

Shiv Chander Kapoor

Vs

Amar Bose

Civil Appeal No. 4779 of 1989

(M. N. Venkatachaliah, N. D. Ojha, J. S. Verma JJ)

28.11.1989

JUDGMENT

VERMA, J. -

1. Leave granted.

2. The landlord Shri. Shiv Chander Kapoor has preferred this appeal by special leave against the judgment dated August 3, 1987 passed by the Delhi High Court in S.A.O. No. 393 of 1986 whereby the High Court dismissed the landlord's appeal against the order dated October 14, 1986 of the Rent Control Tribunal affirming in appeal the order dated August 9, 1985 of the Rent Controller dismissing the landlord's application dated October 12, 1983 for restoration of possession of the premises let out for residence to the tenant Amar Bose for the limited period of three years w.e.f. June 8, 1980 under section 21 of the Delhi Rent Control Act, 1958 (hereinafter referred as the 'Act'). The true scope of the enquiry contemplated when the tenant assails validity of the Rent Controller's permission granted under Section 21 of the Act for creation of a tenancy for limited period arises for determination in the present case.

3. The premises is the second floor of the building bearing No. 19/10, Old Rajinder Nagar, New Delhi comprising of two rooms, a kitchen, bathroom and lavatory let out for residence on a monthly rent of Rs. 800 apart from electricity and water charges. The landlord offered to let out the premises for three years only w.e.f. June 8, 1980 for the reason that it would be needed by his family thereafter when his son got married, to which the tenant consented. Accordingly, by an agreement in writing between the parties the premises was so let out for the limited period of three years w.e.f. June 8, 1980 with permission of the Rent Controller obtained under Section 21 of the Act. The order of the Rent Controller is as under :

"In view of the statements of the parties made above, I am satisfied that there is no collusion or fraud. I am also satisfied that the petitioner does not require the suit premises for a limited period of there years. Permission, therefore, is hereby granted to the petitioner Shri. Shiv Chander Kapoor to let out his premises No. 19/10, situated at Old Rajinder Nagar, New Delhi, the details of which are given in the site plan Ex. A-I to the respondent for residential purposes for limited period of three years with effect from June 8, 1980."

4. On failure of the tenant Amar Bose to restore possession of the premises to the landlord on expiry of the period of limited tenancy, an application dated October 12, 1983 was filed by the landlord before the Rent Controller praying for execution of the aforesaid order by delivery of vacant

possession of the premises to the landlord. The tenant filed his objection to the execution application which was replied by the landlord. The Rent Controller by order dated August 9, 1985 rejected the landlord's application taking the view that the permission granted under Section 21 of the Act was invalid so that the tenant could not be evicted on expiry of the period of three years. The landlord's further appeal to the Rent Control Tribunal and then to the Delhi High Court failed. Hence this further appeal.

5. The Rent Controller upheld the tenant's objection that the landlord's son being aged only about 19 or 20 years on the date of expiry of the period of limited tenancy while the minimum age prescribed law for marriage being 21 years, the ground that the premises would be needed on the son's marriage after three years was untenable. On this basis it was held that creation of tenancy for the limited period of three years amounted to fraud and misrepresentation by the landlord rendering invalid the permission granted under Section 21 of the Act. This view has been upheld by the Rent Control Tribunal and then the Delhi High Court, treating the grant of permission by Controller to be mechanical and without application of mind. The tenant also contended that the landlord was in possession of the remaining building which comprises of sufficient accommodation to meet the bona fide need of the landlord's family; and that the premises were constructed in 1972 and the second floor of the building was never occupied by the landlord being let out to other tenants from time to time. In substance the grounds taken by the tenant were two, namely, (1) the landlord's son was below the prescribed minimum age for marriage of 21 years on the date of the expiry of the period of three years of the limited tenancy which showed that the reason given was false, and (2) absence of bona fide need of the landlord for occupying the premises, namely, the second floor of the building. The High Court's order is based only on the first ground.

6. The scope of enquiry contemplated under Section 21 of the Act when the tenant assails validity of the Controller's permission to create a limited tenancy thereunder was seriously debated at the hearing of this appeal. On behalf of the appellant/landlord it was urged that the scope is limited to examining only the existence of jurisdictional facts which permit grant of permission to create a tenancy for limited period and no more. On this basis, learned counsel for the appellant contended that the above first ground alone was within the scope of enquiry which too has been wrongly decided by the High Court on a misconstruction of Section 21. On the other hand it was contended on behalf of the respondent tenant that the enquiry extends also to examining the other ground viz. existence of landlord's bona fide need to occupy the premises on expiry of the period do limited tenancy. The same earlier decisions of this Court on the point were relied on by both sides with equal vehemence in support of the rival contentions.

7. Section 21 is as under :

"21. Recovery of possession in case of tenancies for limited period. - (1) Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.

(2) While making an order sub-section (1), the Controller may award to the landlord such damages for the use or occupation of the premises at such rates as he considers proper in the circumstances of the case for the period from the date of such order till the date of actual vacation by the tenant."

8. Chapter III of the Delhi Rent Control Act, 1958 comprising of Sections 14 to 25 contains provisions relating to control of eviction of tenants. The object of enacting the Rent Control Laws is well known and it does not need an elaborate enunciation. Suffice it to say that in view of acute shortage of housing accommodation, more particularly in the bigger cities, these laws have been enacted to regulate the letting of the available premises and an attempt has been made to reconcile the conflicting interests of landlords and the need for the protection of tenants. Section 14 of the Delhi Rent Control Act gives protection to the tenants against eviction and specifies the grounds on which alone the landlord can obtain an order of the competent authority to recover possession of premises let out to a tenant. Apparently, it was realised that some premises may be available for being let only for a limited period where the landlord did not require the same during that period alone provided the landlord was assured of restoration of possession on expiry of the limited period. However, while enacting a provision permitting the creation of a tenancy for limited period to utilise such premises and alleviate to some extent the suffering of persons needing residential accommodation, it was necessary also to ensure that the provision was not misused by capricious landlords to circumvent Section 14 of the Act. It was to achieve this dual purpose that Section 21 was enacted in the Delhi Act to encourage landlords who did not need any premises for a limited period only, to let it out for such period with the assurance of restoration of possession at the end of that period without being required to satisfy Section 14 of the Act. The provision also contains an internal check upon an unscrupulous landlord by requiring the Rent Controller's permission to be granted in the given circumstances only.

9. The conditions on which permission can be granted by the Rent Controller under Section 21 are specified in Section 21 itself. A fortiori when the question arises about the validity of the Rent Controller's permission it can be tested only with reference to the specified conditions subject to which alone permission can be granted by the Controller. No outside factor can be imported either for grant of the permission thereunder or for adjudicating its validity at a subsequent stage. Section 21 being in the nature of an exception to the ordinary mode of eviction of tenants prescribed under Section 14 of the Act, it must be strictly construed and the scope thereof limited to its contents. Section 21 of the Act is by itself the complete provision relating to the creation of a tenancy for limited period and recovery of possession on expiry of that period. Thus, Section 21 is a self-contained code in this behalf.

10. Section 21 permits the creation of a tenancy for limited period "where the landlord does not require the whole or any part of premises for a particular period"; and it is to be let for 'residence'. These words of the provision specify the jurisdictional facts which alone permit creation of a tenancy for limited period. The remaining provision provides the machinery for doing so by an agreement in writing between the landlord and the tenant on the basis of which permission of the Controller is obtained. The provision further says that if on expiry of the said period the tenant does not vacate such premises, then 'notwithstanding anything contained in Section 14 or in any other law' the Controller may on an application by the landlord in vacant possession of the premises by evicting the tenant and every other person who may be in occupation of such premises. The enquiry contemplated at the stage of grant of permission by the Controller under this provision requires the Controller to be satisfied that the landlord does not require such premises for a limited period only; and the said premises is to be let as a residence in terms of an agreement in writing between the

landlord and tenant. On satisfaction of the existence of these facts, the Controller grants permission for creation of tenancy for a limited period under this provision. When recovery of possession of the premises is sought thereafter by the landlord under this provision then the Controller is to restore possession to the landlord "notwithstanding anything contained in Section 14 or in any other law" subject only to the requirements of this provision.

11. Obviously it is the existence of a valid permission of the Controller for creation of a tenancy for limited period under this provision which brings into existence a valid limited tenancy and, therefore, such valid permission is a sine qua non of Controller's jurisdiction to order restoration of possession on expiry of that period under the second part of Section 21. It is, therefore, the obligation of the Controller to examine the question of validity of his earlier permission, if such an objection is raised before he orders restoration of possession to the landlord on expiry of the limited term. However, that enquiry must be limited only to be existence of the aforesaid jurisdictional facts at the time of grant of permission and no more. This is quite evident from the expression 'notwithstanding anything contained in Section 14 or in any other law', in the second part of Section 21 itself. This is the inbuilt safeguard in the provision against its misuse.

12. We have no doubt that the language of Section 21 of the Act clearly forbids the Controller from embarking on an enquiry beyond the ambit of Section 21 itself which may impinge into the sphere of Section 14 of the Act or any other law. We have no hesitation in holding that it is the existence of the aforesaid jurisdictional facts at the time of grant of permission to create a limited tenancy which alone is required to be determined by the Controller, if and when, validity of his permission is assailed at a subsequent stage. This being the scope of his enquiry while granting permission, the scope of enquiry at the subsequent stage cannot be wider. For this reason any objection to the validity of the permission on a ground other than non-existence of the jurisdictional facts at the time of grant of permission is untenable and beyond the scope of the Controller's power to examine validity of his earlier permission before directing restoration of possession to the landlord under Section 21 of the Act.

13. In short, the scope of enquiry before the Controller when validity of the permission granted by him is assailed is to determine; whether, the permission accorded by him earlier was not really to the creation of a genuine tenancy for limited period but to a mere pretence of the landlord for circumventing the provisions of Section 14 ? If so, such an act being a fraud on the statute, it does not bind the tenant whose consent to the sham transaction is obtained taking advantage of his unequal bargaining power, and he can assail the permission. It is equally plain that the object of enacting Section 21 to permit creation of tenancies for limited period should not be frustrated by unduly enlarging the scope of that enquiry at the behest of a tenant who having given his free consent to the creation of a genuine limited tenancy thereafter attempts to thwart restoration of possession to the landlord by raising untenable pleas in spite of the clear prohibition made by the words "notwithstanding anything contained in Section 14 or in any other law". This delicate balance between the two conflicting interests has to be borne in mind, in order to give true effect to Section 21 and thereby to promote the object of its enactment.

14. We may now refer to the decisions of this Court. *S. B. Noronah v. Prem Kumari Khanna* ((1980) 1 SCC 52 : (1980) 1 SCR 281) is the first decision on the point which deals comprehensively with the scope of Section 21 of the Act. Krishna Iyer, J. speaking for the bench said as follows : (SCC pp. 55-58, paras 13, 14, 15, 16, 18, 20 and 21)

"Parliament was presumably keen on maximising accommodation available for

letting, realising the scarcity crises. One source of such spare accommodation which is usually shy is potentially vacant building or part thereof which the landlord is able to let out for a strictly limited period provided he has some credible assurance that when he needs he will get it back The problem is felt most for residential uses So the law has to make itself creditworthy."

"Section 21 is the answer".

"Section 21 overrides Section 14 precisely because it is otherwise hedged in with drastic limitations and safeguards itself against landlords' abuses.

What, then, are those conditions and safeguards ? The first condition is that the landlord does not require the demised premises "for a particular period" only The Controller must be satisfied that the landlord means what he says and it is not a case of his not requiring the property indefinitely as distinguished from a specific or particular limited period of say one year, two years or five years. If a man has a house available for letting for an indefinite period and he so lets it, even if he specifies as a pretence, a period or term in the lease, Section 21 cannot be attracted. On the other hand, if he gives a special reason why he can let out only for a limited period and requires the building at the end of that period It is good compliance. The second condition is that the letting must be made for a residential purpose. The house must be made over "as a residence The fact that a landlord and a potential tenant together apply, setting out the formal ingredients of Section 21, does not relieve the Controller from being vigilant to inquire and satisfy himself about the requisites of the landlord's non-requirement "for a particular period" and the letting itself being "as a residence". A fraud on the statute cannot be permitted"

"If he makes a mindless order, the court, when challenged at the time of execution, will go into the question as to whether the twin conditions for sanction have really been fulfilled. Of course, there will be a presumption in favour of the sanction being regular, but it will still be open to a party to make out his case that in fact and in truth the conditions which make for a valid sanction were not present ..."

".... the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.

... Collusion between the strong and the weak cannot confer validity where the mandatory prescriptions of the law are breached or betrayed."

15. S. B. Noronah case ((1980) 1 SCC 52 : (1980) 1 SCR 281) has thereafter been consistently followed by this Court and treated as the correct analysis of Section 21. With respect, we concur and reiterate that the scope of Section 21 is succinctly summarised in the above extracts. There is nothing in this decision to support the respondent-tenant's contention in this appeal that the scope of enquiry is wider permitting determination of the landlord's bona fide need of the premises as if such a ground for eviction specified in Section 14 of the Act has to be proved. Extending the enquiry to that extent will indeed be against the express prohibition enacted in Section 21 itself.

16. The next decision is V. S. Rahi v. Smt. Ram Chambeli ((1984) 1 SCC 612 : (1984) 2 SCR 290).

Venkataramiah J. (as he then was) speaking for the bench applied the decision in S. B. Noronah case ((1980) 1 SCC 52 : (1980) 1 SCR 281) and pointed out that even though the initial presumption was that the permission granted by the Controller under Section 21 of the Act was regular yet the material produced should be examined in order to be satisfied that there has not been any misuse of the said provision by the landlord taking advantage of the helpless situation of the tenant due to house scarcity. Facts of that case show that the scope of enquiry was limited only to examining existence of the jurisdictional facts at the time of grant of permission by the Controller.

17. In *Dhanwanti v. D. D. Gupta* ((1986) 3 SCC 1) it was held on the facts of that case that permissions for letting out to the same tenant for limited period obtained more than once after expiry of each said period was by itself not sufficient to establish that the premises was available for being let out for an indefinite period, without showing absence of landlord's intention to occupy the premises. Notice was taken of the common knowledge that it is not possible for a man to plan his future life with any degree of definiteness and changing circumstances may justify such a course. The principle applied was the same and the ultimate conclusion was reached on the particular facts of that case.

18. In *Inder Mohan Lal v. Ramesh Khanna* ((1987) 4 SCC 1) it was held that the presumption of validity of the permission given by the Controller was not rebutted by the tenant since there was no evidence to show non-existence of any of the essential conditions which enable the permission to be granted. The earlier decisions of this Court starting with *Noronah case* ((1980) 1 SCC 52 : (1980) 1 SCR 281) were referred and the test indicated therein was applied. In *S. K. Lata v. R. C. Chhiba* ((1988) 4 SCC 709) the permission given by the Controller for creation of tenancy for a limited period was held to be vitiated on the ground of fraud on statute because the permission was obtained without disclosing that the tenant had already been inducted under an oral lease and was in possession of the premises prior to the application made before the Controller. It was, therefore, held applying the same test that an essential condition for grant of sanction under Section 21 by the Rent Controller did not exist.

19. Now the only remaining point is the requirement of notice during enquiry into validity of the Controller's permission before ordering restoration of possession to the landlord. A decision of this Court on this point is *J. R. Vohra v. India Export House (P) Ltd.* ((1985) 1 SCC 712 : (1985) 2 SCR 899). In *J. R. Vohra case* ((1985) 1 SCC 712 : (1985) 2 SCR 899) it was reiterated that the conditions specified for grant of permission by the Controller under Section 21 must be 'truly fulfilled and not be way of any make-belief before the Controller grants his permission for the creation of such limited tenancy'. After reiterating this position the court proceeded to consider the requirement of a notice to the tenant before issuing warrant of possession in favour of landlord. It was held that the competing claims of the landlord and the tenant can be harmonised not by insisting upon service of a prior notice on the tenant before the issuance of the warrant of possession to evict him but by insisting upon his approaching the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to vitiate ab initio the initial grant of permission. It was observed that there is no reason for the tenant to wait till the landlord makes his application for recovery of possession to raise his plea. It was further observed that in case the tenant comes to know, aliunde, of the landlord's application for recovery of possession even without notice to him, he may raise his plea at that stage and the Controller would enquire into the same but in that situation the tenant may run the risk of getting his plea rejected as an afterthought. It was expressly held in this decision that there is no obligation on the part of the Rent Controller to serve a notice on the tenant before issuing the warrant of possession on the landlord's application made after expiry of the period of limited tenancy for

recovery of possession.

20. It is obvious from the decision in *J. R. Vohra case* ((1985) 1 SCC 712 : (1985) 2 SCR 899) that the tenant is expected to raise such a plea during currency of the limited tenancy and on such a plea being raised by the tenant enquiry into it is contemplated. Even though it is not expressly said in *Vohra case* ((1985) 1 SCC 712 : (1985) 2 SCR 899), it is implicit that on such an application being made by the tenant requiring adjudication by the Controller, it is the Controller's obligation to issue notice of the same to the landlord and then to make the adjudication with opportunity to both sides to prove their respective contentions.

21. As for the requirement of notice to the tenant before issuing the warrant of possession in favour of the landlord on his application for recovery of possession on expiry of the limited tenancy, it appears to us also that no notice to the tenant at that stage is either contemplated or expedient. This appears to be the reasonable view which is in accord with the scheme of Section 21. Obviously notice is to be given of a fact which may otherwise be not known to the notice. The period of limited tenancy and the date of its expiry are known to the tenant from the very inception. The tenant is equally aware of his own default in restoring vacant possession of such premises to the landlord on expiry of that period. It is only these facts, well known to the tenant, which compel the landlord to apply for recovery of possession pursuant to the tenant's default. The plea of invalidity, if any, of Controller's earlier permission must equally be known to the tenant at least be then coupled with his knowledge that unless a declaration is made at his instance that the Controller's permission is invalid, he must vacate, the limited tenancy having expired. Why then should a notice to him at that stage be necessary and for what useful purpose? We cannot think of any good reason to require a notice to the tenant at that stage. The object of enquiring into the validity of the Controller's permission under Section 21 is only to ensure that essentials of a limited tenancy existed and the same was genuine; and it is not meant to permit raising of frivolous pleas which would frustrate the very object of its enactment. This view protects the honest tenants and only curbs the frivolous and vexatious pleas.

22. There is another aspect of the matter. The Controller's permission when granted to create a limited tenancy under Section 21 of the Act is presumed to be valid unless declared otherwise. It is, therefore, for the person assailing its validity to get such a declaration from a proper forum in a proper proceeding. Unless this is done, the order remains enforceable. The duty is clearly on the tenant himself to raise the plea of invalidity and unless the order is declared invalid at his instance, its enforceability cannot be doubted.

23. In *Wade's Administrative Law*, 6th edn. at pp. 315-53, there is an illuminating discussion of this topic. It has been pointed out that 'void' is meaningless in an absolute sense; and 'unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders'. In the words of Lord Diplock, "the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue".

24. For the above reasons, we are in respectful agreement with the view taken in *J. R. Vohra case* ((1985) 1 SCC 712 : (1985) 2 SCR 899) that there is no obligation on the Controller to issue notice to the tenant of the landlord's application for recovery of possession made on expiry of the period of tenancy for a limited period under Section 21 of the Act, but an enquiry on the tenant's plea has to be made to the extent indicated, if the tenant assails validity of the Controller's permission even at that stage.

25. We shall now consider the merits of this case on the basis indicated above. The High Court has upheld rejection of the landlord's application for recovery of possession under Section 21 of the Act on the ground that the landlord's son would be about 19 or 20 years old on expiry of three years period of limited lease but he could not be married till he attained the prescribed minimum age of 21 years which showed that the Controller's order granting permission was mindless and was obtained by fraud. The permission has, therefore, been held invalid. In our opinion, the High Court as well as the authorities below it misconstrued the requirements of Section 21 of the Act. It is not a case where the landlord did not have a son who was expected to be married some time after three years. In substance the reason for availability of the accommodation from the limited period of three years only given by the landlord was that the premises was not needed by the landlord till his son got married some time after three years. The reason was not to be construed as a statement that the son was to be married exactly on the date on which three years expired. The date of son's marriage could not be foreseen or estimated with such precision as to coincide with the date of expiry of the limited lease. All that has to be seen is whether the period of limited tenancy was indicated by the landlord with reference to a foreseeable future event and the estimate of time of its occurrence was not unreasonable. When the period of limited tenancy is stated on the basis of a future event, the happening of which is reasonably certain at that time though the precise date of the future event cannot be predicted with precision, the landlord's estimate of the period after which the event is expected to happen, unless unreasonable must be accepted for this purpose as genuine. This would satisfy the test of a genuine limited tenancy if there be no other factor indicating it to be a mere pretence adopted by the landlord. This test is fully satisfied in the present case. Merely because the son's age then was about one year below the prescribed minimum age for marriage the estimate of landlord that he would not need the premises for three years only till his son's marriage cannot be treated as a pretence. One year's period for settling and arranging performance of the marriage is nothing unusual since existence of the basic facts is undisputed. Existence of this jurisdictional fact to justify the permission has not been negated and no material has been produced by the tenant to substantiate his plea.

26. The other ground taken by the respondent-tenant is that the existing accommodation available with the landlord is sufficient for the needs of his family. It is sufficient to state that the enquiry contemplated under Section 21 in this behalf is not the same as that for determining existence of the ground of bona fide need of the landlord for an order of eviction under Section 14 of the Act, and Section 14 is expressly superseded by Section 21. This question is, therefore, beyond the scope of the present enquiry.

27. The respondent-tenant also contended that the premises was constructed in 1972 and the landlord had never occupied this premises viz., the second floor of the building for his personal use and had even let out the first floor prior to 1980. In the present case the respondent-tenant did not produce any material to prove letting out of any part of the building much less this premise i.e. second floor of the building. After the arguments were concluded before us and the judgment was reserved, the respondent has filed an application under Order XLI Rule 27 read with Section 151 CPC for admitting additional evidence to show letting out of the second floor of the building. It has been stated that the evidence could not be produced in the courts below since the objections were not listed for investigation by the courts. No cogent ground is shown to permit any additional evidence when no attempt to produce any evidence was made in any of the court below up to the High Court or even here till conclusion of the hearing before us. The application is rejected. The lease for limited period of three years expired in 1983 and more than six years have been spent since then in this litigation at the stage of recovery of possession. The facts of the case indicate that the respondent's plea is a clear afterthought and is baseless.

28. The absence of existence of any jurisdictional fact not having been proved by the respondent-tenant even after objecting to recovery of possession on expiry of the period of limited tenancy, there was no ground to refuse restoration of possession to the landlord. More than twice the period of the limited lease has expired even after the date of expiry of the lease. We see no reason to delay any more the relief due to the landlord.

29. Consequently, the appeal is allowed. The impugned orders passed by the Rent Controller, Rent Control Tribunal and the High Court are set aside and the landlord's application for recovery of possession is allowed. The respondent-tenant shall also pay Rs. 2000 as costs to the appellant-landlord in addition to an amount equal to that calculated on the basis of the monthly rent for the entire period till the date of restoration of possession.

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