

## DELHI HIGH COURT

Vas Dev

Vs.

S. Sohan Singh (Delhi)

Execution Second Appeal No. 191 of 1967.

(M.M. Ishmail, J.)

2.8.1967

### JUDGMENT

**M.M. Ismail, J.**

1. One, Shri Wasakha Singh, obtained orders for eviction against the seven tenants on the ground of personal *bonafide* requirements as provided for in proviso (e) to Section 14(1) of the Delhi Rent Control Act, 1958. However, he died before the order for eviction could be executed. His sons and daughters filed an execution application praying that they should be imp leaded as the legal representatives of their deceased father and they should be delivered possession of the premises in possession of the tenants. The tenants objected to this prayer of the legal representatives. The Kent Controller rejected the objection of the tenants and Ordered the application of the legal representative. An Appeal preferred against the same to the Rent Control Tribunal also failed, and hence, the present second Appeals.

2. The learned counsel for the appellants put forward the contention that the order for eviction granted in favor of the landlord on the ground of his personal *bonafide* requirements was personal to him and after his death the order of eviction cannot be executed by the feral representatives. But if in other words, the benefit of the order of eviction does not ensure the favor of the legal representatives and if the legal representatives were in need of the premises for their *bonafide* personal requirements, they will have to start proceedings afresh The learned counsel painted out that there is a difference of opinion on this point between the decision of the Madras High Court in *Dr. Muhammad Ibrahim v. Rahiman Khan* <sup>1</sup> and the decision of Madhya Pradesh High Court in *Motilal Panna lal v. Kailash Narain* <sup>2</sup> and stated that in view of those

conflicting decisions an authoritative pronouncement of this Court is necessary.

3. I am of the view that there is really no conflict between the two decisions cited and relied upon by the Tribunals below before I refer to these two decisions, it is necessary to refer to the statutory provision under which the order for eviction has been passed in this particular case. Proviso (e) to Section 14(1) of the Act is as follows: ---

"14.protection of Tenant against eviction.

(i) 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 favor 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 the premises on one or more of the following grounds only, namely : -

\* \* \* \* \*

(e) that the premises let for residential purposes are required *bonafide* by the landlord for occupation as a residence for himself or for any member of the 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 reasonable suitable residential accommodation; \* \* \* \* \*

It can be immediately seen that with reference to the points in controversy in this case, this statutory provision contains two features The first feature is that the landlord can apply for an order of eviction not only on the ground that he requires the premises *bonafide* turn occupation for himself but also for any member of the family dependent on him, The second feature is that this statutory requirement has to be fulfilled before a Court or the Controller can make an Older for the recovery of possession of the premises. With reference to the facts of this case, it is clear from the orders of eviction passed by the Rent Controller and the Tribunal that the landlord in this case applied for eviction of the tenants for the *bonafide* requirements not only of himself but of his wife, four sons aged 12 years, 15 years, 20 years and 2,5 years and three unmarried daughters aged 11 years, 13 years and 16 years, who were all dependent on him. Only on taking into account these requirements, the orders of eviction were passed. It is the very same dependents for whose benefit Shri Wasakha Singh applied for the eviction of the tenants that have now come on record as legal representatives for executing that order of eviction. It is in this context, the decisions referred to by the earned counsel for the appellants has to be

considered. As far as the Madras High Court decision is concerned, it proceeded on the basis of a 'provision contained in the Madras House Rent Control Order, 1945. The relevant provision in that order is as follows:-

"A landlord who is not living in a house of his own in a city, town or village and who desires to occupy his house in such city, town or village, which is in the occupation of a tenant, may apply to the Controller for an order directing the tenant to put the landlord in possession of the house. The Controller shall, if he is satisfied that the landlord is acting in good faith, make an order directing the tenant to put the landlord in possession of the house on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application."

It may be seen immediately that the requirement in that particular provision was that the landlord must not be living in a house of his own in a city, town or village and must desire to occupy his house in such city, town or village, which is in the occupation of a tenant. With reference to this statutory provision, the Madras High Court observed:

"THE decree in favor of a widow to reside in a house is purely personal and would become unenforceable on her death." Whether one agrees with such a conclusion or not, it can be easily seen that that conclusion was sought to be drawn from the particular statutory provision which I have already referred to, which is far different in its language and content from the statutory provision which is found in the Delhi Rent Control Act, 1958. Consequently, the decision of the Madras High Court has no bearing whatever on the interpretation of Section 14(1)(e) of the Delhi Rent Control Act which statutory provision expressly refers to the requirement of any member of the family dependent on the landlord. One further fact which might have influenced the decision of the Madras High Court may be the fact that in that case, the legal representatives were apparently said to possess houses of their own which they were occupying. With reference to this, when I asked the learned counsel for the appellants whether it was the case of the appellants that the legal representatives in this particular case were in occupation of separate houses of their own the learned counsel stated that he did not take any such plea, but still he contended that the burden was on the legal representatives to establish that they were not in occupation of any house of their own. As far as this particular contention concerned, I am unable to agree with the contention of the learned counsel for the appellants and if it was their case that the legal representatives were

occupying houses of their own and they did not require this house, it is for them to take up the plea and establish the same.

4. The other decision referred to is, as I pointed out already, a decision of the Madhya Pradesh High Court. In that case, a landlord filed a suit for recovery of possession of his premises in the occupation of the tenants on the ground that he required that house for himself as he wanted to shift from his village and he succeeded in two Courts. When the matter came up in second Appeal before the High Court, a point was raised that the landlord having died, the decree for possession passed in his favor must be set aside since the decree was personal to him. The learned Judge of the Madhya Pradesh High Court observed as follows:-

"I am of the opinion that this argument ignores the fact that the expression 'personal requirement' in Section 4(g) of the Act must be construed to mean the requirement of the accommodation for his own body as also his wife and dependent children, because they cannot be separated from him so far as the question of residence is concerned

I am, therefore, clearly of the opinion that the requirement for his own residence cannot be concerned so narrowly as to confine the requirement for the person of the single individual, namely, the land lord alone."

In support of his view, the learned Judge referred to the decision in *Smith v. Penny*.<sup>3</sup> If that was the case with reference to a statute which used the expression 'personal requirement' alone the case must be a fortiori with regard to a statutory requirement which not only uses the expression requirements to himself but also the requirements of any member of the family dependent on him. In view of these considerations, I do not think that there is any conflict or difference in principle between the two decisions referred to and relied upon by the two Tribunals below.

5. The learned counsel for the appellants put forward the contention that an order for eviction obtained at the particular point of time may be sought to be executed after a considerable time of delay during the interval of which many changes might have taken place so as to render the order of eviction previously obtained unenforceable. As I printed out earlier the requirements with regard to proviso (e) to Section 14(1) of the Act have to be satisfied only at the time when the order for eviction came to be passed and as the Tribunals below pointed out at the stage of execution the executing Court has no right to go behind the decree or order and scan it or scrutinize it with a view to find out whether at the point of time when it is sought to be executed, the requirement

is satisfied or not in the absence of any statutory provision to that effect The learned counsel for the appellants could not draw my attention to any statutory provision which imposes an obligation on the executing Court to satisfy itself that the order of eviction sought to be executed answers the test of the proviso (e) to Section 14(1) of the Act at the time when the order for eviction is sought to be executed. I do not consider that there are any merits in these cases and accordingly they are dismissed.

Appeal allowed.

Cases Referred.

1. 1947 II M.L.J. 419
2. AIR 1960 Madhya Pradesh 134
3. 1946 (2) All England Reporter 672