

**SUPREME COURT OF INDIA**

Rafeeqan (Dead) By Lrs.

Vs.

Hussan Bano

C.A.No.2126 of 2004

(G.S.Singhvi and Asok Kumar Ganguly JJ.)

06.09.2010

**JUDGEMENT**

**A.K.Ganguly, J.**

1. This appeal is directed against the judgment and order dated 27th May 2003 passed by the Delhi High Court in Civil Revision No.754 of 2002. By the impugned judgment and order, the High Court affirmed the order of the Additional Rent Controller dated 27th May, 2002 by which the Additional Rent Controller dismissed the application of the appellant for leave to defend in the eviction proceeding filed against her by the respondent under Section 14-D of the Delhi Rent Control Act (hereinafter, 'the said Act').

2. The material facts of the case are that the respondent, a widow, filed a petition under Section 14-D of the said Act to recover immediate possession of the premises of which the appellant is a tenant in one room, kitchen, bathroom, latrine and courtyard on the first floor of property No.4899-A Gali Maulvi Abdul Rahim, Bara Hindu Rao, Dehli at a rent of Rs.100/- per month and other charges.

3. Admittedly, the respondent purchased the property in question by a registered sale deed dated 31.10.1961 and the appellant was inducted as a tenant in the said property by the previous owner. In the eviction petition it was stated by the respondent- landlord that she and her family require the tenanted premises for her own residential purposes. When such eviction petition came before the Court of the Additional Rent Controller, Delhi the Court recorded that nobody appeared on behalf of the appellant in spite of notice in the newspaper and no leave application was filed. However, the Additional Rent Controller, Delhi by judgment and order dated 18.3.1999 dismissed the eviction petition filed by the respondent herein, inter alia, on the ground that the tenanted premises was let out by the previous owner from whom the respondent herein purchased the tenanted premises. It was not let out either by the respondent herein or by her husband or by any of her blood relations and the Additional Rent Controller held that Section 14-B of the said Act does not apply.

4. Challenging the said order a revision petition was filed by the respondent herein. In such revision petition, the Delhi High Court vide order dated 11.9.2000 was pleased to set aside the order dated 18.3.1999 passed by the Additional Rent Controller, Delhi and the Delhi High Court was pleased to direct the Additional Rent Controller to decide the eviction petition on merits. The Delhi High Court was pleased to hold as follows:- "Admit.

“The petitioner is aggrieved by an order dated 18th March, 1999 passed by the learned Additional Rent Controller, Delhi.

The petitioner was non-suited on the ground that the suit premises were not let out by her husband or by her but were in fact let out by the predecessor-in- interest of the petitioner.

The admitted position is that the suit premises were purchased by the petitioner some time in 1961. She, unfortunately, became a widow in 1980.

It has been held by various judgments *Union of India and others*<sup>1</sup>, *Tools (India) Pvt. Ltd.*<sup>2</sup>, that the provisions of Section 14-D of the Delhi Rent Control Act, 1958 cannot be given restricted meaning. It is immaterial that the suit premises were let out by the predecessor- in-interest or the widow. The expression "letting out by her or by her husband" has to be given a wider meaning including therein the predecessor-in-interest of the widow.

Under these circumstances, I am of the view that the impugned order passed by the learned Additional Rent Controller cannot be sustained.

The learned Additional Rent Controller should now decide the eviction petition on merits.

The parties will appear before the learned Additional Rent Controller on 25th September, 2000.”

5. Learned counsel appearing for the appellant in this case mainly argued on two points. His first submission is that the decision of the Delhi High Court quoted above is erroneous in view of subsequent Constitution Bench decision of this Court in *Nathi Devi vs. Radha Devi Gupta*<sup>3</sup>.

6. The Constitution Bench in *Nathi Devi* (supra) was formed in view of divergence of opinion between two Benches of this Court on the interpretation of Section 14-D of the said Act.

7. For proper appreciation of the points at issue, the provision of Section 14-D of the said Act is set out below:- 14D. Right to recover immediate possession of premises to accrue to a widow. –

“(1) Where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to her to make an application under that sub-section in respect of any one of the premises chosen by her.”

8. In *Nathi Devi* (supra) this Court noticed the difference of opinion between the decision of this Court in the case of *Surjit Singh Kalra vs. Union of India*<sup>4</sup>, and the decision of this Court in *Kanta Goel vs. B.P. Pathak*<sup>5</sup>.

9. The Constitution Bench of this Court in *Nathi Devi* (supra), upholding the reasoning given by this Court in *Surjit Singh Kalra* (supra) held as follows:

“...The expression "let out by her, or by her husband" is not an expression which permits of any ambiguity. We must, therefore, give it its normal meaning. So understood the conclusion is inescapable that the legislative intent was only to confer a special right on a limited class of widows viz. the widow who let the premises or whose husband had let the premises before his death, and which premises the widow requires for her own use." (Para 28, page 284 of the report)”

10. The Constitution Bench made the position further clear in paragraph 32, in the following words:- "...Section 14-D benefits only a class of widows viz. a widow who or whose husband had let out the premises. If the intention was to benefit all widows, the section would have provided that a widow is entitled to obtain immediate possession of the premises owned by her and the expressions "let out by her or by her husband" and "such premises" in Section 14-D would be redundant...."

11. Again in the same paragraph it was held as follows:

“...in our view, Section 14-D insists that the premises must be one let out by her or by her husband. A widow or her late husband who acquired a tenanted premises by sale or transfer cannot invoke the provisions of Section 14-D to evict a pre-existing tenant.”

12. In view of the aforesaid clear enunciation of law by the Constitution Bench of this Court on Section 14-D of the said Act, the judgment of the Delhi High Court, extracted above, is clearly erroneous.

13. It may be true that the decision of the Delhi High Court, extracted above, giving a different interpretation of Section 14-D was not challenged by the appellant herein.

“But the High Court judgment on interpretation of Section 14-D is clearly erroneous in view of the subsequent Constitution Bench judgment of this Court in Nathi Devi (supra). The Constitution Bench decision in Nathi Devi (supra), in view of the mandate of Article 141 of the Constitution is binding on all subordinate Courts and Delhi High Court and the rights of the parties in a pending proceeding under Section 14-D of the said Act must be governed by the law laid down in Nathi Devi (supra).”

14. The learned counsel for the appellant has, however, argued another point, namely, that there is no relationship of landlord and tenant between the appellant and the respondent.

15. In view of the decision of this Court in Nathi Devi (supra), this Court need not go into the aforesaid question.

16. Following the Constitution Bench judgment of this Court in Nathi Devi (supra) this Court allows the appeal and holds that provision of Section 14-D is not applicable for eviction of the appellant in this case, since she is admittedly a pre-existing tenant on the premises prior to the purchase of the property by the husband of the respondent landlord.

17. This Court, however, makes it clear that the respondent-landlord, if so advised, is at liberty to initiate eviction proceedings against the appellant in accordance with law. The appeal is, thus, allowed. The impugned order of the High Court is set aside. No order as to costs.

<sup>1</sup>1990 (18) DRJ

<sup>2</sup>1993 (25) DRJ 52 (47) DRJ 789

<sup>3</sup>(2005) 2 SCC 271

<sup>4</sup>(1991) 2 SCC 87

<sup>5</sup>(1977) 2 SCC 814