

SUPREME COURT OF INDIA

Rachpal Singh

Vs.

Gurmit Kumar

C.A.Nos.3402-3404 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

08.05.2009

JUDGEMENT

H.L. Dattu, J.

1. This is a petition for special leave to appeal under Article 136 of the Constitution from the judgment and order dated 28.4.2008 of the High Court of Punjab and Haryana, at Chandigarh. We grant special leave and dispose of this appeal.

2. By the judgment and the order impugned, High Court has allowed and remanded all the three Revision Petitions to the Rent Controller, Nakodar, 1 to reconsider all the issues raised in the application filed under Section 18-A of the Act in accordance with law.

3. The factual matrix as asserted by the respondent /landlady are; the respondent/ Gurmit Kaur is the owner/landlady of the disputed property which was purchased by her vide registered sale deed dated 16.4.1971. The building has four shops and three of which has been let out to the appellants and the fourth shop to one Sri Vijay Kumar. The respondent claiming to be an NRI and being desirous of having possession of the tenanted premises so as to settle down in India, sought eviction of tenants by filing separate petitions under section 13-B of the East Punjab Urban Rent Restriction Act, 1949 against all the four tenants.

4. The tenants appeared in all the four eviction petitions, out of which three are pending before the Rent Controller, Nakodar. The tenants have filed applications for leave to contest under section 18-A of the act, wherein, they dispute the landlord and tenant relationship and according to them the shops were let out to them by one Gurbachan Singh and not by respondent and the tenants are paying rents regularly to him. Secondly, the respondent was not an NRI at the time of letting out the shop premises and has not acquired the status of an NRI even till today.

5. In the eviction petition filed against one another tenant Vijay Kumar, the respondent had claimed that she is an NRI and has leased out one of the shops in the building owned by her to Vijay Kumar in the year 1990. Since, she has come back to India, she requires the shop

premises for her own use and occupation. By way of defence, it was alleged by Vijay Kumar that he is not the tenant of the disputed shop, and it is his brother Vipin Kumar is the tenant and is running the shop in his own name and, therefore, the proceedings filed under section 13-B of the Rent Act is not maintainable for non-joinder of necessary and proper parties.

6. The Rent Controller, Nakodar, vide its order dated 15.6.2007, without giving any finding with regard to the status of the respondent/Gurmit Kaur being NRI or not, had concluded that the tenancy created in favour of Vijay Kumar stands prima facie proved from the rent deed dated 7.7.1993 and as such there is no tenancy created in favour of Vipin Kumar and therefore, the petition filed under Section 13-B of the Rent Act by the landlady deserves to be allowed and, accordingly, has directed Vijaya Kumar to deliver the immediate possession of the shop premises to the landlady.

7. In respect of other three petitions, Rent Controller vide its order dated 15.6.2007, has granted to the tenants leave to defend the petition filed by the landlady under Section 13-B of the Rent Act.

8. Aggrieved by the aforementioned order, the respondent landlady had filed revision petitions before the High Court, inter alia, asserting that the learned Rent Controller in the case of Gurmit Kaur v. Vijay Kumar, has found the respondent/landlady is an NRI after looking into her passport and the sale deed dated 16.4.1971, and the same Rent Controller in other three petitions has taken a different view and has allowed the application for leave to defend and, therefore, the order passed is arbitrary and impermissible in law.

9. The High Court, while allowing the petitions has observed, that, the Rent Controller would be justified in permitting the tenants leave to defend, if it is of the opinion that some triable issue would arise in view of the contentions raised in the application filed under Section 18-A of the Act and at any rate, not on the ground that the respondent is not an NRI and that would lead to incongruous situation in view of the conflicting orders passed by the same court on the status of the respondent, and accordingly, has set aside the impugned orders and has remitted back to the Rent Controller, Nakodar, to reconsider the application filed by the tenants under Section 18-A of the Act in accordance with law. Aggrieved by the order of remand so passed, the appellants are before us in this appeal.

10. The Learned Counsel for the appellants has argued that the order in Vijay Kumar's case does not even record a finding to the effect that the respondent is an NRI; hence the inferential finding in Vijay Kumar's case could not be binding in the cases of the appellants. It is further submitted that the Rent Controller in Vijay Kumar's case has accepted the claim of the respondent on the ground that Vijay Kumar in order to avoid the order of eviction had stated that his brother Vipin Kumar is the tenant of the shop premises, but in fact it was Vijay Kumar in whose name rent deed was executed, and the Rent Controller has just made a passing reference to the passport and sale deed of the respondent without deciding whether the respondent is an NRI. Therefore, in the instant Revision Petitions the High Court has erred in giving a finding that the learned Rent Controller has considered the respondent as an NRI.

11. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and prove his own case. (See *Charan Dass Duggal v. Brahma Nand*¹).

12. If some triable issues are raised then the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits and other material documents.

Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when the status of the respondent has been specifically challenged and also when the landlord-tenant relationship is in question. Therefore, we do not see any infirmity in the common order passed by the High Court in Civil Revision Petitions 4096 of 2007 and connected matters dated 28.04.2008.

13. We, accordingly, dismiss these appeals and sustain the impugned order passed by the High Court. However, we direct the Rent Controller to independently examine the applications filed by the appellants under Section 18-A of the Act in accordance with law and also if there are any triable issues between the parties, decide the same in accordance with law as expeditiously as possible, at any rate within an outer limit of nine months from the date of receipt of this Court's order and while doing so, the Rent Controller need not be influenced by any of the observations made by the High Court while disposing of Civil Revision Petitions. In the facts and circumstances of the case, parties are directed to bear their own costs.

¹(1983) 1 SCC 301)