

A. N. Kapoor

Vs

Pushpa Talwar

Civil Appeal No. 1993 of 1982

(T. K. Thommen, S. Mohan JJ)

31.01.1992

JUDGEMENT

THOMMEN, J.:-

1. This appeal arises from the judgment of the Delhi High Court in S. A. O. No. 59 of 1979 whereby the High Court, reversing the concurrent findings of the Additional Rent Controller and the Rent Control Tribunal, allowed the respondent landlord's application for eviction of the appellant-tenant under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (the 'Act'). The respondent is the daughter of the original landlord who had let out the premises to the appellant on 1-10-1961. The present respondent purchased the property from her father on 27th June, 1964 and thus stepped into his shoes as the 'landlord' as defined under Section 2 (e) of the Act.

2. Relying upon the Rent Note and the appellant's letters dated 7-10-1961 and 18-8-1962 addressed to the respondent's father and the earlier proceedings between them for eviction of the appellant on the ground of sub-letting the premises for commercial purposes, both the statutory authorities found that the premises which had been let out for residential purposes to the appellant had also been used incidentally for commercial purposes so as to exclude the application of Section 14(1)(e) read with the Explanation thereto. This finding was reversed by the High Court by the impugned judgment. The High Court found that there was no evidence for the statutory authorities to come to the conclusion, which they did, as regards the premises having been used for commercial purposes. This is what the High Court says (AIR 1983 NOC 15 : (1982) 21 Delhi LT 235 (para 5)):-

"..... No documentary, evidence has been brought on record to hold that the premises were ever used for boarding and lodging foreign students.....Thus there is no evidence on record to hold that the premises were used for boarding and lodging of the foreign students or that the premises were let to the respondent for commercial purposes. Thus I am of the view that the premises were let to the respondent for use as residence and the findings to contrary by the Controller and the Tribunal are without any evidence on record and are perverse."

3. This finding of the High Court is, in our view, unsustainable. The High Court was not justified in saying that there was no evidence to hold that the premises were used for boarding and lodging foreign students. The specific plea of the landlord in the earlier proceedings was that the tenant had sub-let the premises for commercial purposes. The tenant contended that she had never parted with her exclusive possession of any part of the premises and the foreign students who were lodging with her were her paying guests and were not her tenants. The plea of subtenancy raised by the landlord was thus rejected on the ground that those who lodged with her were not sub-tenants but only

paying guests. Letters dated 7-10-1961 and 18-8-1962 addressed by the appellant-tenant to the respondent-landlord were considered by the authorities in coming to the conclusion, which they did. These letters clearly disclosed the fact that foreign students were lodged in the premises as the guests of the appellant. The evidence let in by the appellant and not contradicted by the respondent clearly showed that apart from the appellant, all the other inmates of the premises were foreign students staying with her as her paying guests. The appellant testified to the effect that she earned her livelihood from the income she received as lodging fee from students who lodged with her. It was out of that income that all her personal expenses including the rent payable by her for the premises had been met. These are the findings of the two fact-finding authorities and those findings are based on oral and documentary evidence. To have reversed those findings by the High Court in Second Appeal on the ground that they were perverse was totally uncalled for.

4. Mr. Harish Salve appearing for the respondent-landlord submits that even if the High Court was wrong in coming to the conclusion that there was no evidence about foreign students being lodged by the tenant, the mere fact that foreign students stayed as paying guests in the premises did not imply either that they lodged with the consent of the landlord or that such lodging amounted to a commercial use of the building. Counsel submits that the High Court was right on the facts of this case in saying that the ground contained in clause (e) of sub-section (1) of Section 14 was attracted.

5. There is no substance in the contention that the landlord was unaware that the premises had been used for lodging foreign students. The two letters relied on by the statutory authorities leave no doubt that this fact was well-known to the landlord at all material times. To the knowledge of the landlord the premises have been regularly used by the tenant ever since 1961 for the residence of not only herself but also of the foreign students who were lodged by her for gain as paying guests. The evidence is that she had no income other than what she received as lodging fee from the foreign students. The question then is whether the facts found excluded the application of the ground contained in clause (e) of Section 14 (1).

6. Section 14, insofar as it is material, reads:

"S. 14. Protection of tenant against eviction. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely -

(e) 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, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation.- For the purposes of this clause, "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."

7. The only ground which is relied on by the landlord is that which is contained in clause (e) read with the Explanation. Clause (e) on the facts alleged is applicable only if the landlord is in a position to establish that the premises let for residential purposes are required bona fide by him for occupation as a residence. Assuming that the bona fide requirement of the landlord is established, the landlord must still prove that the premises had been let for residential purposes. The Explanation to clause (e) makes it clear that the words 'premises let for residential purposes' include any premises let for residential purposes, but used incidentally, without the consent of the landlord, for commercial or other purposes. The Explanation is attracted when (i) the premises have been let for residential purposes, (ii) the premises have been used incidentally for commercial or another purposes, and (iii) the landlord has not given his consent for such incidental use for commercial or other purposes. If the three ingredients contained in the Explanation are attracted, the premises do not cease to be premises let for residential purposes" falling under clause (e). In respect of such premises, the bona fide requirement of the landlord referred to in clause (e) is a ground for eviction.

7. If the premises have never been used for any non-residential purpose, the aid of the Explanation is unnecessary to attract clause (e). The Explanation is called in aid only where premises let for residential purposes have been used incidentally for commercial or other non-residential purposes, but without consent of the landlord. The fundamental question in respect of residential premises is whether the landlord had consented to the user of the premises for any other purpose, albeit incidentally.

8. If the landlord is in a position to establish that the premises have been let for residential purposes and that he has never consented to the user of the premises for any other purpose, the mere fact that such premises have been incidentally used for commercial or other purposes would not change or affect the residential character of the premises. In respect of such premises, it is open to the landlord to prove his bona fide requirements and thus establish the ground mentioned under Clause (e). On the other hand, if the premises have been regularly and openly used for nonresidential purposes, the knowledge and consent of the landlord, unless proved to the contrary, are ordinarily presumed and in that event the Explanation would be of no avail to save the ground under clause (e).

9. In the present case, it is not disputed that the premises had been let for residential purposes, but it is also beyond doubt that to the knowledge of the landlord the premises have been regularly used by the tenant not only for her own residence but also for her foreign guests. The landlord has at all material times known or is presumed to have known that foreign students have been staying with the appellant as her paying guests' and that she has been ever since 1961 running a boarding house in the premises. At no time did the landlord object to the user of the premises by the appellant for such purpose.

10. The continued user of the building ever since 1961 for the purpose of lodging paying guests shows that the respondent landlord and her father have not only been aware of such user of the building, but have also impliedly consented to such user. This presumption is irresistible from the evidence on record. Such user takes the premises in question out of the ambit of 'premises let for residential purposes' so as to exclude the ground contained in clause (e).

11. We are fortified in our conclusion by the views expressed by this Court in *Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj*, (1962) 2 SCR 678 : (AIR 1963 SC 337) and *Kartar Singh v. Chaman Lal*, 1969 Rent CJ 349 : (AIR 1969 SC 1288).

12. The position would have been probably different, and the Explanation would have been still

available, had foreign guests been lodged only occasionally and for short periods, even if it be on the basis of payment to cover expenses. All this is a question of intention. Was it an occasional accommodation of paying guests consistently with the character of the premises as a private residence?

13. The evidence on record leaves no doubt that the premises have been regularly used by the appellant as a boarding house and not as a private residence in the ordinary acceptance of the term. She has in fact been carrying on, in the words of Romer, J., "a species of business". See *Hobson v. Tulloch*, (1898) 1 Ch D 424. See also *Thorn v. Maocien*, (1925) All ER (Reprint) 321 and *Tendler v. Sproule*, (1947) 1 All ER 193.

14. In the absence of any question of law, much less any substantial question of law, the High Court was not justified in reversing the concurrent findings of the statutory authorities.

15. In the circumstances, we set aside the impugned judgment of the High Court and restore the orders of the Additional Rent Controller dated 29-9-1976 and Rent Control Tribunal dated 18-11-1978. The appeal is allowed in the above terms with the costs of the appellant throughout. Appeal allowed.

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