction is finished and completed, may bring his action and defeat the contract.

12. The ground that the appellants cannot challenge the permission initially granted under Section 21 of the Act is not, therefore, available in this case.

13. The Tribunal and the High Court have approached the present case in a mechanical way and have failed to apply correctly the ratio of the decision in *Noronah* case ((1980) 1 SCR 281 : (1980) 1 SCC 52 : AIR 1980 SC 193) to the facts before them. We are of the view that on the facts and in the circumstances of the case, the respondent is not entitled to invoke the remedy under Section 21 of the Act to recover possession of the premises.

14. In the result, the judgments of the High Court and of the Tribunal are set aside and the application filed by the respondent under Section 21 of the Act for recovery of the premises is dismissed.

15. The appeal is accordingly allowed with costs.

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