

Surjit Singh Kalra

Vs

Union of India and Another

With

Mahendra Raj

Vs

Union of India and Colonel Ashoka Puri

Civil Appeals Nos. 837-839 of 1991

(K. Jagannatha Shetty, L. M. Sharma JJ)

13.02.1991

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. Leave granted. These appeals from the decision of the Delhi High Court raise the question with regard to landlord's right to evict the tenant under Section 14-B of the Delhi Rent Control Act, 1958 ('the Act') and the corresponding right of the tenant to resist the eviction proceedings. Section 14-B is a special provision made by the legislature conferring certain rights to persons belonging to Armed Forces to recover from their tenants immediate possession of the premises for their occupation.

2. Mahendra Raj, the common petitioner in S.L.P. Nos. 7146 and 11425 of 1990, is a tenant occupying the premises of the respondent Col. Ashok Puri. The petitioner in S.L.P. No. 7364 is also a tenant, but occupying the premises belong to the respondent Brig. V. N. Channa. In the action for eviction brought by the respondents on the ground that they need the premises for their occupation, the tenants sought leave to contest the application. But the Rent Controller was not satisfied with the facts disclosed by the tenants in their affidavits and therefore, denied leave to contest the application for eviction. He considered the affidavits of the parties and accepted the case of the landlord and directed that the tenants shall be evicted. In the case of Mahendra Raj, the Rent Controller made an order dated September 2, 1989 inter alia, observing that the landlord is living in a rented house; that he is paying rent of Rs. 2000 p.m.; and that he requires the premises for himself and the members of his family. The eviction order was challenged by the tenant by means of revision petition before the Delhi High Court. Almost simultaneously, the tenant also filed a writ petition under Article 226 of the Constitution, challenging the validity of Section 14-B. On May 10, 1990, the High Court dismissed the revision as well as the writ petition. Against the Judgment of the High Court dismissing the writ petitioner, the tenant has preferred S.L.P. No. 7146 of 1990. Against the order dismissing the revision petition, the tenant has preferred S.L.P. No. 11425 of 1990.

3. The tenant in S.L.P. No. 7364 of 1990 has also challenged the order of eviction in a revision

petition before the High Court and we are told the revision is still pending. Like the other tenant, he has also questioned the validity of Section 14-B before the High Court under Article 226. The High Court dismissed that petition following the decision in Mahendra Raj's case.

4. It would be convenient to refer to the relevant provisions of the Act before dealing with the points raised in these cases. The Act applies to premises which are defined by Section 2(i) as meaning, inter alia, any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose. Section 14 provides that notwithstanding anything to the contrary contained in any other law or contract, no decree or order for the recovery of possession of any premises shall be passed by any court or Controller in favour of the landlord against a tenant. This provision is, however, subject to the exceptions provided under several clauses of the proviso. Section 14(1)(e) allows a decree for ejection to be passed if the court or Controller is satisfied that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, provided that the landlord is the owner of the premises and he has no other reasonably suitable residential accommodation. The explanation thereunder states that for the purpose of clause (e) of the proviso to Section 14(1) "premises let for residential purposes" included any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes. Section 14(1)(e) is further restricted by sub-sections (6) and (7) of Section 14. Sub-section (6) imposes a restriction on the landlord, who has acquired any premises by transfer, not to evict the tenant under Section 14(1)(e) within the period of five years from the date of acquisition. Sub-section (7) imposes an obligation on the court where an order for eviction is made on the ground specified in Section 14(1)(e) to give the tenant the minimum period of six months for delivery of possession to the landlord.

5. By Act 18 of 1976 the legislature has introduced certain changes in the Act with effect from December 1, 1975. Section 14-A was introduced in Chapter III providing certain rights to a person occupying residential premises allotted to him by the Central Government or any other local authority. If he is required to vacate such residential accommodation on the ground that he owns in the Union territory of Delhi, a house in his name or in the name of his spouse or dependent children, he could recover immediate possession of his premises let out by him notwithstanding anything contained elsewhere in the Act or any other law for the time being in force. Simultaneously, Chapter III-A was introduced containing Sections 25-A to 25-C providing summary trial of the applications filed by landlords classified under Section 14-A and also applications filed by any other landlord for bona fide requirement of their premises under Section 14(1)(e).

6. By the Amending Act 57 of 1988 some more classes of landlords were carved out from the class of general landlords. Section 14-B to Section 14-D are the provisions. The released or retired persons from armed forces or the dependents of the member of armed forces who had been killed in action are covered by Section 14-B. They could recover immediate possession of the premises let out by them if they are required for their own residence. The retired employees of the Central Government and of the Delhi Administration are covered by Section 14-C. They could recover immediate possession of the premises let out by them if they are needed for their own residence. The landlords who are widows are covered by Section 14-D with similar right to recover immediate possession of the premises let out by them or by their husband. These classified landlords are also given the benefit of the summary trial under Chapter III-A, by introducing Sections 14-B to 14-D in sub-section (1) of Section 25-B. The sub-section (1) of Section 25-B as it stands provides that every application by a landlord for recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A or under Section

14-B or under Section 14-C or under Section 14-D shall be dealt with in accordance with the procedure specified in this section. There are however, no corresponding amendments to sub-sections (2) to (5) of Section 25-B.

7. Omission to make corresponding amendments particularly, to sub-sections (4) and (5) of Section 25-B has given rise to the arguments for the petitioners that the tenant's right to contest the application for eviction on the grounds specified in Section 14(1)(e) cannot be denied even as against the classified landlords falling under Sections 14-B to 14-D. It was also argued that the classified landlords may prove the facts stated in their respective provisions, but the tenant is entitled to contest the application by disclosing such facts as would disentitle the landlords from obtaining an order of eviction on the grounds specified under Section 14(1)(e).

8. The acceptance of the submissions urged for petitioners would practically obliterate the purpose and object of classification of landlords under Sections 14-B to 14-D who are carved out from the general landlords. Indeed, it would render the whole exercise of creating special classes of landlords with specified rights to recover immediate possession of the premises let out by them nugatory.

9. Before the introduction of Sections 14-B to 14-D Section 14(1)(e) was the only remedy available to all landlords except those covered under Section 14-A to recover possession of their premises. The Controller shall give the tenant leave to contest the applications, if the tenant in his affidavit discloses such facts as would disentitle the landlords from obtaining an order for recovery of possession of the premises on the grounds specified under Section 14(1)(e). It is but natural when the landlord brings an action for recovery of possession of the premises covered under Section 14(1)(e), the tenant has the legitimate right to show that the landlord does not qualify under or satisfy the requirements of Section 14(1)(e). But today the remedy under Section 14(1)(e) is available only to landlords in general or the landlords who are not classified landlords under Sections 14-B to 14-D. The classified landlords have been conferred with certain rights which are different from the independent of the rights under Article 14(1)(e). For a proper understanding, we may set out Section 14(1)(e), side by side with Section 14-B.

#"Section 14(1)(e) "Section 14-B14. Protection of tenant against 14-B. Right to recover immediateeviction. - (1) Notwithstanding possession of premises to accueanything to the contrary contained to members of the armed forcesin any other law or contract, no etc. - (1) Where the landlord -order or decree for the recoveryof possession of any premises (a) is a released or retiredshall be made by any court or person from any armed forces andController in favour of the the premises let out by him arelandlord against a tenant : required for his own residence; orProvided that the Controller (b) is a dependent of a membermay, on an application made to of any armed forces who had beenhim in the prescribed manner, killed in action and the premisesmake an order for the recovery let out by such member areof possession of the premises on required for the residence ofone or more of the following the family or such member,grounds only, namely - such person or, as the case may \* \* \* be, the dependant may, within one year from the date of his release(e) that the premises let for or retirement from such armedresidential purposes are required forces or, as the case may be,bona fide by the landlord for the date of death of such member,occupation as a residence for or within a period of one yearhimself or for any member of his from the date of commencement offamily dependent on him, if he is the Delhi Rent Control (Amendment)the owner thereof, or for any Act, 1988, whichever is later,person for whose benefit the apply to the Controller forpremises

are held and that the recovering the immediate landlord or such person has no possession of such premises. other reasonably suitable residential accommodation : (2) Where the landlord is a member of any of the armed forces and has a period of less than one year preceding the date of his retirement and the premises let out by him are required for his own residence after his retirement, he may, at any time, within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises. (3) Where the landlord referred to in sub-section (1) or sub-section (2) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of only one of the premises chosen by him. Explanation. - For the purposes of this clause, 'premises let for of this section 'armed forces' residential purposes' include any means an armed force of the premises which having been let Union constituted under an Act for use as a residence are, of Parliament and includes without the consent of the a member of the police force landlord, used incidentally for constituted under Section 3 commercial or other purposes;" of the Delhi Police Act, 1978 (34 of 1978).###

10. To make the picture complete we may also read sub-sections (6) and (7) of Section 14.

"14. (6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years has elapsed from the date of the acquisition.

(7) Where an order for recovery of possession of any premises is made on the ground specified in clause (e) of the proviso to sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of the order."

11. Under Section 14(1)(e), the premises let out for residence could be recovered from the tenant, if the landlord requires the premises bona fide for his own occupation or for any member of his family dependent on him. The eviction could also be sought for any person for whose benefit the premises are held. The condition being apart from the requirement must be bona fide, there shall be no other reasonably suitable residential accommodation for the landlord or for whose benefit the premises are held. The explanation to Section 14(1)(e) provides "premises let for residential purposes" include any premises which having been let for use as a residence are without the consent of the landlord, used incidentally for commercial or other purposes. That means if with the consent of the landlord the premises let for residential purposes are used for commercial or other purposes, the landlord will have difficult task to evict such tenant. Sub-section (6) of Section 14 provides protection to the tenant from being evicted from the premises which are transferred to third parties. The transferee landlord must wait for five years from the date of the transfer or acquisition before he moves the court for eviction of the tenant already in occupation of the premises. Sub-section (7) is again a protection to the tenant requiring the court or the Controller to give a minimum period of six months to vacate from the date of order of eviction. This is a complete code governing the disposal of application filed under Section 14(1)(e).

12. Under Section 14-B the right to evict the tenant is available to two categories of persons : (i) The person who has let out the premises and, (ii) the dependent of a member of any armed forces who had let out the premises but killed in action. In the former case, the premises must be required

for his own residence and in the latter, for the residence of the family of such member. It may be noted that Section 14(1)(e) requires that the premises should have been let for residential purposes but the landlord who seeks eviction need not be the person who has let out. But Section 14-B narrows down such right. It is he who has let out alone could evict or the dependent of the person who has let out but since killed in action. Secondly, Section 14-B uses the expression "the premises let out by him" unlike the expression used in Section 14(1)(e) "the premises let out for residential purposes". The definition of "premises" under sub-section (2)(i) means "any building or part of a building which is or intended to be let, separately for use as a residence or for commercial use or for any other purposes....". It is clear that Section 14-B does not require that the premises should have been let out for residential purposes and the purpose of letting out seems to be irrelevant. But he who has let out alone could seek eviction of his tenant or the dependent of a member of any armed forces who had let out but since killed in action. Section 14-B also provides the period of limitation for claiming possession of such premises, but no such limitation is provided under Section 14(1)(e). Sub-section (3) of Section 14-B imposes further restriction on the landlord who is having more than one premises. Such a landlord cannot ask for possession of more than one of the premises but he can choose any one of the premises which he has let out. Here again we find that there is no such restriction to a landlord covered under Section 14(1)(e) provided the requirement of the landlord is a bona fide and he has no other reasonably suitable residential accommodation. Section 14(1)(e) does not preclude the landlord from seeking eviction of more than one premises provided he establishes the need.

13. Similar are the provisions in allied Sections 14-C and 14-D.

14. It will be thus seen that Sections 14-B to 14-D are markedly different from Section 14(1)(e).

15. Notwithstanding these two independent provisions with specified rights to landlords in general and the classified landlords, counsel for the tenants argued that Section 14(1)(e) is the weapon of defence for the tenant even against the applications under Section 14-B or 14-C or 14-D. The tenant is entitled to leave to contest the application by disclosing such facts in his affidavit which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). This contention is sought to be supported first, by the retention of sub-section (5) of Section 25-B without any amendment, second, absence of amendment to Section 25-C(2). It was also contended that sub-sections (4) and (5) of Section 25-B are a composite scheme and since that scheme has been left untouched the tenant's right thereunder cannot be denied.

16. The submission if taken to logical conclusion leads to obvious anomaly which will be indicated presently. But before we do that it will be necessary to deal with one other contention. Sub-section (1) of Section 25-B provides that every application for the recovery of possession of any premises belonging to persons referred to in sub-section (1) of Section 25-B shall be dealt with in accordance with the procedure prescribed "in this section" meaning thereby entire Section 25-B. It was also the submission of Dr. Chitale counsel for one of the tenants in these cases. Mr. Krishnamurthi Iyer counsel for the Union of India, however, argued that the procedure contemplated under sub-section (5) of Section 25-B need not be followed by the Controller with regard to applications filed under Sections 14-B to 14-D. According to counsel when the tenant is duly served of the application filed under Section 14-B, 14-C or 14-D he has no right to contest the application unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. It is said that sub-section (4) itself authorises the Controller to refuse leave if he is satisfied that the grounds set out in the affidavit of the tenant would not disentitle the landlord to seek eviction. We do not think that this contention could be accepted. Indeed, sub-

section (4) itself provides that the tenant has to obtain leave from the Controller, "as hereinafter provided", which in the context means proved under sub-section (5) the meaning and scope of which will be presently considered. This is the only sub-section under which the Controller could give leave to the tenant to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises.

17. The argument that the absence of amendments to sub-sections (4) and (5) of Section 25-B preserves the tenant's right to contest the application of even a classified landlord on the grounds specified under Section 14(1)(e) would be basically faulty. If such argument is available in respect of sub-sections (4) and (5) of Section 25-B, it must be equally available to sub-section (2) of Section 25-B. There is also no corresponding amendment to the summons to be issued under sub-section (2) and the form specified in the Third Schedule after the introduction of Section 14-B to 14-D. Third Schedule is in these terms :

# "The Third Schedule Form of Summons in a case where recovery of possession of premises is prayed for on the ground of bona fide requirement or under Section 14-A. To (Name, description and place of residence of the tenant.) Whereas Shri -----  
----- has filed an application (a copy of which is annexed) for your eviction from (here insert the particulars of the premises) on the grounds specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A; You are hereby summoned to appear before the Controller within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises. Leave to appear and contest the application may be obtained or an application to the Controller supported by an affidavit as is referred to in sub-section (5) of Section 25-B. Given under my hand and seal. This ----- day of ---  
-- 19----- . Controller"##

18. This form specified in the Third Schedule refers only to applications filed under Section 14(1)(e) or under Section 14-A. Does it mean that the unamended form should be used to issue notice to the tenant even in case where application for eviction is not made under Section 14(1)(e) or 14-A ? Is the tenant entitled to claim that he must have received the notice in the unamended form only, since there is no corresponding amendment to the form after introduction of Sections 14-B to 14-D ? A wooden reading may furnish him positive answers, but it would be ridiculous. When an application is filed under Section 14-B, a copy of the application should be sent to the tenant by making necessary amendment to the prescribed form and omitting the other references which are not relevant. If the application is filed under Section 14-B, the summons should state that the application is filed under Section 14-B and not under Section 14(1)(e) or 14-A. Likewise if the applications are under Sections 14-C to 14-D, the summons should state accordingly. That would indicate the scope of the defence of the tenant for obtaining leave referred to in sub-section (5) of Section 25-B. Under sub-section (5), the tenant could contest the application by obtaining leave with reference to the particular claim in the application of the landlord depending upon whether it is under Section 14-A, 14-B, 14-C, or 14-D or under Section 14(1)(e). The tenant cannot be allowed to take up defence under Section 14(1)(e) as against an application under Section 14-B. There cannot be any defence unconnected with or unrelated to the claim or right of the plaintiff or applicant. That would be against our jurisprudence. It is unlikely that the legislature intended the result for which the counsel for the tenant contended. It will be a mechanical interpretation of the enactment

defeating its purpose. Such an interpretation has never found favour with the courts which have always adopted a purposive approach to the interpretation of statutes. Section 14-B and other allied provisions ought to receive a purposeful construction and sub-section (5) of Section 25-B should be so construed as to implement the object and purpose of Sections 14-B to 14-D. It is the duty of the court to give effect to the intention of the legislature as expressed in Sections 14-B to 14-D.

19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies Statute Law, 7th edn., p. 109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar* ((1988) 2 SCC 513, 524-25) where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See : *Sirajul Haq Khan v. Sunni Central Board of Waqf* (1959 SCR 1287, 1299 : AIR 1959 SC 198).)

20. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the word bona fide requirement in Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states "special procedure for the disposal of applications for eviction on the ground of bona fide requirement".

21. It was next urged that sub-section (6) of Section 14 is also attracted to applications under Section 14-B to 14-D. This contention overlooks the express wordings of sub-section (6). It refers to premises acquired by transfer and thereby the transferee becoming the landlord. Such a landlord cannot bring an action for eviction of tenant in possession of the acquired premises within a period of five years from the date of acquisition. After five years such a landlord can ask for eviction of the tenant under Section 14(1)(e). This is indeed, as we said earlier, a protection to the tenant. The original landlord who cannot evict the tenant since he has got many houses under his occupation cannot use the device by transferring one of the houses to a third party who could easily evict such a tenant. The tenant in occupation of the transferred premises gets a protection from eviction for a minimum period of five years. Section 14-B and other allied provisions refer to the premises let out and not acquired by transfer. One may become an owner of the premises by transfer but the tenant in occupation of the transferred property cannot be evicted by resorting to Sections 14-B to 14-D. If the transferee wants to evict the tenant of such premises he must take action only under Section 14(1)(e). Equally, sub-section (7) of Section 14 has no application to eviction under Sections 14-B to 14-D. Nor the amended provisions under Section 25-C(2) would be attracted since it applies exclusively to tenants of the landlords covered under Section 14-A. But that does not mean that the tenants covered under Sections 14-B to 14-D are not entitled to any time for surrendering possession of the premises. It is always left to the Controller who is a quasi-judicial authority to exercise his discretion having regard to the facts and circumstances of each case. The Controller must exercise his judicial discretion in every case of eviction and grant a reasonable time to the tenant.

22. There is one other aspect which requires elucidation. In *Busching Schmitz Private Limited v. P. T. Menghani* ((1977) 2 SCC 835) this Court while dealing with the scope of Section 14-A and the

corresponding right of the tenant to resist the application thereunder, has, inter alia, observed that sub-section (5) of Section 25-B cannot be equated with Order 37 Rule 3 of the Code of Civil Procedure. The social setting demanding summary proceeding, the nature of the subject matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The Controller's power to give leave to contest the application filed under Section 14(1)(e) or Section 14-A is cribbed by the condition that the 'affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified' in the respective sections. Needless to state, therefore, if an application is filed under Section 14-B or 14-C or 14-D, the tenant's right to contest the application is narrowed down and is restricted to the parameters of the respective sections. He cannot widen the scope of his defence by relying upon Section 14(1)(e). We find nothing contrary to our view in Precision Steel & Engineering Works v. Prem Deva Niranjana Deva Tayal ((1982) 3 SCC 270). Sub-section (5) of Section 25 is self-contained and Order 37 Rule 3 CPC has no part to play there. We, therefore, reiterate the views expressed in Busching Schmitz Private Limited case ((1977) 2 SCC 835).

23. The tenant, who is petitioner in S.L.P. No. 11425 of 1990 has suffered an order of eviction which has been confirmed by the High Court in revision. It is found that his landlord is living in a rented house and is paying rent of Rs. 2000 p.m. and he requires the premises for himself and the members of his family. We concur with the view taken by the Controller as affirmed by the High Court. The landlord cannot be denied possession of his own premises under Section 14-B when he is residing in a rented premises.

24. Before parting with the case, we have to deal with one other contention which has been specifically raised by Mr. Sanghi. The counsel argued that the concerned landlord has taken voluntary retirement long earlier and he has become a part of the society just like any other landlord and Section 14-B was not intended to confer such landlord, the special right to recover immediate possession of the premises. Obvious answer to this contention is found in Section 14-B(1) which states that the persons who have already retired may within one year from the date of their release or retirement from such Armed Forces or, within a period of one year from the date of introduction of Section 14-B, whichever is later apply to the Controller for recovering the immediate possession of their premises. That is the legislative wisdom.

25. In this view of the matter, the appeals stand disposed without an order as to costs.

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