

K. L. Malhotra

Vs

Prakash Mehra (Smt.)

Special Leave Petition (Civil) No. 12184 of 1990

(B.C. Ray, R.M. Sahai JJ)

24.10.1990

ORDER

1. Having heard Mr Garg, learned counsel in support of this case that there is serious infirmity in the findings arrived at by the Rent Controller as well as by the High Court inasmuch as they have not taken into consideration that an application under Section 14(1)(e) of the Rent Control Act was pending and the Rent Controller granted leave to the petitioner to defend and the same is pending in this Court. In the meantime, however, the admitted fact is that on December 1, 1985 the petitioner i.e. the landlady's husband died and she became widow. It is also not disputed that in 1988 Section 14-D was inserted in the Rent Control Act which confers special benefit on the widow to apply for an order or decree for recovery of possession of any premises against her tenant. The landlady admittedly applied for recovery of possession of the premises in question on July 3, 1989 i.e. within one year from the date of enforcement of the provisions of Section 14-D as provided in the said Act. Therefore, the contention about delay in making the application is of no substance and also there is no merit in it. The second submission which was made by Mr Garg, with great emphasis and vehemence is that since the application under Section 4(1)(e) is pending, the landlady was not competent to make an application for eviction of the tenant-respondent under Section 14-D of the Act. This argument on the face of it is wholly inconsistent being without any merit whatsoever. Section 14-D was brought into being by the legislature in its wisdom to confer special benefit and a right on the widow to get eviction of any part of the premises or any premises for her own occupation or residence. In this view of the matter the argument does not stand a moment's scrutiny. It has been next argued by learned counsel for the petitioner that Section 14-D is arbitrary as it does not lay down any guidelines and it is also discriminatory being violative of Article 14 of the Constitution. Mr G. Ramaswamy, learned counsel appearing on behalf of the respondent submitted before us that this question of validity or invalidity of the provisions of Section 14-D was neither raised nor argued even before the High Court nor any ground was taken to that effect before High Court. It is for the first time in the special leave petition this point has been raised and as such the petitioner cannot be permitted to argue this point here for the first time in this Court. There is substance in the submission made by learned counsel for the respondent. Moreover, it does not appear to us on a plain reading of Section 14-D itself that the benefit conferred on a widow for applying for eviction of the tenant from her premises is at par with the general benefit conferred on the landlord to seek for eviction on the ground of bona fide need. Admittedly, on the face of it the class on which the benefit was granted by Section 14-D is per se different from the class whose rights have been protected by Section 14(1)(e). Therefore on the face of it this argument also is without any merit.

2. We have carefully gone through the decisions rendered by the Rent Controller as well as by the High Court and we find no infirmity in the findings arrived at by the courts below. In this view of

the matter the application for special leave is summarily dismissed.

3. On the prayer of the learned counsel for the petitioner time is granted for vacating the premises till November 30, 1990 with the usual undertaking to be filed within two weeks from today.

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