

Smt. Dhanwanti

Vs

D. D. Gupta

Civil Appeal No. 1795 of 1986

(R. S. Pathak, Sabyasachi Mukharji JJ)

09.05.1986

JUDGMENT

PATHAK, J. –

1. Special leave granted.

2. This is a landlady's appeal by special leave directed against the order of the High Court of Delhi dismissing her second appeal in limine. The appellant is the owner of the premises No. F-8/17, Vasant Vihar, New Delhi. It is a single storeyed house. She let out the premises for a limited period of two years to the respondent, who is a judicial officer. She did so after obtaining the requisite permission under Section 21 of the Delhi Rent Control Act on April 22, 1980. A registered deed was executed between the parties in that behalf. The deed recorded the undertaking of the respondent to vacate the premises at the end of two years. The two years expired on April 21, 1982 but the respondent did not hand over possession of the premises to the appellant. Accordingly the appellant prayed for an order directing delivery of possession of the premises to her. A warrant of possession was issued.

3. On October 20, 1982 the respondent filed his objection, alleging that the order granting permission under Section 21 of the Act was obtained by fraud practiced on the Rent Controller and was a nullity. It was asserted that the premises were constructed in the year 1973 and were let out to an official of the government under Section 21 of the Act for a period of one year. On the official vacating the premises after one year, it was alleged, they were let out to the respondent at a rent of Rs 725 per mensem in the first week of April 1974 as a regular tenant. It was said that on the request of the appellant the respondent joined in an application for permission under Section 21 of the Act. When the appellant applied for permission, it is alleged, she did not disclose to the Rent Controller that earlier also she had inducted a person as tenant after obtaining such permission. On the expiry of three years, the respondent said, the appellant again, in the year 1977, obtained permission under Section 21 of the Act for letting out the premises at an enhanced rent of Rs 825 per mensem for a limited period of two years to the respondent. That period expired in April 1980. It was thereafter that the appellant obtained permission under Section 21 of the Act for letting out the premises to the respondent for a period of two years. The respondent urged that he was in uninterrupted possession since April 1974 and that no ground had been disclosed by the appellant in the application for permission under Section 21 of the Act made in the year 1980 indicating the reason for letting out the premises for a limited period of two years. It is alleged that permission was granted mechanically by the Rent Controller, and that it could not be recognized as binding on the respondent.

4. The appellant filed her reply to the objection and vehemently denied that the order under Section 21 of the Act granting permission in 1980 was a nullity or had been obtained by fraud or that any material fact had been withheld in the application for permission. The appellant asserted that in the beginning the premises had been let out to an official of the government for a period of three years commencing from August 29, 1973, but the tenant vacated the premises after 6 or 7 months and thereafter it became necessary to let out the premises to the respondent on April 15, 1974 after obtaining permission under Section 21 of the Act. It was denied that the respondent had already occupied the premises as a regular tenant before permission under Section 21 of the Act had been granted. It was maintained that the respondent occupied the premises on April 15, 1974 pursuant to the permission under Section 21 of the Act. The appellant stated further that the respondent had given notice to the appellant on February 27, 1977 expressing his intention to vacate the premises and that in fact he did vacate the premises on that date after settling the account in respect of the rent. But a few days after leaving the premises the respondent again approached the appellant for taking the premises on rent. Accordingly, the premises were let out by the appellant to the respondent on March 11, 1977 after obtaining permission under Section 21 of the Act. It was pointed out that in the application under Section 21 of the Act, the respondent gave his address as Village Khandsara, near Gurgaon, Haryana where he was then residing in the factory premises of his son. The possession of the premises was handed over to the respondent on March 11, 1977 in pursuance of the permission, and the rate of rent agreed to was Rs 825 per mensem. The appellant further stated that on the expiry of the period, the respondent again vacated the premises and shifted to 13, Palam Marg, New Delhi. Thereafter the respondent approached the appellant again to let out the premises for a limited period of two years. As the appellant's second son, who is an officer in the Indian Air Force, was posted at Bangalore and the appellant was not in a position to occupy the premises all alone, she agreed to let out the premises to the respondent. On April 21, 1980 the appellant and the respondent joined in the application for obtaining permission under Section 21 of the Act to enable the appellant to let out the premises to the respondent for a period of two years. The appellant urged that the premises were now required by her as her son, an Indian Air Force officer, had to shift his family to Delhi, and it was further pointed out the premises were to be occupied by the appellant and the family members of that son as the climate of Bangalore did not suit them. It was denied that the premises were available for indefinite letting, and the periodic tenancies, it was asserted, were entered into because of the circumstances prevailing on each occasion.

5. On January 21, 1984 the First Additional Rent Controller, Delhi upheld the objection filed by the respondent and dismissed the execution application of the appellant made under Section 21 of the Act. The appellant appealed to the Rent Control Tribunal and the Tribunal held that the allegation of the respondent that he had already entered into possession of the premises before permission was granted under Section 21 of the Act in 1974 was false, and even if it be assumed that he had done so there was nothing to prevent him from surrendering the tenancy. That was evident when he joined the appellant in the application for permission under Section 21 of the Act in 1974. The case of the respondent that he must be considered to be a tenant in possession without interruption ever since 1974 could not, in the opinion of the Rent Control Tribunal, be accepted on the facts and circumstances of the case, and that it was only the tenancy pursuant to the last permission which could be questioned. The Rent Control Tribunal then addressed itself to the principal issue whether fraud had been practiced on the Rent Controller in obtaining permission under Section 21 of the Act in 1980. The Tribunal referred to the circumstance that the appellant had let out the premises from time to time for limited periods on earlier occasions and observed that it was evident that the premises were available for being let out for an indefinite period. It adverted to a statement made by

the appellant regarding the transfer of her son to Delhi, and deduced from the language employed by her that she wanted to convey that her son had been posted earlier in Delhi and that he was now being transferred back to Delhi. It also pointed out that the unsuitability of the climate of Bangalore in regard to her grandson as the reason for the family desiring to settle in Delhi had not been mentioned at the initial stage of the litigation. Upon that, the Rent Control Tribunal held that the appellant had practised fraud on the Rent Controller when obtaining permission under Section 21 of the Act in 1980. A second appeal by the appellant was dismissed summarily by the High Court.

6. We have considered the case with great care. Ordinarily, this Court declines to interfere with findings of fact and refuses to entertain special leave petitions questioning such findings. But it seems to us that in this case the entire approach of the statutory authorities has been vitiated by a gross misconstruction of the facts and circumstances of the case, ignoring material evidence on the record, and arriving at inferences which fly in the face of reason and the law. All this has resulted in grave injustice. At the outset it is apparent from the record that the finding of the Rent Control Tribunal that the property was available for being let for an indefinite period proceeds on the unwarranted assumption that the grant of the three leases, from 1974 through 1977 to 1980, points to that as the only conclusion. That assumption would have been justified if there was positive material to indicate that from the very beginning there was never any intention on the part of the appellant to occupy the premises herself. There is no such material at all on the record. It seems to have been ignored altogether that it is perfectly possible for the owner of a premises, on looking to the immediate future, to find that for certain reasons he is unable to occupy the premises forthwith himself but that he may do so later in the not very distant future. It is not always that a man can plan his life ahead with any degree of definitions. Prevailing uncertainty in the circumstances surrounding him may not permit clear-sighted vision into the future. The circumstances may justify his envisioning his need for the premises two or three years later, and therefore applying for permission under Section 21 of the Act to let out the premises accordingly. And yet, thereafter, on the expiry of that period he may find that the circumstances have changed and his use of the premises has now to be postponed by another few years. In cases such as this the mere fact that the owner has let out the premises after obtaining permission under Section 21 of the Act for a limited period, and thereafter on the expiry of that period has found it necessary to obtain permission to let out the premises again for another limited period cannot necessarily lead to the inference that from the very beginning the premises were available for letting out indefinitely. The Rent Controller and the Rent Control Tribunal should have examined the circumstances prevailing on each occasion when an application was made under Section 21 of the Act. The changing facts of social existence do not permit the application of unimaginative perspectives and inflexible assumptions. The mutating kaleidoscope of human life portrays a different reality. It is this fundamental error into which the Rent Control Tribunal has fallen. Because of that it has unwittingly fallen further into the error of misconstruing the significance of the statement made by the appellant. A copy of her statement is before us and all that the appellant said was that the premises could be spared for letting because her son had been posted at Bangalore and that after two years he would be back in Delhi. Much has been made by the Rent Control Tribunal of this minor inconsistency, of the circumstance that instead of stating that her son would be posted in Delhi the appellant had stated that her son would be posted "back" in Delhi. It seems to us wholly irrelevant to the issue in the case whether the son was being posted in Delhi for the first time or was being posted again in the city. It was wholly immaterial to the question in 1980 whether the premises, which had been constructed a few years before, should be let out for a period of two year. What was material was the expectation that the son and his family would be in Delhi after two years. The central issue in the case has been clouded by a circumstance which has no bearing on it.

7. In our judgment, the orders of the First Additional Rent Controller, the Rent Control Tribunal and of the High Court cannot be sustained.

8. An attempt was made by learned counsel for the appellant to refer to material, now placed on the record, establishing that the appellant's son had in fact been transferred to Delhi in May 1985 and that he was compelled, with a family of six members, to share a small accommodation with a friend at Delhi. There is also clear evidence showing that his eldest child was suffering from bronchial asthma and had been hospitalised in the Command Hospital at Bangalore three times, and that medical specialists had advised a change of place immediately. We need not take this material into consideration. After examining the material already on the record, a task to which we are compelled by the erroneous approach adopted by the statutory authorities to the case, we have come to the conclusion that the evidence does not make out that any fraud was practiced on the Rent Controller when permission was granted in 1980 under Section 21 of the Act, and there is nothing to show that the permission can be regarded as a nullity or that material facts were concealed. On the contrary, it seems to us that the haphazard manner in which the case has been dealt with by the First Additional Rent Controller and the Rent Control Tribunal leaves much to be desired.

9. The appeal is allowed, the order dated January 21, 1984 of the First Additional Rent Controller, the order dated May 2, 1984 of the Rent Control Tribunal and the order dated September 25, 1984 of the High Court are set aside and the objection filed by the respondent to the appellant's application for possession under Section 21 of the Delhi Rent Control Act is rejected and the said application is allowed. The appellant will be entitled to delivery of possession of the premises. But in the circumstances, we allow the respondent a period of two months from today for vacating the premises. There is no order as to costs.

</html