

Pukhraj Jain

Vs

Padma Kashyap and Another

Special Leave Petition (Civil) No. 7914 of 1989

(K. Jagannatha Shetty, R. M. Sahai JJ)

20.03.1990

JUDGMENT

R. M. SAHAI, J. -

1. Tenant inducted in 1979, for three years, by the landlord under a written agreement, in C-4/33, Safdarjang Development Area, New Delhi, with permission of Controller under Section 21 of Delhi Rent Control Act (for brevity the 'Act') seeks leave of this Court on limited question of law if proceedings for recovery of possession under Section 21 of the Act could be initiated and continued by legal representatives of the landlord who had obtained permission but who died before expiry of period of tenancy.

2. Answer of it shall depend, primarily, on construction of word 'landlord' used in Section 21, a provision held to be self-contained code in Shiv Chander Kapoor v. Amar Bose ((1990) 1 SCC 234) and also the purpose and objective of its enactment as provision of short duration tenancy or periodical tenancy in Rent Control Act of Delhi right from 1952, is unique amongst such legislations and is probably non-existent in any other State. It reads 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 under 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."

3. What it, undoubtedly, projects is the legislative awareness of acute crisis of houses in the State. To resolve the paucity of accommodation, on one hand, due to enormous influx of office personnel and business class as a result of rapid growth of social, economic and political activity and

apprehension of house owners, on other, bulk of whom hail from middle class or service class, of losing their houses if not for good then for substantial period due to development of strange phenomenon in big cities that allotted or rented houses are more economical than even own, the legislature which is the best judge of need of its people carved out an exception to usual rent control provisions of protecting tenants from eviction. What was unique of it was not short duration tenancy but a fresh look on eviction. Vacant possession was ensured, statutorily, without any notice, or termination of tenancy or the hazard of establishing bona fide need and comparative hardship etc. Since Section 21 is an exception to Section 14 and it mandates restoration of possession, "notwithstanding any other law" it has to be construed strictly and against any attempt to frustrate it. Intensity of it can be appreciated better, if its language is compared with other provisions of recovery of possession even though those provision, namely, Sections 14-A, 14-B, 14-C and 14-D, were introduced later. They also provide speedy remedy to recover possession. But the landlord cannot succeed unless he is able to prove circumstances mentioned in it. More than this the tenant has been given right to contest under Section 25-B. Import of Section 21 on the other hand is altogether different. It enjoins Controller to place landlord in vacant possession after expiry of time without any right to tenant to contest it except to the limited extent that permission was vitiated by fraud as held in *S. B. Noronah v. Prem Kumari Khanna* ((1980) 1 SCC 52 : (1980) 1 SCR 281) or misuse of the provision by landlord taking advantage of helpless situation of the tenant as held in *V. S. Rahi v. Ram Chambeli* ((1984) 1 SCC 612 : (1984) 2 SCR 290) or the permission really did not create genuine tenancy as held in *Shiv Chand Kapoor v. Amar Bose* ((1990) 1 SCC 234). Recovery of possession under Section 21 is not hedged, by any inquiry or opportunity, if permission is not challenged on any of those exceptions which have been carved out by courts, obviously, to uphold fairness and honesty the core of our jurisprudence. Right to get vacant possession is, thus absolute.

4. Purpose and objective of the section having been ascertained, it may now be examined if the word "landlord" used in the second part of the section which empowers landlord to make an application for recovery of possession is to be understood as the same landlord who made the application or his legal representatives as well. In other words, is there any justification for construing the word "landlord" in a narrow sense so as to restrict it, only, to the person who made the application and obtained permission. "Landlord" has been defined in Section 2(e) as under :

"2.(e) 'landlord' means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."

Expression, "for the time being" makes it clear, that landlord has to be understood in praesenti. That is anyone entitled to receive rent is the landlord. It does not visualise past or future landlord. Therefore, the word "landlord", on plain reading of Section 21 does not warrant construction of the word in any other manner. Basis for submission, however, that landlord in second part of Section 21 entitling him to claim vacant possession should be confined to the person who obtained permission was founded on use of expression, "who does not require the whole or any part of the premises for a particular period". Attempt was made to personalise eviction proceedings by linking it with the person, due to whose non-requirement the permission was granted resulting in automatic exclusion of legal representatives. To put it interpretationally the word "landlord", in second part was urged to be understood in a manner different than it is defined in Section 2(e). Can it be said that context or setting of Section 21 is such that the word "landlord" in second part of it should be understood in a different sense than that in definition clause ? Not on prima facie reading of it which has already been adverted to. Nor on close analysis. What is visualised is occasion for short duration tenancy

due to non-requirement of whole or part of premises by landlord for time being; method of its creation by written agreement entered with tenant, statutory status to it by permission obtained from Controller and execution by restoration of vacant possession if the tenant does not vacate after expiry of period. All condensed in one. Constructionally it is in two parts one creation of short term tenancy and other its execution after expiry of time. Both stand on their own and operate independently. Non-requirement of premises for time being furnishes basis for entering into agreement for periodical tenancy. Truth of it or its genuineness are relevant considerations for granting permission. But it exhausts thereafter except to the limited extent pointed out in decisions referred earlier. And the permission granted continues unabated, unaffected irrespective of variation in requirement. Necessity of landlord, again, does not entitle him to seek its revocation. Even his death cannot shorten the period. Similarly once period expires the agreement, the permission all cease to operate by operation of law. Nothing further is required. Vacation is not linked with landlord but with time. Expiry of it obliges tenant to vacate. If he does not then the landlord may approach Controller for putting him in vacant possession. Which landlord? Obviously whosoever is the landlord at the time of efflux of tenancy. Death of landlord does not either shorten or enlarge period nor the consequences envisaged are altered or affected.

5. Use of expression "notwithstanding any other law" renders it obligatory on tenant to vacate without questioning authority of landlord. Any other construction, may, as rightly observed by the High Court lead to disastrous consequences. Even on principle of civil law the provision for recovery of possession being in nature of execution it could not be successfully resisted on the death of landlord due to whose non-requirement the permission was granted. Such narrow and unrealistic construction of the word 'landlord' shall frustrate entire purpose of Section 21.

6. Maxim of *actio personalis moritur cum persona* cannot apply, either, on principle or on facts. In *Official Liquidator, Supreme Bank Ltd. v. P. A. Tendolkar* ((1973) 1 SCC 602 : AIR 1973 SC 1104), this Court while discussing applicability of the maxim held "whatever view one may take of the justice of the principle it was clear that it would not be applicable to actions based on contract or where tortfeasors' estate had benefited from a wrong done. Its applicability was generally confined to actions for damages for defamation, seduction inducing a spouse to remain apart from the other and adultery". In *Phool Rani v. Naubat Rai Ahluwalia* ((1973) 1 SCC 688 : (1973) 3 SCR 769), a decision which was relied by petitioner in support of submission that an application filed for eviction of a tenant on bona fide need lapses on the death of landlord and it could not be continued by his legal representatives overruled in *Shantilal Thakordas v. Chamanlal Maganlal Telwala* ((1976) 4 SCC 417 : (1977) 1 SCR 313), it was observed that doctrine of *actio personalis moritur cum persona* did not apply to Rent Control Acts.

7. Even otherwise an action for eviction abates only if the cause of action does not survive. What is the cause of action for an application for vacant possession in Section 21 : death of landlord or expiry of time for which tenancy was created. Obviously the latter, the failure of tenant to honour his commitment to vacate the premises after expiry of time for which he was inducted with permission of Controller. The death of the person who obtained the permission has nothing to do with it. Permission was obtained because the landlord did not require the premises on the date when it was let out to tenant. That does not continue on the date when the tenant does not vacate the premises. The necessity of not requiring the premises, for some time, or for the duration the tenant was inducted was confined to the date when the permission was granted. It could not be taken further to the time when the question of vacation arose. The cause of action for granting permission was the non-requirement by the landlord of the premises for the time mentioned in the agreement whereas cause of action for eviction is non-vacation by the tenant after the expiry of period.

Therefore, it is immaterial who is the landlord at the time when the action for vacation arose.

8. Even on facts permission was applied for by the landlord as, premises was surplus to his need for a limited period of three years due to the reason that his son had gone abroad and he was expected to return after three years. Permission was granted for this reason on statement of parties. Such necessity to let out or non-requirement by the landlord could not be brought into those exceptions which invalidate permission. Therefore death of the landlord was immaterial as even the reason for letting out did not die with death of landlord.

9. In the result this petition for special leave fails and is dismissed. In the circumstances of the case the tenant is directed to suffer costs which we quantify at Rs. 5000.

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