Ganpat Ram Sharma and Others

Vs

Gayatri Devi

Civil Appeals Nos. 2150-52 of 1980

(Sabyasachi Mukharji, S. Natarajan JJ)

17.07.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These appeals by special leave are from the judgment and order dated August 28, 1980 of the High Court of Delhi. Three Appellants, Jai Bhagwan, Pearey Lal and Ganpat Ram, were inducted into premises No. 3240, Kucha Tara Chand, Daryaganj, Delhi by the then landlord, Shri Dina Nath. The families of the appellants consisted of about 7 or 8 members per family living in one room each on the ground floor of the said premises. Shri Pearey Lal, one of the appellants, had one side storeroom alongwith the room and Shri Jai Bhagwan had one small tin shed on the first floor. The appellants were also sharing the terrace.

2. In 1952 the land and building situated at No. A-6/25, at Krishan Nagar, Delhi was purchased by one Nathu Ram, father of the appellant Ganpat Ram and Pearey Lal together with the appellant Jai Bhagwan, his son-in-law. The building consisted of two rooms, two kitchens and a barsati.

3. Three applications were made by the appellants under Order 41 Rule 2 of CPC on or about August 4, 1980. The High Court pronounced its judgment without disposing of these applications on or about August 27, 1980 and proceeded to hold against the appellants on the basis of an adverse inference that the three appellants had built the house in Krishna Nagar, whereas a copy of the sale deed would show that the said house was bought and not built by Nathu Ram and Jai Bhagwan, and were not by the two of three appellants.

4. In 1958 Ganpat Ram was allotted a DDA Quarter No. 3/7 at Village Seelampur, Shahdara. By a notification dated May 28, 1966, Village Seelampur, Shahdara was declared to be an urban area. By Notification dated March 27, 1979 issued under Section 1(2) of the Delhi Rent Act (hereinafter called 'the Act') this village was subjected to the provisions of the said Act. During 1967-68 one Mrs. Sushila Devi was inducted into the quarter at Seelampur, consisting of a room, a kitchen and a bathroom. This lady had applied for the allotment of the said quarter in her name sometime in 1974. On July 20, 1980, the authorities, in fact, allotted the said quarter to her. In 1965-70 M/s. Dev Karan and Kul Bhushan being the sons of Pearey Lal had been occupying the portion of the house at Krishna Nagar together with their family members and grandfather, Nathu Ram. Nathu Ram died in 1969. The other portion was occupied by one Kalu Ram and his family members being brother of Jai Bhagwan. There were 18 people residing at the relevant time in the said house. The present landlord, the respondent herein, purchased the suit premises from the erstwhile landlord. Dina Nath on or about April 9, 1973. On or about September 28, 1973, the present landlord applied to the competent authority under the Slum Act for permission to evict the appellants from the said

premises. On December 12, 1974 the competent authority under the Slum Act granted permission to the landlord to proceed in eviction against the three appellants. On or about April 16, 1975, the respondent herein filed three eviction suits against the appellants on the grounds contained in Section 14(1)(a), (h) and (j) of the Act. On January 31, 1977, it was held by the Additional Rent Controller, Delhi that the ground under Section 14(1)(h) was made out against all the three appellants. The ground under Section 14(1)(a) was also upheld but the appellants were asked to deposit arrears of rent within a month from the date of the order so as to avail the benefit of Section 15(1) of the Rent Act which the appellants availed of. On or about April 24, 1979, the Rent Control Tribunal confirmed the decree in ejectment on appeal under Section 14(1)(h) of the Act against the three appellants. On further appeal the High Court construed Section 14(1)(h) of the Act to mean that a building constructed by the tenant which is outside the purview of the Delhi Rent Act on the date of the application for ejectment, was yet within Section 14(1)(h) and the tenant was liable to be ejected.

5. In appeal before us, it was submitted on behalf of the appellants that in none of the three judgments, there was any finding as to the suitability of the residence that is built, allotted or of which the tenant has acquired vacant possession of. None of the courts has re-examined the size of the space, the distance and inconvenience that might be caused, the number of persons in the tenants' families or the state of residence built or allotted by or to the tenants. Aggrieved by the aforesaid judgment of the High Court dated August 28, 1980, the tenants have come up in appeal.

6. In this case the learned Additional Rent Controller had passed an order of eviction under clause (h) of Section 14(1) of the said Act against all the three appellants as mentioned before. The said decision was upheld by the Tribunal. It has been held by the courts below that the three tenants have built and acquired vacant possession of the residential house at A-6/25 Krishna Nagar, Lal Quarter, Delhi. It was held that Ganpat Ram, one of the tenants-appellants has been allotted residential quarter at 317, Seelampur III, Shahdara, Delhi. Before the High Court the judgments of the Rent Controller as well as the Tribunal were challenged on the grounds, inter alia, that none of the three tenants had built or acquired vacant possession of the residential house No. A-6/25, Krishan Nagar, near Lal Quarter, Delhi. It was further submitted that in any case the respondent-landlady was not entitled to claim eviction under clause (h) on the grounds of waiver and laches. Counsel submitted before the High Court that Ganpat Ram had not been allotted the quarter at Seelampur and that in any case he was not in possession of the same. He further submitted that the Act was not applicable to the quarter alleged to have been allotted to Ganpat Ram, tenant and as such grounds covered by clause (h) were not available to the landlady. Lastly it was submitted that all the three ingredients mentioned in clause (h) of Section 14 of the Act were applicable to the landlord. Section 14 of the Act is in Chapter III and controls eviction of the tenants. The said section stipulates that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against the tenant. Clause (h) deals with the situation where the tenant has, whether before or after the commencement of the Act, built or acquired vacant possession of or has been allotted a residence.

7. The High Court noted the apparent purpose of providing clause (h) of sub-section (1) of Section 14. The High Court was of the opinion that on account of rapid growth of population of Delhi, landlords were tempted to terminate the tenancies of the existing tenants and ask for their eviction in order to let out the premises to the new tenants at high rents. Rent Control legislation for Delhi and New Delhi was passed for the first time during the Second World War and since then there has been Rent Control legislation applicable to various urban areas in the Union Territory of Delhi. The Rent

Control Act was enacted to provide for the control of rents and evictions. The object of clause (h), as is apparent, is not to allow the tenant more than one residence in Delhi. Therefore, it provided that in case that tenant builds a residence, the landlord could get his house vacated. It also provided that if the tenant acquired vacant possession of any other residence, he is not protected. Lastly, it also stipulated that if a residential premises has been allotted to a tenant, he is not entitled to retain the premises taken on rent by him. In the instant case, on (sic of) the three causes on which the landlord can claim eviction were present against the tenant, the High Court held that these causes are not joint. These need not be conjointly proved or established. These were in the alternative. Therefore, if the landlord is successful in proving any one of the causes, he is entitled to an order of eviction against the tenant. Counsel for the appellants sought to urged before the High Court that if a tenant built a house, he must acquire its vacant possession before he can be evicted under clause (h). Similarly, it was submitted that if residential accommodation was allotted to a tenant then he must obtain vacant possession of the same. The word 'or' showed according to the High Court, that these were different circumstances in which a tenant was liable to be evicted. These were (i) if the tenant had built a new residence, or (ii) if he had acquired vacant possession of it or (iii) if he had been allotted a residence.

8. The words 'built' and 'allotted' do not mean that after building residence or after allotment or a residence, the tenant must also acquire its possession. If a tenant builds a house and does not occupy it, he is liable to eviction, according to the High Court. Similarly, if a residence is allotted to a tenant, but he does not occupy it and allows others to occupy the same, he is not protected, according to the High Court. The Act provides that building of a house by tenant or allotment of residence to him is a ground of eviction available to the landlord against his tenant. The learned Judge of the High Court was of the view that it is not necessary for a landlord to prove either that the tenant has built and acquired vacant possession of the building or that he has been allotted and taken possession of the allotted premises.

9. The landlady in the eviction application alleged that the tenants had built and acquired vacant possession of a residential house at A-6/25, Krishna Nagar, near Lal Quarter, Delhi. It was denied by all the tenants but the Controller and the Tribunal on the basis of the evidence on record concluded that the three tenants have built and have also acquired vacant possession of the said residential premises. It was further held that the relatives of the three tenants were in actual physical possession of the said house at Krishna Nagar. It transpired from the record that Dev Karan, Kul Bhushan and Kalu Ram were admittedly related to the three tenants and were in occupation of house at Krishna Nagar as licensee of the three appellant-tenants. This is a finding of fact and could not have been challenged in second appeal before the High Court. Learned counsel for the tenants then submitted before the High Court. Learned counsel for the tenants then submitted before the High Court that the landlady was a purchaser of the property from one Dina Nath and she and her vendor had also been aware that the tenants were owners of the house in Krishna Nagar. On account of this knowledge it was argued that the landlady-respondent had waived her rights under clause (h) of Section 14(1) of the Act. The High Court found that there was no substance in the argument. There was no plea that the landlady ever waived or was guilty of laches. No evidence was led by the parties. The facts were that the respondent-landlady purchased this property from Dina Nath on April 9, 1973. There was nothing on record to show that Dina Nath was ever aware of the fact about building or acquiring a house at Krishan Nagar by the three tenants. The landlady on September 28, 1973 filed applications against the three tenants under Section 19 of the Slum Area (Improvement and Clearance) Act, 1956 seeking permission to institute eviction proceedings. The required permission was granted by the competent authority on December 12, 1974 and the present eviction application out of which this appeal arises was filed on April 16, 1975. Therefore, there was no

question of laches on the part of the landlady. She filed an application for permission after about six months from the date of purchase and she filed an eviction application after about four months from the date of the grant of permission by the Slum authority.

10. The landlady claimed eviction of Ganpat Ram, appellant tenant, on another ground also, namely, that he has been allotted residential quarter at 317, Seelampur III, Shahdara, Delhi. This fact was denied by the tenant. AW 1 Naresh Chand, an official of the DDA brought the official record relating to the allotment of this quarter. It was proved that the said quarter was allotted to him in 1958 and that possession was delivered to him. It was deposed that it was residential in nature. On behalf of the tenants, it was submitted before the High Court that the same was in possession of Sushila Devi. Sushila Devi had appeared as a witness. She admitted that the said quarter was allotted to the tenant, Ganpat Ram, the appellant. After allotment Ganpat Ram was entitled to occupy the allotted accommodation and possession was delivered to him. According to the said witness, he was not now in possession and somebody else was in possession. Evidence was adduced on behalf of the tenant that he was not in possession and somebody else was in possession. According to the High Court, if once the condition stipulated in clause (h) was fulfilled, by the tenant, he was disentitled to protection under the Act. He cannot thereafter claim that he should be protected. We are of the opinion that the High Court was right.

11. It was further alleged that Seelampur area known as Seelampur where the allotted quarter was situated, was not governed by the Act and therefore ground covered by clause (h) was not available to the landlady. There is no plea and the High Court found taking into consideration all the relevant materials that there was no evidence to show that it was situated within the area which was not governed by the Act. We are in agreement with the learned Judge of the High Court.

12. Before us in appeal, however, several points were sought to be urged. It was urged that on a proper construction, there must be a suitable residence, that is to say, a good substitute for the petitioners or the landlord and a reasonable substitute.

13. Reliance was placed on the decision of this Court in Goppulal v. Thakurji Shriji Shriji Dwarkadheeshji ((1969) 3 SCR 989 : (1969) 1 SCC 792 : 1969 Ren CR 300). There the court was concerned with the sub-letting before the coming into force of the Act and was concerned with Section 13(1)(e) of the relevant Act which used the expression "has sublet". The present perfect tense contemplated a completed event connected in some way with the present time. The words took within their sweep any sub-letting which was made in the past and had continued up to the present time. Therefore, this Court held that it did not matter that the subletting was either before or after the Act came into force.

14. The Delhi High Court in the case of Ved Prakash v. Chunilal ((1971) 7 Del LT 59) where the expression 'has' in the Delhi Rent Control Act, 1958 in Section 14(1)(h) came up for consideration held that the word 'has' in clause (h) carries in itself the force of the present tense. It has therefore to be interpreted in terms of the words employed in the opening part of the proviso which are to the effect that the Controller may on an application made to him in the prescribed manner make an order for the recovery of the premises and those words meant that on the date of the application the tenant must be having a residence either because he might have built the same or might have acquired vacant possession thereof or it might have been allotted to him. Any of the three situations must be there on the date of the application. If that is not so, then clause (h) of the proviso to sub-section (1) of Section 14 of the Act would have no application.

15. According to the learned Single Judge of the Delhi High Court, the word 'has' applied with the same force and velocity to the words 'built' 'acquired vacant possession of' and 'been allotted'. The last words 'a residence' again relate to all the three contingencies. The word 'has' contains in itself the meaning of presently possessing something. The ordinary English dictionaries while giving the meaning of word 'has' refer to the word 'have', which in turn means 'to hold', 'to possess'.

16. The words 'has built' or 'has acquired' or 'has been allotted' clearly mean that the tenant has already built, acquired or been allotted the residence to which he can move and that on the date of the application for his eviction his right to reside therein exists. It was therefore held that the words as they stood associated with each other in clause (h) lead to the only conclusion that as on the date of the application the tenant must be possessing a clear right to reside in some other premises than the tenancy premises as a matter of his own rightful choice either because he may have built such premises or acquired vacant possession thereof or the same may have been allotted to him.

17. In Revti Devi v. Kishan Lal ((1970) 2 Ren CR 71 (Del), Deshpande, J. of Delhi High Court had occasion to construe Section 14(1)(h) of the Act. The landlord there applied for eviction of his tenant on the ground that the tenant had acquired vacant possession of another residence within the meaning of Section 14(1)(h) of the Act. The tenant defended that he had not acquired any residence and that the alleged residence had in fact been acquired by his wife and his sister-in-law jointly. The Rent Control Tribunal held that (sic) the view that under Section 14(1)(h) the tenant was liable to be evicted only if he himself had acquired the vacant possession of another residence and not by any other member of his family including the wife. The question which came up before the court for decision was whether the acquisition of a separate residence by the wife of the tenant was sufficient ground for the eviction of the tenant by the landlord under proviso (h) of sub-section (1) of Section 14. That, however, is not the question here.

18. In Niader Mal v. Ugar Sain Jain (AIR 1966 Punj 509 : ILR (1965) 2 Punj 609 : 1965 Pun LR (Supp) 103), the court had to construe, inter alia, Section 13(1)(h) of the Delhi and Ajmer Rent Control Act, 1952. There under Section 13(1)(h) of the said Act in order to be liable for eviction, the tenant must have built a suitable residence. The court was of the opinion that merely because the tenant had built a house, would not be a ground for ejectment within the meaning of Section 13(1)(h). The words 'suitable residence' must be read with all the terms namely 'built', 'acquired vacant possession of' or 'been allotted'. Although the onus to prove fact within the special knowledge of a party must be on him, a landlord bringing a suit for eviction under Section 13(1)(h) of the said Act must first allege the existence of grounds entitling him to a judgment. The residence of the tenant must be suitable one.

19. In Siri Chand v. Jot Ram ((1961) 63 Punj LR 915), the Punjab High Court had to construe the Delhi and Ajmer Rent Control Act, 1952 and it was held that on the date of the suit for ejectment of the tenant, in order to succeed, all that the landlord had to show was that he was the landlord and secondly, that defendant was his tenant and thirdly the tenant has, whether before or after the commencement of the Delhi and Ajmer Rent Control Act, either built a suitable residence, or been allotted a suitable residence.

20. The decision of the Delhi High Court in Govindji Khera v. Padma Bhatia Attorney ((1972) 4 Ren CR 195 (Del) to which our attention was drawn, does not advance the case any further.

21. Before we discuss the other aspect the result of the several decisions to which reference has been made above, indicate that the position in law is that the landlord in order to be entitled to evict the

tenant must establish one of the alternative facts positively, either that the tenant has built, or acquired vacant possession of or has been allotted a residence. It is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession of or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts. The other aspect is that apart from the question of limitation to which we shall briefly refer the landlord must be quick in taking action after the accrual of the cause of action, and if by his inaction the tenant (sic landlord) allows the premises to go out of his hands then it is the landlord who is to be blamed and not the tenant. In the light of these, we have now to examine whether the suit in the instant case was barred by the lapse of time. But quite apart from the suit being barred by lapse of time. This is a beneficial legislation, beneficial to both the landlord and the tenant. It protects the tenant against unreasonable eviction and exorbitant rent. It also ensures certain limited rights to the landlord to recover possession on stated contingencies.

22. The next aspect of the matter is which article of the Limitation Act would be applicable. Reference was made to Article 66 and Article 67 of the Limitation Act, 1963 (hereinafter called the Limitation Act). Article 66 stipulates that for possession of immovable property the cause of action arises or accrues when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition. Article 67 stipulates a period of twelve years when the tenancy is determined. Article 113 deals with suit for which no period of limitation is provided elsewhere in this Schedule. On the facts of this case it is clear that Article 66 would apply because no determination in this case is necessary and that is well settled now. Determination in notice under Section 106 of the Transfer of Property Act is no longer necessary.

23. It is well settled that time begins to run from the date of the knowledge. See in this connection the decision of Harbans Singh v. Custodian of Evacuee Property 'P' Block (AIR 1970 Del 82 : ILR 1969 Del 719), though that was a case under a different statute and dealt with a different article. See also Ujagar Singh v. Likha Singh (AIR 1941 All 28, 30 : 193 IC 387 : 1940 AWRHC 579). The Division Bench of the Punjab and Haryana High Court in Som Dass v. Rikhu Dev Chela Bawa Har Jagdass Narokari ((1983) 85 Punj LR 184) held that in a suit for possession under Article 113 of the Limitation Act, material date is one on which the right to sue for possession arises.

24. In K. V. Ayyaswami Pathar v. M. R. Ry. Manavikrama Zamorin Rajah (AIR 1930 Mad 430(2) : 58 MLJ 89 : 124 IC 273) it was held that where a claim is based upon a forfeiture of a lease by reason of alienation of the demised land and nothing else, the article applicable for the purpose of limitation was clearly Article 143 and the limitation commences to run from the date of the alienation. Here accrual of the right of the landlord is not challenged. The knowledge is indisputably in 1973 looked at from any point of view. There is no question of limitation in this case.

25. In the premises, we are of the view that the High Court was right and the appeals must fail and are accordingly dismissed with costs.

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