

Joginder Kumar Butan

Vs

R. P. Oberoi

Civil Appeal No. 1148 of 1979

(Sabyasachi Mukharji, S. Natarajan JJ)

12.08.1987

JUDGMENT

NATARAJAN, J. -

1. This appeal by special leave is directed against a judgment of the Delhi High Court dismissing the second appeal preferred by the appellant herein to impugn the order passed against him in execution proceedings taken under Section 21 of the Delhi Rent Control Act, 1958 by the Rent Controller and confirmed by the Rent Control Tribunal.

2. The respondent, a government official who has since retired from service is the owner of a house bearing number A/15, Naraina Vihar, New Delhi. During the year 1976, the respondent was residing in government quarters situated in Kidwai Nagar, New Delhi. On June 1, 1976 the respondent and the appellant appeared before the Rent Controller and sought for permission of the Rent Controller for the rear portion of the ground floor being leased out for a period of 18 months to the appellant under Section 21 of the Delhi Rent Control Act (hereinafter referred to as the Act). Besides filing the application, the parties gave their declarations before the Rent Controller. The respondent declared that he was the owner of the premises No. A-15, Naraina Residential Scheme, Delhi, that he did not require the rear portion of the ground floor as shown in the plan Ex. A-1 for his own use, that as such he wanted to let out the same to the appellant for residential purpose at a monthly rent of Rs. 500 exclusive of water and electricity charges for a period of 18 months with effect from June 1, 1976 as per proposed lease deed Ex. A-2. The appellant for his part declared that he had heard the statement of the respondent and that he accepted the same as correct, that he wanted to take on lease the rear portion of the ground floor of the respondent's house marked in plan Ex. A-1 for his residence on a monthly of 18 monthly rent of Rs 500 exclusive of water and electricity charges for a period of 18 months with effect from June 1, 1976 as per the terms contained in the draft lease deed Ex. A-2 and further declared that he "shall vacate the premises on the expiry of the aforesaid period of 18 months". Thereupon the Rent Controller passed an order as under :

Having regard to the averments made in the petition and the statements of the parties recorded above, permission under Section 21 of the Delhi Rent Control Act, 1958 is granted to the petitioner for letting out the aforesaid portion of the aforesaid house as detailed in the statement of the petitioner to the respondent for residential purpose for a period of 18 months with effect from today, June 1, 1976. File be consigned to the record room.

3. It was the case of the respondent in the execution application filed by him that pursuant to the abovesaid permission granted by the Rent Controller, the appellant was inducted into possession of the leased portion on June 2, 1976, that the period of lease came to an end on November 30, 1976

(sic 1977) and that as the appellant failed to deliver possession on December 1, 1977 as undertaken by him, he had to file an application under Section 21 for recovering possession of the leased portion. The said execution application was filed on December 12, 1977.

4. The appellant contested the application and raised a three-fold defense as under :

(1) He had been inducted into possession as a tenant on May 28, 1976 itself, i.e. before the Rent Controller gave permission to lease transaction by his order dated June 1, 1976 and that as such the tenancy was not governed by the order passed under Section 21 of the Act by the Rent Controller.

(2) Though the leased portion was taken on rent for being used as a residence, the parties by mutual agreement had agreed soon after the lease to make the proprietary concern of the appellant viz. M/s. Refaire Projects Corporation the tenant of the premises and as such the firm was the tenant and not the appellant and hence the execution application against the appellant was not maintainable.

(3) After the period of tenancy was over, a fresh tenancy was entered into governing not only the leased portion of the ground floor on a higher rent of Rs. 550 p.m. but also covering a garage and servants quarters on a monthly rent of Rs. 150 and by reason of the new tenancy the respondent was disentitled to file an execution application.

5. The Rent Controller and the Rent Control Tribunal, after a due consideration of the materials placed before the court by the parties, rendered concurrent findings to the effect that the tenancy came into effect only by reason of the permission granted by the Rent Controller under Section 21, that the several pleas of the tenant viz. A tenancy coming into existence even prior to the order of the Rent Controller, a subsequent modification of the tenancy so as to make the firm the tenant and a fresh being created so as to cover an additional area and on revised rental terms were all untenable and baseless contentions. Both the authorities therefore allowed the execution application and directed the appellant to deliver possession of the leased premises.

6. Before the High Court, in the second appeal preferred by the appellant, the question of a fresh tenancy on revised terms of lease was again sought to be canvassed but the High Court very rightly declined to examine the matter as the exercise would call for appraisal of evidence on factual matters which is in the domain of the trial court and the first appellate court and would also necessitate sitting in judgment over concurrent findings of facts rendered by the courts below. It was then urged before the High Court that there was no agreement in writing as required under Section 21 of the Act and hence the permission granted by the Rent Controller was not a valid one on the strength of which an execution application can be filed. The High Court rejected this contention stating that inasmuch as the parties had made statements before the Rent Controller and duly signed them, there was sufficient compliance with the terms of Section 21 and it was not necessary that there should be a separate agreement in writing over and above the draft agreements and the statements rendered before the Rent Controller. The High Court also briefly went into the question whether the proprietary concern of the appellant had become the tenant and whether thereby the use of the premises had been changed from residential to non-residential purpose and found the contentions of the appellant to be wholly devoid of merit. The High Court therefore dismissed the second appeal and hence the present appeal by special leave by the tenant.

7. Mr. Parekh, learned counsel for the appellant, realising the futility of canvassing once over again the unsuccessful defences raised before the courts below and the High Court, sought to assail the judgment of the High Court and the order in the execution application on two grounds alone viz. (1) the permission obtained by the respondent from the Rent Controller under Section 21 was in fraud of the statute and (2) an important condition prescribed by Section 21 was not fulfilled. It has to be mentioned even here that these contentions have not been raised before the Rent Controller and the Appellate Tribunal or even before the High Court.

8. Insofar as the first contention is concerned, the appellant has alleged in the special leave petition that the respondent had been obtaining permission from the Rent Controller under Section 21 on several occasions for leasing out different portions in the ground floor as well as the first floor of the house to different tenants for short periods in order to deprive the tenants of their rights conferred by the Act and also to get higher rent from each successive tenant. The respondent has controverted these averments in his counter-affidavit. Mr. Parekh submitted that the appellant was not setting up a new case because he had given the details of the names of the previous tenants and the portions occupied by them and the periods for which short term leases were granted to them after obtaining permission from the Rent Controller under Section 21 of the Act and as such there were enough materials before the court to show that the respondent had been abusing the provisions of Section 21 and playing a fraud upon the statute and obtaining permission for leasing out portions of the house to several tenants for limited durations and as such the permission granted by the Rent Controller in this case is vitiated by the fraud committed by the respondent and hence the execution application filed by the respondent was not at all maintainable. It is true we find that in the objections filed by the appellant to the execution application, he has given some particulars regarding the names of some tenants to whom the other portions of the building had been let out by the respondent after obtaining permission from the Rent Controller under Section 21. But significantly enough, the appellant had not pursued the matter and substantiated the charge of fraud leveled by him. He has not cross-examined the respondent with reference to the leases granted earlier by him to other tenants nor has he adduced independent evidence to prove the factum of those leases and such leases being granted by abuse of provisions of Section 21. In the absence of factual materials to show the abuse or misuse of the provisions of Section 21, it is not possible for us to sustain the contention of the appellant's counsel that the respondent had practised fraud on the Rent Controller and obtained permission under Section 21 to lease out a portion of the house to the appellant because a plea pertaining to fraudulent practice is a mixed question of fact and law. Without the requisite foundations of facts to prove a wilful contravention or abuse of a provision of law a finding cannot be rendered as to whether a party has committed a fraud by abusing any legal provision. Besides, it has to be borne in mind that even if the respondent had let out the ground floor portions and the first floor of the building to other tenants on earlier occasions by having recourse to Section 21 of the Act, the respondent may have done so on the basis of bona fide grounds and genuine calculations and his calculations may have gone wrong due to factors or events beyond his control.

9. Learned counsel invited our attention to the decisions rendered in *S. B. Noronah v. Prem Kumari Khanna* ((1980) 1 SCR 281 : (1980) 1 SCC 52 : AIR 1980 SC 193) and *V. S. Rahi v. Smt. Ram Chambeli* ((1984) 2 SCR 290 : (1984) 1 SCC 612 : AIR 1984 SC 595) and argued that the respondent had suppressed material facts from the Rent Controller when he asked for permission under Section 21 of the Act to lease out the premises in question to the appellant for eighteen months, and furthermore the Rent Controller had passed his order granting permission under Section 21 without due application of mind. Similar contentions were raised before us in the case of *Inder Mohan Lal v. Ramesh Khanna* ((1987) 4 SCC 1) in which judgment has been rendered by us on August 4, 1987. The whole gamut of Section 21, the object underlying the provision, the field of

its operation and the correct ratio to be applied in dealing with cases pertaining to Section 21 have been elaborately considered by us in the light of the earlier decisions of this Court and some of the decisions rendered by the Delhi High Court. We have pointed out therein that in order to attract Section 21 four conditions have to be satisfied viz. (1) The landlord does not require whole or part of any premises for a particular period, (2) The landlord must obtain the permission of the Controller in the prescribed manner, (3) The letting of the whole or part of the premises must be for residential purposes only; and (4) Such letting out must be for such period as may be agreed to in writing. After analysing the decision in Noronah case ((1980) 1 SCR 281 : (1980) 1 SCC 52 : AIR 1980 SC 193) the resultant position emerging under law has been summarised as follows : (SCC pp. 12-13, para 20)

An analysis of this judgment which has been applied in the various cases would indicate that Section 21 only gives sanction if the landlord makes a statement to the satisfaction of the court and the tenant accepts that the landlord does not require the premises for a limited period; this statement of a landlord must be bona fide. The purpose must be for residence. There must not be any fraud or collusion. There is a presumption of regularity. But it is open in particular facts and circumstances of the case to prove to the satisfaction of the executing court that there was collusion or conspiracy between the landlord and the tenant and the landlord did not mean what he said or that it was a fraud or that the tenant agreed because the tenant was wholly unequal to the landlord.

10. Viewed in this light it may be seen that the respondent herein has satisfied all the tests prescribed in Noronah case ((1980) 1 SCR 281 : (1980) 1 SCC 52 : AIR 1980 SC 193). The respondent was a government servant and was living in government quarters allotted to him. He had an apprehension that the allotment of the government quarters may be cancelled because of his owning a house and so he had to provide for any contingency resulting from the cancellation of the allotment of government quarters allotted to him, and hence he felt that he would be able to spare the leased premises only for a limited period. There was no material before the Rent Controller to establish or even to arouse suspicion that the respondent was playing a fraud on the statute. In such circumstances the order passed by the Rent Controller cannot be said to be vitiated in any manner. It would also be pertinent to point out in this context that if the Rent Controller had reason to suspect to suspect the bona fides of the respondent's application under Section 21, the Rent Controller could only have declined to grant his permission for the lease transaction and, if he had done so, the lease transaction would not at all have come to pass through. The Rent Controller could not have compelled or directed the respondent to give the premises on lease to the appellant for an indefinite period of time so as to enable the appellant to have the benefit of the statutory protection afforded by the Act against eviction except on one or more of the grounds set out in Section 14. Insofar as Rahi case ((1984) 2 SCR 290 : (1984) 1 SCC 612 : AIR 1984 SC 595) is concerned, the facts therein were totally different and they were instrumental in the court declining to sustain the landlady's application under Section 21 for eviction of the tenant. The evidence in the case established that the landlady had let out the identical portion of the house to other tenants but still she had made a false declaration before the Rent Controller that she had never let out the portion to anyone earlier. Furthermore her statement that after the lease period was over her mother would be joining her and the leased portion would be required for her was found to be false because the lady in question was not her mother but an aunt whom the landlady claimed to be her foster mother. It was therefore a case where the permission under Section 21 had been obtained on the basis of false declarations and statements. In the present case no such false declaration had been made by the respondent when he sought the permission of the Rent Controller under Section 21. On the other hand we are inclined to agree with the argument of the respondent's counsel that the facts of the case call for the court taking the view which it had taken in the case of Smt. Dhanwanti

v. D. D. Gupta (AIR 1986 SC 1184 : (1986) 3 SCC 1). In that case it was observed that there may be certain cases where the owner, after obtaining permission under Section 21 of the Act had let out the premises for a limited period and after the expiry of the said period he may have again found it necessary to obtain permission to let out the premises for another limited period due to genuine causes and therefore, the mere fact of letting out of the premises once again by having resort to Section 21 of the Act for a limited period should not necessarily lead to inference that from the very beginning the premises were available for letting out indefinitely. In the instant case there is no evidence except the averment of the appellant that the respondent had let out the leased portions on earlier occasions also for limited periods by having resort to Section 21. However even if that statement is true there cannot be an automatic inference that the permission granted by the Rent Controller pertaining to the lease of the premises to the appellant had been obtained by fraudulent by the respondent.

11. Apart from these things there is also another factor which weakens the objections raised by the appellant and denudes them of force and content. He had waited for the full term of the lease to raise objections about the respondent playing a fraud on the statute. He has failed to put forth these objections within a reasonable time after the permission was granted by the Rent Controller to impugn the order on the ground of alleged fraud perpetrated by the respondent. It was observed by this Court in *J. R. Vohra v. India Export House* ((1985) 2 SCR 899, 911-12 : (1985) 1 SCC 712, 123-24, para 13 : AIR 1985 SC 475) that the remedy available to a tenant in a case where there was only a ritualistic observance of the procedure while granting permission for the creation of a limited tenancy or where such permission was procured by fraud practised by the landlord or was a result of collusion between the strong and the weak, would be for the tenant approaching the Rent Controller during the currency of the limited tenancy itself for adjudication of his pleas as soon as he discovers facts and circumstances that tend to vitiate ab initio the initial grant of permission and not to wait till the landlord makes his application for recovery of the premises after the expiry of the period fixed under Section 21.

12. We are, therefore, unable to sustain the first ground of attack of the appellant's counsel to assail the judgment of the High Court.

13. Insofar as the second ground is concerned, this aspect of the matter also has been considered by us and dealt with in a detailed manner in *Inder Mohan Lal* case ((1987) 4 SCC 1). After noticing the decisions of the Delhi High Court which have held the field all along declaring that Section 21 is a complete code by itself and that a permission granted under Section 21 would not become invalid either on account of landlord failing to disclose the reasons for non-requirement of the leased premises for a particular period or because of the landlord and the tenant not entering into an agreement in writing subsequent to the grant of permission under section 21 or on account of the agreement of tenancy in writing not being subsequently registered, this Court affirmed the decisions of the Delhi High Court laying down the above ratio in observance of the settled judicial policy that in the matter of interpretation of a local statute the law settled by the High Court over a continuous period of time should be normally adhered to and not disturbed. The relevant passage in the judgment reads as follows : (SCC p. 16, paras 25-26)

Learned counsel for the appellant also stressed before us that Section 21 of the Rent Act was a complete code by itself. The order was under Section 21 of the Rent Act. No further question of lease or registered lease arose thereafter.

This question has been settled by series of decisions of the Delhi High Court upon which people

have acted for long. See the decision in *Kasturi Lal v. Shiv Charan Das Mathur* ((1976) 8 Ren CR 703) where at pages 708-709 Misra, J. of the Delhi High Court had clearly indicated numerous cases where it was held that Section 21 was a code by itself. The order of the permission is itself an authority; no lease was necessary and if that is the state of law in Delhi, it is too late in the day to hold otherwise. See the observations of the court in *Raj Narain Pandey v. Sant Prasad Tewari* ((1973) 2 SCR 835 : (1973) 2 SCC 35 : AIR 1973 SC 291) where this Court observed that in the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not be disturbed. A different view would not only introduce an element of uncertainty and confusion but it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. In Delhi transactions have been completed on the basis of permission and it was never doubted that there was any requirement of any lease or any agreement subsequent to the order and the same required registration.

14. There is therefore, no merit in the second contention of the appellant's counsel that since the lease transaction was not reduced to writing in terms of Ex. A-2 subsequent to the grant of permission by the Rent Controller, the terms of Section 21 are not fulfilled and hence the execution application under Section 21 would not lie.

15. In the light of our conclusions the appeal has to fail and it will accordingly stand dismissed with costs to the respondent.

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