

Smt Prativa Devi

Vs

T. V. Krishnan

Civil Appeal No. ... of 1987

(A. S. Sen, V. B. Eradi, G. L. Oza JJ)

12.03.1987

ORDER

1. In this appeal by special leave directed against the judgment of the Delhi High Court dated 1-5-1986 reversing the order passed by the Controller of Rents, Delhi dated 24-5-1985 directing the eviction of the respondent under clause (e) to the proviso to Section 14(1) of the Delhi Rent Control Act, 1958, the only contention is that the High Court was not justified in the facts and circumstances of the case in interfering with the order of the learned Rent Controller allowing the application made by the appellant-landlady under Section 14(1)(e) of the Act. After hearing learned counsel for the parties, we are satisfied that the contention must prevail. Although the revisional power conferred on the High Court under sub-section (8) of Section 25-B of the Act may not be as narrow as the revisional power under Section 115 of the Code of Civil Procedure, 1908, there was no ground on which the legality and propriety of the order of the learned Rent Controller could be successfully assailed. The learned Rent Controller had kept the legal principles in view and on an objective determination come to a definite conclusion that the need of the appellant of the demised premises at C-192, Sarvodaya Enclave, New Delhi for her residential use was bona fide and that she did not have any alternative accommodation available for that purpose within the meaning of Section 14(1)(e) of the Act. The High Court ought not to have interfered under Section 25-B(8) merely on the ground that on a reappraisal of the evidence it would have come to a contrary conclusion.

2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N. C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjang Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.

3. The learned counsel for the appellant however relies on the following observations made by a learned Single Judge (T. P. S. Chawla, J.) supposed to be based on the decision of this Court in *Phiroze Bamanji Desai v. Chandrakant N. Patel* [(1974) 1 SCC 661 : (1974) 3 SCR 267] to the effect :

"I think, the true test is whether, on an overall and reasonable view, it can be said that the landlord has suitable accommodation 'available for his use'. In deciding this question one should certainly have regard to the fact that the landlord has no legal right to the other accommodation, but that is only a factor and not the end of the matter."

These observations proceed on a misunderstanding of the ratio of the decision of this Court in *Phiroze Bamanji Desai* case [(1974) 1 SCC 661 : (1974) 3 SCR 267]. The High Court was in error in laying down that the test is availability of alternative accommodation and not the legal right to such occupation in adjudging the bona fides of the claim of the landlord under Section 14(1)(e) of the Act. The decision of this Court in *Phiroze Bamanji Desai* case [(1974) 1 SCC 661 : (1974) 3 SCR 267] does not lay down any such proposition. On the contrary, this Court reversed the judgment of the Bombay High Court which proceeded upon that basis. In that case, the first floor was in occupation of the mother of the appellant as a tenant and the question was as to the availability of the Truth Bungalow which was given on leave and licence to one Dr. Bharucha. The High Court came to the conclusion that the requirement of the appellant for the ground floor of the demised premises was not reasonable and bona fide since the appellant was in juridical possession of the Truth Bungalow. This Court in allowing the appeal observed : (SCC p. 668, para 8)

"Now, it is true that when premises are given on leave and licence, the licensor continues, from a juridical point of view, to be in possession of the premises and the licensee is merely given occupation and therefore, strictly speaking the High Court was right in observing that the Truth Bungalow, which was given on leave and licence to Dr. Bharucha, was in the possession of the appellant."

The Court then pointed out : (SCC p. 668, para 8)

"But for the purpose of determining whether the requirement of the appellant for the ground floor premises was reasonable and bona fide, what is necessary to be considered is not whether the appellant was juridically in possession of the Truth Bungalow, but whether the Truth Bungalow was available to the appellant for occupation so that he could not be said to need the ground floor premises. If the Truth Bungalow was in occupation of Dr. Bharucha on leave and licence, it was obviously not available to the appellant for occupation and it could not be taken into account for negating the need of the appellant for the ground floor premises."

We accordingly overrule the decision of the Delhi High Court in *Sat Pal v. Nand Kishore* [ILR 1983 Del 73] as not laying down good law.

4. In the premises, the judgment of the High Court disallowing the appellant's claim cannot be supported. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under Section 14(1)(e) of the Act and her claim could not be disallowed merely

on the ground that she was staying as a guest with a family friend by force of circumstances.

5. In the result, the appeal must succeed and is allowed with costs. We set aside the judgment and order of the High Court and restore that of the Rent Controller directing eviction of the respondent from the demised premises under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The respondent is given four months' time to vacate the premises subject to filing of the usual undertaking within four weeks from today.

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