Sushila Devi and Others

Vs

Avinash Chandra Jain and Others

Civil Appeal No. 4089 of 1985

(A. P. Sen, V. B. Eradi JJ)

19.02.1987

ORDER

1. This appeal by special leave is directed against the judgment and order passed by a Single Judge of the Delhi High Court dated January 17, 1985 disallowing the revision preferred by the appellant under sub-section (8) of section 25-B of the Delhi Rent Control Act, 1958 in a proceedings brought by the respondents for recovery of the demised premises sunder section 14(1)(e) wherein the appellants had been granted leave under sub-section (5) of section 25-B to contest the application for eviction.

2. Shri Kacker, learned counsel for the appellants contends that there was a duty cast on the High Court under sub-section (8) of section 25-B of the Act not only to call for the records but to satisfy that the order made by the Rent Controller under section 14(1)(e) read with section 25-B(1) was in accordance with law. He submits that there is total non-application of mind on the part of the learned Single Judge to the requirements of section 14(1)(e). According to him, the respondents had twice earlier made unsuccessful attempts a get rid of the appellants on one pretext or another from the demised premises which had residential-cum-business premises, that the partition by the consent decree under the terms of which the demised premises occupied by the appellants have been allotted to the share of the respondent Avinash Chandra Jain is a merely a device to make out a claim for eviction under section 14(1)(e). The learned counsel makes a grievance that the learned Single Judge did not go into the question as to the bona fides of the need of the landlord. He drew our attention to the following observations made by the learned Single Judge while declining to interfere in revision :

> It is true that the tenant has been residing in the premises for more than 40 years it will be noticed that in the first three decades, no such attempt was made to throw out the tenant. As time passes and circumstances change, the tenant should also realize that in these circumstances, it is better to quit and find some alternative accommodation rather than insisting on staying in the same premises.

3. We are really distressed that the learned Single Judge should have made such an observation at all. It breaks complete lack of comprehension of the purpose and object of such control legislations and the spirit behind them. While the landlord is entitled to the beneficial enjoyment of his property, the law still insists as a measure of social necessity that the court should be satisfied as to the genuineness of the requirement of the landlord under Section 14(1)(e). It has to keep in view that there is acute shortage of housing accommodation in the metropolitan city of Delhi and therefore unless there is compelling necessity, there can be no order for eviction under Section 14(1)(e) of the Act. The provision contained in Section 14(1)(e) is meant to subserve a public interest and to strike

a just balance between the competing needs of the landlord and the tenant. It is axiomatic that when a landlord applies for eviction of a tenant under Section 14(1)(e) of the Act, there is duty cast on the court to consider the question on merits on the basis of the evidence adduced by the parties. Again, there has to be in such cases an objective determination of the claim of the landlord. It is necessary to emphasise that unlike section 115 of the Code of Civil Procedure, 1908 where the High Court's power of interference in revision touches jurisdiction, the power of the High Court to interfere in revision under sub-section (8) of section 25-B of the Act is much wider in scope and enables the High Court to satisfy it self as to whether the decision rendered by the Rent Controller on the facts in issue is in a accordance with law, that is to say, in accordance with the well settled principles. The failure on the part of the learned Single Judge to apply his mind to requirements of section 14(1)(e) of the act and objectively determine the facts raised merely because the appellants have been in occupation of the dismissed premises for 40 years vitiates the impugned order passed by him. It cannot be that merely because a tenant has been in occupations for a large number of years, the landlord must as a mater of course get an order of eviction under section 14(1)(e). Such a view would negate the very protection given to the tenant under section 14(1)(e) and can hardly be sustained.

4. We are therefore constrained to allow this appeal, set aside the Judgment of the High Court and remit the revision to the High Court for fresh disposal with advertence to the observations made above and in accordance with the well settled principals. The High Court will try to dispose of the revision as early as possible and in any event, not later than three months from today. No costs.

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