

Bhagwat Dutt Rishi

Vs

Ram Kumar

Civil Appeal No. 4567 of 1989

(Ranganath Misra, P. B. Sawant, K. Ramaswamy JJ)

08.11.1989

JUDGMENT

RANGANATH MISRA, J. -

1. Special leave granted.

2. The short question for consideration in this appeal at the instance of the landlord in a proceeding for eviction under the East Punjab Urban Rent Restriction Act is as to whether the appellant before us is a specified landlord as defined in Section 2 (hh) of the Act. The High Court has decided against the landlord by relying upon the decision of this Court in the case of D. N. Malhotra v. Kartar Singh ((1988) 1 SCC 656). When this matter came before a two judge bench, on August 16, 1988 the following order was made :

"This matter may be listed before a bench of three Hon'ble Judges two weeks hence for consideration of the question in the light of the decision of this Court in D. N. Malhotra v. Kartar Singh ((1988) 1 SCC 656)."

3. Section 2 (hh) of the Act defines 'specified landlord' to mean :

"a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State."

4. It is not disputed that the appellant was Reader to the sessions Judge of Sangrur from where he retired on September 30, 1981. He was thus holding a post in connection with affairs of a State. He was member of a Mitakshara family and the house in question was tenanted out to the respondent by his father in July 1982, and upon his father dying in the following month the tenant attorned to the appellant.

5. Section 13-A of the Act provides :

"Where a specified landlord at anytime, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable

accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts ..."

6. The amendment came into force with effect from November 16, 1985. The appellant applied for eviction on May 13, 1986. Thus, within one year of the enforcement of the Amending Act of 1985, the application for eviction was filed following the procedure laid down under the Act. Appellant's contention which has been rejected in the courts below has been that all the ingredients of the definition of 'specified landlord' are satisfied and he should, therefore, have been admitted to be a specified landlord and given the benefit of the special procedure. The High Court relied upon the following observations in Malhotra case : ((1988) 1 SCC 656). (SCC p. 662, para 11)

"It has been urged before us on behalf of the respondent that at the relevant time i.e. after retirement of the respondent from service within one year of the date of commencement of the said Act he is the landlord of the appellant and as such he falls within the definition of Section 2(hh) of the said Act and he becomes a specified landlord. This submission, in our view, cannot be sustained inasmuch as the words 'specified landlord' as used in Section 2(hh) refer to the person in service of the Union who is a landlord at the time of his retirement from the public service or post in connection with the affairs of the Union or of state. It cannot in any manner include an ex-serviceman who was not a specified landlord qua the tenant and the premises on or before the date of his retirement from the service of the Union. This has been very succinctly held by this Court in the case of Mrs. Winifred Ross v. Mrs. Ivy Fonseca ((1984) 1 SCC 288 : AIR 1984 SC 458) which has been referred to hereinbefore."

7. Malhotra case ((1988) 1 SCC 656) in terms relied upon on earlier decision of this Court in Mrs. Winifred Ross v. Mrs. Ivy Fonseca ((1984) 1 SCC 288 : AIR 1984 SC 458) in support of its view.

8. It is not disputed that on the ratio laid down by this Court in the two decisions referred to above the High Court had come to the correct conclusion that on the facts the appellant could not be a specified landlord. It is now for consideration whether the cases of Winifred Ross ((1984) 1 SCC 288 : AIR 1984 SC 458) and D. N. Malhotra ((1988) 1 SCC 656) have been correctly decided.

9. Winifred Ross case ((1984) 1 SCC 288 : AIR 1984 SC 458) was considering Section 13-A1 of the Bombay Rents, Hotel & Lodging House Rates Control Act of 1947. Section 13-A1 had been brought into the Act in 1975. The said section provided :

"Notwithstanding anything contained in this Act, -

(a) a landlord who is a member of the armed forces of the Union, or who was such member and is duly retired (which term shall include premature retirement), shall be entitled to recover possession of any premises, on the ground that the premises are bona fide required by him for occupation by himself or any member of his family

(which term shall include a parent or other relation ordinarily residing with him and dependent on him); and the court shall pass a decree for eviction on such ground if the landlord, at the hearing of the suit produces a certificate signed by the Head of his Service or his Commanding Officer to the effect that -

(i) he is presently a member of the armed forces of the Union or he was such member and is now a retired ex-serviceman;

#(ii)(b) "##

Dealing with this provision this Court said : (SCC pp. 292-93, para 5)

"The essential requirement is that he should have leased out the building while he was a member of the armed force. His widow can also recover the premises of which she is or has become the landlord under clause (b) subject to fulfillment of the conditions. Having regard to the object and purposes of the Act and in particular Section 13-A1, it is difficult to hold that Section 13-A1 can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement. Acceptance of this argument will expose the very Section 13-A1 of the Act to a successful challenge on the ground of violation of Article 14 of the Constitution for if that were so, a retired military officer who has no house of his own can purchase any building in the occupation of a tenant after his retirement, successfully evict a tenant living in it on the ground that he needs it for his use, then sell it for a fancy price and again because he has no house of his own, he can again acquire another building and deal with it in the same way. There appears to be no restriction on the number of times he can do so. It was argued that he would not be able to get the requisite certificate under the Act more than once. A reading of Section 13-A1 of the Act show that the certificate should show that the person concerned has been a member of the armed forces and that he does not possess any other suitable residence in the local area where he or members of his family can reside. Those conditions being satisfied the certificate cannot be refused. A liberal construction of Section 13-A1 of the Act as it is being pressed upon us would also enable unscrupulous landlords who cannot get rid of tenants to transfer their premises to ex-military men, as it has been done in this case in order to avail of the benefit of the said section with a private arrangement between them. It is also possible that a person who has retired from the armed forces may after retirement lease out a premises belonging to him in favour of a tenant and then seek his eviction at his will under Section 13-A1 of the Act".

A little later in the same decision this Court said : (SCC p. 295, para 10)

"Since a liberal interpretation of Section 13-A1 of the Act is likely to expose it to a successful challenge on the basis of Article 14 of the Constitution, it has to be read down as conferring benefit only on those members of the armed forces who were landlords of the premises in question while they were in service even though they may avail of it after their retirement. Such a construction would save it from the criticism that it is discriminatory and also would advance the object of enacting it, namely, that members of the armed forces should not while they are in service feel worried about the difficulties of a long drawn out litigation when they wish to get

back the premises which they have leased out during their service".

10. In Malhotra case,((1988) 1 SCC 656) this Court was called upon to consider Section 13-A1 of the very Act with which we are now concerned. On the basis of the ratio in Winifred Rose case ((1984) 1 SCC 288 : AIR 1984 SC 458), this Court came to the conclusion that until the landlord satisfied the test that he was a landlord qua the premises and the tenant at the time of his retirement or discharge from service, he would not be entitle to the benefit of Section 13-A of the Act.

11. It is not disputed that the appellant retired on September 30, 1981. On the finding the appellant is right in his submission that this was not a case of transfer with an oblique motive but as the property belonged to a Mitakshara father, upon his death the property has come to his hands. This feature which is different from the facts appearing in the two reported decisions, however, would not persuade us to give a different meaning to the definition in Section 2 (hh). In both the cases, for good reason this Court came to the conclusion that the public officer should have been a landlord of the premises in question while in service. Admittedly, the appellant was not the landlord before he superannuated.

12. We are of the view that the opinion of this Court in Winifred Ross ((1984) 1 SCC 288 : AIR 1984 SC 458) case is unassailable and, therefore, the appellant would not be entitle to the benefit of the special procedure in Section 13-A of the Act.

13. The appeal fails and is dismissed. Parties are directed to bear their own costs.

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