

# DELHI HIGH COURT

Shri Gobind Dass

Vs.

Shri Kuldip Singh,

S.A.O. No. 128 of 1967

(H.R. Khanna, C.J. and Prakash Narain. J.)

28.4.1970

## JUDGMENT

**Prakash Narain, J.**

1. The problem posed in this second appeal is as to the interpretation of proviso (c) of sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 and finding out whether the claim for eviction made by the appellants was covered by the said proviso.
2. The appellants, three brothers, filed an application under Section 14 of the Delhi Rent Control Act, 1958 (hereinafter called the Act) seeking eviction of the respondent from the premises under his tenancy comprising two rooms, a W. C. and a kitchen on the ground floor in the building bearing No. 48 in Block C, *Ramesh Nagar*, New Delhi. The appellants' contention was that they were in occupation of similar accommodation on the first floor but the accommodation occupied by them, being insufficient for their needs they required the tenanted premises for occupation by themselves and for members of their family dependent on them. In the eviction petition the three appellants had claimed to be joint owners of the entire premises contending that they constituted a joint Hindu family of which Gobind Dass, the first appellant was the karta. It was further stated that Gobind Dass was a bachelor but the second appellant Dewan Chand was married and besides his wife had five children and the third appellant was married just about the time of the institution of the eviction proceedings.
3. The claim for eviction was resisted by the respondent according to whom Gobind Dass was alone the owner of the premises or landlord of the tenant respondent. According to him Gobind Dass was a bachelor and so had sufficient accommodation

for his own use on the first floor of the building and the requirements of his relations could not be taken into account. It was further urged that Dewan Chand was running a shop at Chekarta and had merely sent his wife and children to stay with his elder brother while Joginder Lal was in Government service and was not dependent upon his elder brother Gobind Dass.

4. The learned Additional Controller, Delhi, by his order dated May 3, 1966 granted the petition in favor of Gobind Dass alone after holding that he alone was the owner of the premises and landlord but at the same time coming to the conclusion that the three appellants were all members of a joint family and Gobind Dass as the Karta was not merely keeping relatives but that the second and the third appellants and their wives and children were dependent on Gobind Dass for accommodation. Aggrieved by this order the respondent-tenant appealed to the Rent Control Tribunal which by its order dated January 20, 1967 reversed the findings of the learned Additional Controller and dismissed the eviction petition. The learned Tribunal came to the conclusion that there was no joint Hindu family, that the requirements and the relations of Gobind Dass could not be taken into consideration in ordering eviction of the respondent, that since Gobind Dass was a bachelor he had sufficient accommodation for himself and also observed that neither Dewan Chand nor Joginder Lal, the second and the third appellants were financially dependent upon Gobind Dass and in fact Gobind Dass could not be regarded as having a family as "it may appear that he had entered some religious order". The appellants have now come up to the High Court in second appeal against the order of the learned Tribunal stating that not only is the decision of the Tribunal contrary to proved facts but the findings are based on no evidence and further the interpretation of proviso (c) to section 14(1) as given by the Tribunal is wholly incorrect in law.

5. Before we construe the provision and examine how far it is applicable to the facts of the present case it will be advantageous to read the same which is in the following terms:

"14. (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 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

(a) ... ..

(b) ... ..

(c) ... ..

(d) ... ..

(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 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".

Mr. G. S. Vohra, the learned counsel for the appellants has not agitated the question of the three appellants being the joint owners of the premises and, in our opinion, rightly so because that would be a question of fact which is not open to review in second appeal. What he has contended is that Gobind Dass, the eldest of the three brothers, being the owner of the premises, the premises in the tenancy of the respondent are required by him as a residence for himself and for members of his family dependent upon him and that he being the owner of the premises he also requires the premises for person for whose benefit he holds the premises. Admittedly, Gobind Dass is a bachelor and his only heirs will be his brothers and their children. So, the premises are held by him for his own benefit and the benefit of those who are likely to succeed to him. In any case the main point at issue is whether his brothers and their wives and children form part of his family and if that be so whether these persons are dependent upon him.

6. The word "family" has not been defined in the Act and we feel advisedly so. The concept of what constitutes a family when a number of persons are related or are living together is not something static or capable of concise definition. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-religious customs of the community to which such persons may belong. In the case of *Ram Parshad Singh v. Mukand Lal* <sup>1</sup> J.L. Kapur, J. held that in a given set up of social structure even nephews could be regarded as member of a landlord's family within the meaning of section 9(1) (e) of the Delhi and Ajmer Marwara Rent Control Act, 1947. The learned Judge had quoted extensively from several English Judgments and had particularly relied on the observations of Wright, J. in the case of *Prica v. Gould*, wherein the learned Judge had observed as under:

"It has been said in a number of equity cases relating principally to wills or to settlements under powers of appointment, that the word "family" is a popular,

loose, and flexible expression and not a technical term. It has been laid down that the primary meaning of the word "family" is children, but that primary meaning is clearly susceptible of wider interpretation, because the cases decide that the exact scope of the word must depend on the context and the other provisions of the will or deed in view of the surrounding circumstances. Thus in *Snow v. Tead.*,<sup>3</sup> it was held that the word family could be extended beyond not merely children but even beyond the statutory next of kin.

I hold that in the section now under consideration the word "family" includes brothers and sisters of the deceased living with her at the time of her death. I think that meaning is required by the ordinary acceptance of the word in this connection, and that the legislature has used the word "family" to introduce a flexible and wide terms".

The above quoted, observations of Wright, J. were also noticed with approval in a Bench decision of the Punjab High Court in *Shri Nanak Chand v. Shrimati Tara Devi.*

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7. Similarly, D.K. Mahajan. J. in *Mrs. G. V. Shukla v. Shri Parbhu Ram Sukhram Dass Ojha*, observed that the word family is capable of wide interpretation, but that interpretation must have relation to existing facts and circumstances proved on the record in each case. A remote relation may, in a given case of set circumstances be treated as a member of the family, whereas in another set of circumstances the same relation may not be legitimately called as a member of the family. In Mrs. Shukla's case an uncle of a tenant was held not to be a member of the family because Mrs. Shukla who was the tenant while going out had left the premises with her uncle for being looked after and there was no evidence that this uncle was ever living with her before she went abroad. Had there been evidence to show that this uncle had always lived with her perhaps he may have been regarded as a member of the family.

Mr. Vohra had invited our attention to several other decisions also on who all would and can constitute a family in a given set of circumstances but it is not necessary to refer to all of them. We may, however, notice one decision of the Calcutta High Court in *Sukumar Guha v. Naresh Chandra Ghosh and another*,<sup>6</sup> wherein the learned Judge on the basis of principles set out in several other decisions had observed that the extent of the boundaries of the family depends upon the particular facts of each case and the structure and out look of each community and that no one can be dogmatic either way on such matters. We are in respectful agreement with the observations in all the decisions that we have noticed above and would hold that in a given set of circumstances and according to the particular structure of a society a family may be

constituted of persons who may not in another given set of circumstances be regarded as being members of one family. Applying this principle to the facts of the present case there is no doubt that the members of the family of Gobind Dass would include his brothers, their wives and children. These persons belong to the Hindu community where the normal concept is that of a joint Hindu family and as has been observed by the Supreme Court in *Bharat Singh and others v. Mst. Bhagirathi*,<sup>7</sup> there is a strong presumption in favor of Hindu brothers constituting of joint family and it is for the persons alleging severance of the joint Hindu family to establish it. Even if it be assumed that there is no joint Hindu family as such in the technical sense, Gobind Dass is a bachelor and the eldest brother and his nearest kith kin in the person of his brothers, their wives and their children would undoubtedly be his family.

8. The next question for consideration is whether members of the family of Gobind Dass were dependent upon him within the meaning of proviso (c) to Section 14(1) of the Act. This word "dependent" is also not defined in the Act and so has to be construed in accordance with the facts and circumstances of each case. As was observed by Falshaw, C.J. in *C.L. Davar v. Amar Nath Kapur*,<sup>7</sup> The word "dependent" cannot be construed as meaning nothing but wholly dependent in the sense of not earning anything at all and being entirely dependent on the father for board, lodging and food. The term must be construed as meaning somebody not wholly independent or self supporting and in a position to set up separate residence. Dependence may not in all circumstances be entirely a matter of finance and would particularly be so in the case of an unmarried daughter who may be employed but in whose case for various reasons it would not be desirable for her to attempt to live away from her parents and on her own". Mr. D. K. Kapur, the learned counsel for the respondent has urged that both Dewan Chand and Joginder Lal are earning their livelihood and so cannot be regarded as dependent upon Gobind Dass. To our mind this interpretation if accepted, would tend to restrict the meaning of the word "dependent" to a person being financially dependent. In the socio-religious structure of Hindu society it is common for all the members of a family of brothers to live together while some men folk in the family may go out of town to earn a livelihood and even remit their earnings to the family. One cannot shut one's eyes to this structure of our society and so to give a restricted meaning to the word "dependent" would be to provide a definition of this word where the legislature has advisedly chosen not to do so. We would, therefore, in the circumstances of this case held that the wives of the brothers of Gobind Dass and their children were dependent on Gobind Dass for accommodation specially when it has not been brought on record that the family member owned any other residential

premises. That Dewan Chand runs a shop in Chakarta has no relevance to the question of his being dependent upon his elder brother to provide accommodation for his immediate family specially when it is proved on record that he has not taken a house on rent at Chakarta and is probably living in the shop where he carries on his business. Similarly, there is no evidence that Joginder Lal has any other residential accommodation and in these days of high rents and prices it cannot be said that because Dewan Chand and Joginder Lal are earning their livelihood they must leave the family home and find independent accommodation for themselves. Apart from the cost of such accommodation it would be in the fitness of things for such a family to live together particularly when Gobind Dass is a bachelor and would require his kith and kin to look after him.

9. We may here with advantage refer to a decision of our own Court rendered by Tatachari, J. in *Vas Dev Dhawan v. Triloki Nath*,<sup>8</sup> It was held that the requirements of a landlord "implies that in considering the question as to whether the landlord requires the premises for himself, all the circumstances in which he is placed have to be taken into consideration. State of health of the landlord would be relevant in considering the *bonafide* requirement of the landlord. If his age and health is such that he cannot live alone and needs the presence company and assistance of certain members of his family, even if those members are not dependent on him, his requirement would be bonafide." As we have already observed Gobind Dass being a bachelor would need his kith and kin to be near him and so when he seeks eviction it is not only the requirements of his family but his own requirement that must also be kept in mind.

10. Mr. D.K. Kapur, the learned counsel for the respondent very strongly urged that the case as pleaded by the appellants in their application seeking eviction was that they were joint owners and required the premises for themselves and for members of their family dependent on them and so Gobind Dass cannot now be heard to say that his brothers and their families be regarded as his family and that his own requirements should also be looked at as he needs the presence of his kith and kin. To our mind the argument does not have much substance inasmuch as though the appellants had pleaded the case as propounded by Mr. D.K. Kapur the finding of the courts below is that Gobind Dass alone was the owner of the premises and throughout both before the Controller and the Tribunal the case was fought on this basis also that Dewan Chand Joginder Lal and their immediate families did not form part of the family of Gobind Dass and that the requirements of members of the family of Gobind Dass dependent upon him.

11. We may, before we close, also comment upon an observation of the Tribunal regarding Gobind Dass joining a religious order. This was nobody's case at any stage and there is no evidence to support this observation. Merely because Gobind Dass had acquired this property from claims inherited from his Guru would not mean that he had joined a religious order even if he was a Chela of that Guru.

12. As a result of our discussion above the present appeal is accepted, the order of the Tribunal is set aside and the order of the learned Additional Rent Controller is restored. An order of recovery of possession is hereby passed in favor of Gobind Dass, appellant alone against the respondent, who is, however, given six months' time to vacate the premises from the date of this judgment. In the circumstances of the case, we make no order as to costs.

Appeal accepted

Cases Referred.

1. (A.I.R., 1952 Punjab 189)
2. (1930) 143 Law Times 333
3. (1871) 223. L.T. 303,
4. 1953 P.L.R. 32.
5. 1963 P.L.R. 256,
6. AIR 1968 Calcutta 49
7. 1962 PLR 521.
8. 1967 P.L.R. 260 (Delhi Section).