

Narain Das

Vs

Manohar Lal and Another

Civil Appeal No. 2210 of 1987

08.09.1987

ORDER

1. Special leave granted.

2. The appellant is the tenant of premises which in terms of the lease in favour of the landlord was meant for residential use, but admittedly for over 30 years now it has been put to commercial use. The respondent-landlord acquired the property a few years back with the appellant in possession as a tenant. When notice was issued by the Delhi Development Authority for terminating the lease on account of change of user from residential to commercial the landlord sued the tenant for eviction. Eviction has been decreed and that is why the tenant is in appeal here.

3. We must make it clear that the predecessor of the present landlord who had inducted the tenant had permitted commercial user. That being so, in the absence of action taken by the Delhi Development Authority which is the foundation for the proceedings, the landlord would not have been entitled in law to ask for eviction. It became relevant in this background to ascertain as to whether there was justification for the notice given by the Delhi Development Authority. The Authority was a party to the proceedings in the courts below but was not participating. When the matter came to this Court special notice was again issued in response to which the Authority has appeared. Several documents have been placed before us along with affidavits and counter-affidavits to show that the question as to whether steps for cancellation of lease on account of change of user should be as a matter of policy taken is still under consideration of the Authority. There was instances in which the Lieutenant Governor has stayed action. There are also instances where the Authority has permitted change of user. The Authority by resolution has decided to re-examine similar cases arising within the Union Territory for adoption of a uniform policy. In this backdrop we called upon learned counsel appearing for the Delhi Development Authority to indicate as to how the notice issued by it to the landlord has to be considered. He made a statement at the Bar that the Authority was not pressing the notice and the lease would not be cancelled pursuant to such notice. This statement has been obviously made in view of the resolution of the Authority agreeing to reconsider the question.

4. For the reasons stated above, the notice not being effective, the landlord would not be entitled to sue for eviction on the sole ground that there has been a change of user which has led the Delhi Development Authority to issue a notice for cancellation of the lease in favour of the landlord. Reliance has been placed on a decision of this Court in *Faqir Chand v. Ram Rattan Bhanot* ((1973) 1 SCC 572 : (1973) 3 SCR 454 : AIR 1973 SC 921) where in similar circumstances the order of eviction was set aside and the matter was remitted to the Controller with certain directions. The self-same question in a little different situation came before this Court in the case of *Punjab National Bank v. Arjundev* (1987 Rajdani LR 7 (SC)) where a two Judge Bench vacated the order of eviction and remitted the matter to the Controller to fix up the quantum of penalty for misuser after

hearing the parties as also the Delhi Development Authority. On the facts and in the circumstances of this case and particularly keeping the course of events as stated above in view, we allow the appeal, vacate the order of eviction and remit the matter to the Controller to determine the quantum of penalty payable to the Delhi Development Authority for the purpose of wrong user of the property by changing from residential to commercial purpose. The tenant will bear the burden of penalty as may be determined. We make it clear that in the event of any fresh notice being issued by the Delhi Development Authority to the landlord for cancellation of the lease in his favour on the self-same ground, the landlord would be free to take action in accordance with law and our decision shall not operate as a bar to such proceeding. There will be no order as to costs throughout.

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