Bimla Devi

Vs

First Additional District Judge and Others

Kailash Nandan Prasad

Vs

Additional District Judge, Moradabad and Others

Civil Appeal Nos. 41 of 1979 and 379 of 1980

(Syed M. Fazal Ali, A. Varadarajan, M. P. Thakkar JJ)

27.03.1984

JUDGMENT

FAZAL ALI, J. -

1. We would first take up Civil Appeal No. 379 of 1980 which is directed against an Order dated March 28, 1979 passed by the Allahabad High Court dismissing the writ petition of the appellant and arises in the following circumstances.

2. The appellant owns a house bearing No. 113, Amroha Gate, Fruit Market, Moradabad, in a portion of which he had inducted respondent 3 (Vishwa Nath Kapoor) as a tenant while retaining some portion for himself, when he (appellant) was serving as a Judicial Officer in the State of Uttar Pradesh. In the year 1968, the appellant retired as District Judge as a result of which he had to vacate his official residence, which necessitated the present eviction proceedings against respondent 3. The application for eviction was filed in January 2, 1973 under Section 21(1)(b) of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the '1972 Act') in which the appellant prayed that the portion occupied by respondent 3 may be released on the ground of personal requirement as after retirement he wanted to occupy the entire house. The appellant further claimed that due to shortage of accommodation he had to stay with his son elsewhere. The eviction proceedings were contested by the respondent on the following grounds :

(a) that since the appellant was already living with his son there was no particular urgency or personal necessity for him to occupy the rented portion also,

(b) that the appellant had in his occupation a part of the house which was retained by him even after inducting him (respondent) as a tenant and which was sufficient for his needs, and

(c) that the appellant after keeping his household effects in the portion retained by him had locked up the same and was, therefore, not in actual occupation of the house as required by Explanation (iv) to section 21(1)(b).

3. In the same token, it was submitted as a point of law that the essential ingredient of Explanation (iv) to section 21(1)(b) was that the building must have been in occupation of the landlord for residential purposes which alone would be a conclusive proof of personal necessity. It was also contended as a question of fact that as the appellant landlord was not in actual occupation of the premises, Explanation (iv) would not be attracted in the instant case. To buttress this argument it was submitted that the landlord never occupied or possessed the premises but had locked up the same and was residing elsewhere. This plea of the respondent tenant did not find favour with the prescribed Authority or the High Court.

4. The dominant question, therefore, turns upon the import and interpretation of Explanation (iv) to Section 21(1)(b), particularly the nature and meaning of the word 'occupation' as used in Explanation (iv). The crux of the matter, therefore, was as to whether or not the case of the appellant squarely fell within the four corners of Explanation (iv) and whether the word 'occupation; included actual residence of the landlord even though he may not have been residing there. We might mention that while the eviction proceedings were pending before the prescribed Authority the 1972 Act was amended by U.P. Act No. 28 of 1976 (for short to be referred to as the '1976 Act') which came into force with effect from July 5, 1976 and which deleted explanation (iv). The prescribed Authority, relaying on Explanation (iv), held that the need of the landlord was fully made out and according passed an order of eviction against the tenant, partly releasing some portion in appellants favour. The appellant then filed an appeal before the District Judge which was heard by an Additional District Judge who accepted the offer of the tenant and modified the Order of the Prescribed Authority by further releasing some other portion in his favour. The appellant then filed a writ petition before the High Court which upheld the decision of the District Judge and dismissed the writ petition.

5. Before we approach the question of law raised before us it may be necessary to give a detailed picture of the position of the premise retained by the landlord and that rented out to the tenant. The house in question is a double-storeyed one containing some rooms on the fist floor and some on the ground floor which were retained by the landlord at the time of the lease and the rest of the portion was let out to the tenant.

6. The learned counsel for the appellant contended that in view of the requirements of the landlord he had a real and bona fide need for occupying the entire house and, therefore, the entire portion occupied by the tenant should have been released in favour of the appellant. This argument was countered by Mr. Shanti Bhushan, counsel for the respondent who put forward the following legal submissions :

7. In the first place, he contended that Explanation (iv) would not in terms apply to the facts of the present case because on the findings of fact arrived at by the courts below it was not shown that the appellant was in actual occupation of the portion retained by him, which is a prerequisite for the application of Explanation (iv) to section 21(1)(b). In this connection, it was submitted that the admitted position being that the appellant was previously employed as a District Judge and was living elsewhere, he could not be deemed to be in occupation of the portion retained by him. In order to appreciated this argument, it may be necessary to examine closely the language of Explanation (iv), which may be extracted thus :

> (iv) the fact that the building under tenancy is a part of a building, the remaining part thereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is bona fide required by the landlord.

8. The pivotal argument of the counsel for the respondent turns upon the interpretation of the word 'occupation. This however, does not present any difficulty because in a recent decision in the case of Babu Singh Chauhan v. Rajkumari Jain ((1982) 3 SCR 114 : (1982) 1 SCC 520 : AIR 1982 SC 810) this Court while construing a similar term in the same Act observed as follows : (See p. 524, para 10)

We have gone through the judgment of the High Court in the light of the arguments of the parties and we are inclined to agree with the view taken by the High Court that the mere fact that the landlady did not actually reside in the premises which were locked and contained here household effects, it cannot be said that she was not in possession of the premises so as to make section 17(2) inapplicable. Possession by a landlord of his property may assume various forms. A landlord may be serving outside while retaining his possession over a property or a part of the property by either leaving in in charge of a servant or by putting his household effects or things locked upon in the premises. Such an occupation also would be full and complete possession in the eye of law.

9. It is true that the Court used the word 'possession' but in Explanation (iv) to section 21(1)(b) the word used is 'occupation' and not 'possession' but this Court treated the word 'possession' as being a synonym of 'occupation. In Webster's Third New International Dictionary the word 'occupation' has been defined at page 1560 thus :

> Occupation - to take possession of, occupy, employ

10. The Black's Low Dictionary (Fifth Edn.) defines 'occupation at page 82 thus :

> Occupation - possession; control; tenure; use.

11. In Corpus Juris Secundum (Col. 67) at page 74 'occupation' has been mentioned thus :

> The word may be employed as referring to the act or process of occupying, the State of Being occupied, occupancy, or tenure.

12. This Court in the observations, extracted, above, has clearly pointed out that 'possession' or 'occupation' may take various forms and it was expressly held that even keeping the household effects by the owner is an act of occupation.

13. It is, therefore, manifestly clear that even if a landlord is serving outside or living, with his near relations but makes causal visits to his house and thus retains control over the entire or a portion of the property, he would in law be deemed to be in occupation of the same. Therefore, we are unable to accept the argument of Mr. Shanti Bhushan that the essential ingredient of Explanation (iv) has not been made out, there being no actual physical occupation by the landlord of the portion retained by him. Indeed, if the broad argument put forward by the counsel is to be accepted then that would destroy the very concept of constructive or actual possession or occupation. For instance, even if a house is not let out to anybody but is locked up, can it be said that the owner who is not living there but has kept his household effects, would not be deemed to be in occupation of the same ? The answer must necessarily be in the negative.

14. It seems to us that the policy of the law was to give a facility to the landlord so as to secure the entire building where he is in occupation of a part of the same and wants to occupy the whole house.

15. Mr. Shanti Bhushan then argued that Explanation (iv) does not confer any substantive right but

merely raises a presumption that if a landlord is in occupation of a part of the premises, his need would be deemed to be bona fide. We are, however, unable to agree with this argument. We must remember that all the Rent Control Acts try to deprive and curtail the legal right of an owner to his property and have put constraints and restraints on his right by giving substantial protection to the tenants in public interest, otherwise if the Rent Acts were to be abolished or were not there, the landlord could get a tenant evicted only by a notice after expiry of the tenancy in accordance with the provisions of the Transfer of Property Act. The words "shall be conclusive to prove" in Explanation (iv) clearly indicate that it is a substantive right which belongs to the landlord and which has been affirmed and recognised if a part of an accommodation is retained by the landlord. We are unable to agree with Mr. Shanti Bhushan that the words "conclusive to prove that the building is bona fide required by the landlord constitute a rule of evidence. In fact, this argument was put forward before us because the learned counsel wanted to submit that in view to the 1976 Amendment Act, deleting Explanation (iv) to Section 21(1)(b) of the 1972 Act, it would be deemed to be retrospective ad therefore the relief given by Explanation (iv) would disappear. We cannot agree with this somewhat far-fetched submission because Explanation (iv) deals not merely with a particular procedure but with the substantive rights of the parties. The said Explanation has asserted and affirmed the substantive right of a landlord to get a portion of a building vacated where he is in occupation of a part of it. Such a substantive right cannot be taken away merely by a procedural amendment nor odes the language of the amendment introduced by the 1976 Act envisage or contemplate such position. Section 14 of the 1976 Act merely recites that Explanations (ii) and (iv) of Section 21(1)(b) shall be omitted. There is nothing to show that the Legislature intended to give any retrospective effect to the deletion of Explanation (iv).

16. In these circumstance, therefore, the right to ejectment having occurred to the appellant under Explanation (iv) was a vested right an owner and could not be affected by the 1976 amendment unless it was crouched in a language which was either expressly or by necessary intendment meant to be operative retrospectively.

17. Lastly, it was argued by Mr. Shanti Bhushan that the fact remains that the appellant, even after retirement, was not in actual possession of the portion retained by him and was living with his son or other relations most of the time excepting casual visits to the premises in dispute. A further argument was raised in an additional Note supplied by the counsel for the respondent that as the bathroom and the latrine were in occupation of the tenant, the landlord could not possibly have occupied the premises retained by him and could not have lived there in the absence of these facilities. The High Court rightly rejected these arguments by observing thus :

> The last argument was that the view of the Prescribed Authority that since the petitioner did not occupy the portion retained by him and lived with his son and therefore, his need was not bona fide has no merits inasmuch as the petitioner did not have either a latrine or a bathroom and that he could not possibly occupy the house in the position in which it had been retained. There may be some truth in the submission made by the learned counsel for the petitioner. But, as neither the Prescribed Authority nor the Appellate Authority based their judgment on this feature of the case and they examined the merits of the claim of the respective parties, it is not possible to interfere with the judgments of the courts below.

18. An attempt was made by the parties to come to a settlement but, unfortunately, the efforts failed. To accept the argument of Mr. Shanti Bhushan that merely because the landlord was living with his son or his relation after retirement and, therefore, was not in occupation of the house cannot be

accepted because it was not for the tenant to dictate to the landlord as to how he should use his own premises. A tenant has got no right nor any business to interfere with the mode or manner in which a landlord may choose to use his property or live therein.

19. In these circumstances, therefore, we are satisfied that the case of the appellant is clearly covered by the provisions of Explanation (iv) to Section 21(1)(b) and a decree for release of the entire premises should have been passed by the District Judge against the respondent. We, therefore allow this appeal, set aside the judgment of all the courts below and order release of the entire premises in possession of the respondent to the appellant. Time is granted to the respondent to vacate the premises on or before December 31, 1984 subject to the usual undertaking to be given and filed by him in the Court within four weeks from today, failing which the grant of time shall stand revoked without further reference to the Bench and the appellant would be entitled to be put in possession forthwith.

20. Civil Appeal No. 41 of 1979 : This appeal was heard along with Civil Appeal No. 379 of 1980 which we have decided by our judgment. The main point involved in this appeal was as to whether the portion of the premises sought to be vacated by the landlord was one single unit or two separate units. This Court remanded the matter to the trial court for examining this point and the trial court has returned a finding, basing its decision on the report of the Commissioner appointed for the purpose, that the entire building constituted one single unit.

21. It is, therefore, manifest that if the entire building was one unit and the appellant being in occupation of a portion of the same, he is entitled to get release of the other portion also. In view of out decision in civil Appeal No. 379 of 1980, the appeal is allowed and we order release of the entire portion in favour of the appellant. Time is granted to the respondent to vacate the premises on or before October 31, 1984 subject to the usual undertaking being given and filed within four weeks from today, failing which the grant of time shall stand revoked without further reference to the Bench. There will be no order as to costs.

22. Let a certified copy of this judgment be placed on the file of Civil Appeal No. 41 of 1979.

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