

DELHI HIGH COURT

Shri Hem Chand Baid

Vs.

Smt. Prem Wati Parekh, (Delhi)

S.A.O. No. 138 of 1976.

(Prakash Narain and S.B. Wad, JJ.)

8.8.1979

JUDGMENT

S.B. Wad, J.

1. This second appeal filed by the tenant-appellant raises the question of interpretation of clause (h) of proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act, 59 of 1958. The order of eviction was passed against the tenant under the said clause. Clause (h) which affords ground of eviction to a landlord reads as follows:

"that the tenant has whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence."

2. Admittedly the appellant-tenant had acquired possession of new premises at Y-42 Hauz Khas, New Delhi on May 18, 1967 and reverted to the suit premises in October 1967 before the notice of termination of tenancy was given by the landlord. The learned single Judge (B.C. Misra, J.) faced some difficulty in reconciling certain decision of this Court and Supreme Court. The learned Single Judge has, therefore, set out the following questions of law for our decision :

"The question of law that needs to be decided in this appeal is whether in view of the Supreme Court decision in *Gajanan Dattatraya v. Sherbanu Hosang Patel's* ¹ and Avadh Behari J. in *Muni Lal v. Dulara Singh*, ² and of the division bench of this court in *Battoo Mal in case* ³, the cause of action to the landlord to obtain eviction on the ground mentioned in clause (h) of the Act must exist and continue :

- a) On the date of the notice;
- b) On the date of the institution of the petition;
- c) During the pendency of the decision of the petition; and
- d) During the pendency of the proceedings before the competent authority (slums) or

if accrued any time prior to the institution of the petition, it renders the tenant liable to eviction irrespective of any considerations except the plea of waiver and estoppels, which are different concepts and which may or may not afford adequate defense to claim eviction in respect of old or fresh cause of action."

3. The learned single Judge has further referred for decision the question about the eviction of the appellant on the grounds mentioned in clause (d) and clause (e) of Sub-section (1) of Section 14, we find that the Rent Control Tribunal has rejected the landlord's prayer for eviction on the grounds mentioned in clause (d) and (e) of proviso to Sub-section (1) of Section 14 and no appeal is filed by the landlord-respondent against the said part of the judgment of the Tribunal. So far as the landlord is concerned, the matter stands concluded in regard to these two grounds and we, therefore, do not find any need to decide the question of eviction on the said two grounds.

4. The decision of the division bench in *Battoo Mal's* case is a direct authority on the interpretation of clause (h) of the proviso to Section 14(1) of the Delhi Rent Control Act. The decision is a binding precedent for a single Judge and a division bench of this Court. The judgment in *Battoo Mal's* case was pronounced by the D.B. on May 6, 1970. On July 20, 1970, Safer J. pronounced the judgment in *Ved Parkash v. S.M. Chuni Lal*,⁴ respondent (supra) wherein he took a view contrary to the ratio of *Battoo Mal's* case. It appears that the division bench judgment in *Battoo Mal's* case was not noticed by the learned single Judge. Had the division bench judgment been noticed the learned single Judge would not have held contrary to the division bench judgment as he was bound by the division bench Judgment. Five years latter, in *Gian Singh Tarlok Singh's* case Avadh Behari J. again took a view contrary to the division bench judgment in *Battoo Mal's* case and agreeing with the view taken by Safer J. in *Ved Parkash* case, from the reading of the judgment of learned single Judge in *Gian Singh's* case we find that the learned Judge has not

noticed the ratio of the division bench Judgment on interpretation of clause (h) of the proviso to Section 14(1). It appears that the learned single Judge thought that the only ratio of Battoo Mal's case was that the landlord's delay in filing an eviction proceeding might defeat his claim to eject a tenant under the said clause (h). In a subsequent decision rendered by Avadh Behari, J. in Muni Lal's case the learned single judge reiterated his interpretation of the said clause (h) of proviso to Section 14(1) of the Act and further reiterated the correctness of his own judgment in Gian Singh's case and judgment of Safer, J. in Ved Parkash, case. As regards the division bench judgment in Battoo Mal's case, learned single Judge observed that the law on interpretation of the said clause (h) of the proviso to Section 14(1) was rendered 'foggier', by the decision of the D.B.

5. With respect we hold that sitting as single judges of this court the two learned judge were bound by the decision of the division bench in Battoo Mal's case. We sincerely feel that we should for ever remember the observations of Gajendragadkar, C.J. in *Lala Shri Bhagwan and another v. Ram Chand and another*,⁵ in a case where a judge is inclined to take a view different from a coordinate bench. The learned Chief Justice observed:

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single judge hearing a matter is inclined to take the view that the earlier decisions of High Court whether of a division bench or of a single judge need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a division bench, or in a proper case place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. This is the proper and traditional way to deal with such matter and it is founded on healthy principles of judicial decorum and propriety".

6. We find that the law that was settled as early as 1970 was to some extent established by the said decisions of the learned single judges. A typical problem of uncertainty and confusion created by the conflict of opinions (which could have been avoided by strict adherence to the principles of precedent) is illustrated by an observations of Avadh Behari J. in Gian Singh's case. The Rent Control Tribunal in that case decided the matter (in our opinion rightly) relying upon the decision of the division bench in Battoo Mal's case. The judgment was set aside in appeal by the learned single judge. Judicial dissent is required to be

expressed within judicial discipline. A landmark decision on *stare decisis* is in *Tribhuvandas Purshotdamas Thakur v. Rati Lal Motilal Patel* ⁶ In that case the learned single Judge refuses to follow a judgment of a full bench of the High Court on the ground that such a practice was contrary to Section 136 of the Evidence Act and oath of office of a judge of High Court. Repelling the said pleas and emphasizing need for strict judicial discipline the Supreme Court observed :

"The observations made by the learned judge subvert the accepted notions about the force of precedents in our system of judicial administration. Precedents which enunciate rules of law form the foundation of administration of justice under our system. It has been held time and again that a single Judge of a High Court is ordinarily bound to accept as correct judgments of Courts of co-ordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law".

7. So much for a *stare decisis*. Let us now see how the question of interpretation of clause (h) of Section 14(1) arose and what is the correct ratio of *Battoo Mal's* case. Decision in *Battoo Mal's* was rendered by the division bench of this court consisting of Hardy J. and Deshpande J. (as they then were) on reference of three questions by Hardy J. for the decision of the Division Bench. Out of the three questions referred, question No. 3 relates to interpretation of clause (h) and reads as follows:

"Whether in order to entitle the landlord to the benefit of clause (h) of the proviso to Section 14(1) of the Delhi Rent Control Act, 1958, the Vacant possession of residence acquired or built by a tenant or allotted to him may be any time after the creation of tenancy regardless of whether the tenant is in possession of the same at the time of the institution of proceedings for his eviction by the landlord".

The division bench expressly rejected the contention of the appellant therein that the words "has.....built acquired vacant possession of 'show that the tenant must have built or acquired vacant possession of a residence before the filing of the petition for ejection and that these states of affairs must have continued till the date of the filing of the petition."

The division bench held:

"Apart from the fact that the Legislature could not have intended that the right arisen in favor of the landlord could be so easily defeated at the sweet will of the tenant, we are not at all convinced that the mere use of the word 'has' can support the argument of the tenant as to the meaning of the proviso (h) to Section 14(1) of the Delhi Rent Control Act, 1958-----"

The mere fact that the tenant has subsequently disposed of the residence does not affect the fact that he had once acquired it and thus gave a cause of action to the landlord for filing a petition for eviction-----It cannot be open to the wrongful deer himself to put the aggrieved party out of court by subsequently changing the situation unilaterally".

The counsel for the appellant-tenant before the division bench had relied upon an observation of the Supreme Court in *Goppulal v. Thakurji Shriji Dwarkadheshji and another*,⁷ made in the context of Section 13(1)(e) of Rajasthan Premises (Control & Eviction) Act, 1950. In that case the Supreme Court had observed that the present perfect tense 'has' contemplated a completed transaction even connected in some way with the present time. The division bench observed that the decision in Goppulal's case was in the context of the special facts of the case and was no authority for the proposition that wherever the present perfect tense is used, the state of affairs so described must continue till the filing of the petition for eviction.

8. In the concluding para of the division bench judgment the bench observed that in the exceptional case, where a landlord files the eviction petition too long after the tenant obtains vacant possession of a residence for himself then the tenant may defend the eviction petition. In other words the bench held that the landlord must diligently pursue his remedy of eviction once the default is committed by a tenant and his claim might get defeated if the court finds the claim too stale and belated. The D.B. expressly pointed out that the present was not such a case.

9. Two propositions appear to be well settled by the division bench in Battoo Mal's case.

1) that once protection is lost by a tenant by his default, under clause (h), it is lost forever and cannot be revived at any point of time or under any circumstances :

2) that the landlord's right of eviction might get defeated by application of general principles of waiver or laches is exceptional cases.

The first proposition is a direct authority on interpretation of clause (h) of the proviso to Section 14(1) of the Act. The second proposition is a reiteration of a general principle of law, which the D.B. was careful in pointing out was of no application to the facts of Battoo Mal's case, the learned Single Judge in Gian Singh's case held that Battoo Mal's was a decision on the particular facts of that case. With respect we do not agree. A pure question of law regarding the interpretation of clause (h) of the proviso to Section 14(1) of the Act was referred by a learned single Judge for the decision of the division bench in that Battoo Mal's case and, the decision, therefore, is not restricted to the facts of that case, we also do not agree with the learned single Judge that the general principle of waiver or laches referred to in Battoo Mal's case is the "Quintessence" of Battoo Mal's case.

10. Sitting as Division Bench we are bound by the decision in Battoo Mal's case, but in order to finally, and this seeming controversy we are examining the provisions of clause (h) of Section 14(1) ourselves. The focal point of controversy in regard to interpretation of clause (h) of proviso to Sub-Section (1) of Section 14 is the interpretation of the word 'has' appearing in the said clause (h). In specific terms the controversy is whether the word 'has' imports a concept of continuing default by the tenant till some legal step is taken by the landlord for eviction or whether it is sufficient for the purpose of that clause that the tenant has committed one default. To paraphrase it in terms of the grounds mentioned in the said clause (h), the question is, whether a construction of a building of his own by the tenant or acquisition of vacant possession of another premises or securing allotment of residence permanently takes away the protection against the eviction under the Act or whether it is possible for the tenant to revive the said protection by either selling away his house or relinquishing another premises acquired by him or allotted to him before the landlord takes legal steps for the eviction of the tenant.

11. Rent Control Legislations were passed in all the states in India after the Second World War to meet the problems of shortage of accommodation. The problem of accommodation is particularly acute in Delhi where the population is increasing at an extraordinary rate of about 3 lacs a year. It is a matter of common knowledge that population of Delhi which was around 5 lacs in 1947

has now increased to about 55 lacs. The protection-afforded to a tenant under the Delhi Rent Control Act proceeds on the assumption that due to severe shortage of accommodation a tenant is able to secure only one accommodation and that there is no choice for the tenant to change accommodations, according to his conveniences. The simple object of the Act is to afford security of a living roof to a tenant in this thickly populated city. If the position of the housing accommodation is such that a tenant can change accommodations according to his choice, a tenant does not need any security nor protection of law, it is clear that where there is shortage of accommodation, landlord's general right to terminate tenancy according to his will, has to be restricted. Such restrictions and impediments are imposed on a landlord by the Delhi Rent Control Act on the assumption that it is impossible for the tenant to leave the present accommodation to secure another accommodation. These assumptions of non-avail ability of alternative accommodation are wiped out once the tenant builds his own house or acquires other accommodation. Such a tenant is in no need of the protection of law against his eviction because, he has voluntarily left the original accommodation and has acquired another accommodation. Once it is found that a tenant does not need any protection of law, there is no rationale left in continuing an impediment in the way of the landlord to evict the tenant. In this setting the word 'has' imports concluded default and not a continuing default. It is only reasonable that a tenant who voluntarily gives up the original premises and dis-entitles himself to the protection of the Delhi Rent Control Act, cannot revive the protection of law by relinquishing the new accommodation and reverting to the original accommodation. The Act does not contemplate unilateral revival of the protection by a tenant or recreation of an impediment for the landlord. We are thus in entire agreement with the ratio of *Battoo Mal's* case.

12. The next question is whether in the light of the decision of the Supreme Court in *Gajanan Dattatraya's* case, there is any need to reconsider the division bench judgment in *Battoo Mal's* case. In *Gajanan Dattatraya* case the words "has subject" as a ground for eviction under Section 13(1)(e) of the Bombay Rent Hotel and Lodging House Rates Control Act, 1947 fell for consideration. Relying on the decision of the Supreme Court in *Gopulal v. Thakur Ji Shriji Dwarkadheshji and another*,⁸ the appellant in that case argued that the words "has sub-let" means that the sub-letting is to subsist at the date of the suit. The observations of the Supreme Court in *Gopulal's* case, namely, that the words

"has sub-let" contemplate a completed event connected in some way with the present time was strongly relied upon by the appellant. The Supreme Court explained the said observation in Goppulal's case as follows:-

"What is meant by these observations is that the vice of sub-letting which fell within the mischief of the Act continues to be a mischief within the Act. In Goppulal's case there was no sub-letting in 1947 to violate the 1947 Jaipur Rent Control order and, therefore there could not be any sub-letting which could continue upto the 1950 Rajasthan Act----- on the date of the sub-letting in 1944, this court found in Goppulal's case that there was no rent control legislation in force. This Court did not consider the question as to whether the sub-letting put within the mischief of the relevant statute was to subsist at the time of the suit."

Having explained the said observation in Goppulal's case, the Supreme Court held:

"The provisions of the Bombay Rents' Hotel & Lodging House Rates Control Act, 1947, indicate that the tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e) namely, that he has sub-let. The language is that if the tenant has sub-let the protection ceases. To accept the contention of the appellant would mean that the tenant would not be within the mischief of unlawful sub-letting, if after the landlord gives a notice terminating the tenancy on the ground of unlawful subletting, the tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way, the tenant can foil the claim of landlord to obtain possession of the premises in the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction ceases, once the fact of unlawful subletting is proved."

Thus the Supreme Court in most uncertain terms held that the protection of law ceases as soon as the default is committed.

13. However, it appears that some difficulty was created by the observation of the Supreme Court in the concluding para in Gajanan Dattatrya's case. The observation is :

"At the time of the notice, if it is proved that there was unlawful subletting, the tenant is liable to be evicted."

This observation led Avadh Behari J. in *Muni Lal v. Dulara Singh*⁹ to believe that the Supreme Court has laid down the law. Contrary to *Battoo Mal's* decision and hence the same should be followed in preference to the division bench judgment in *Battoo Mal's* case. We felt that the said observation of the Supreme Court if, understood, in the context of the facts before the Supreme Court, would present no difficulty. In the first place, the Supreme Court was not called upon to decide a question as to whether the default should continue up to the stage of the notice of eviction by the landlord or not. Indeed, the report does not disclose that any such argument was advanced on behalf of the appellant. If the said observation is to be treated as the ratio of the case, that will go completely contrary to the entire tenor of the ratio and the effort of the Supreme Court to explaining the earlier observation in *Goppulal's* case. If the ratio of the *Gajanan Dattatraya's* case is that the default must continue up to the date of the eviction notice it would mean that the Supreme Court has accepted the interpretation of the word 'has' in *Goppulal's* case. It may be that the special facts of the case namely, that the default was rectified after the termination notice, required the Supreme Court to refer to that fact in the judgment. Far from modifying the decision of the division bench in *Battoo Mal's* case, we find that the Supreme Court decision in *Gajanan Dattatraya's* case affirms and upholds the ratio of the D.B. judgment in *Battoo Mal's* case.

14. In the light of the discussion above, we answer the questions referred to us by Misra, J. as follows:

Once a default is committed by a tenant he ceases to enjoy the protection of law permanently and at no point of time and under no circumstances, the protection of law is revised. In view of this answer, in regard to the interpretation of clause (h) of sub-section (1) of Section 14, the stage in the litigation at which the default should continue, became irrelevant.

15. Coming now to the facts of the case at hand, the tenant went to the new premises on 18th of May 1967, on 7th August, 1967, the landlord made the application in the prescribed form to the Slum Clearance Authority for permission to evict the tenant. In the said application it was expressly averred that the tenant had secured another accommodation. During the pendency of the said application, before the Slum Clearance Authorities, sometime in October 1967, the tenant vacated the new premises and reverted to the suit premises. On February 8, 1968, the landlord served a notice of termination on the tenant. The

Slum Clearance Authorities granted the permission under the Slum Clearance Act on the 14th of March 1969. On 8th May 1969 the landlord filed the eviction petition which is the subject matter of the appeal.

16. The learned counsel for the appellant relying on the decision of Avadh Behari J. in Muni Lal's case submitted that the tenant had relinquished the new premises before the notice of termination was given by the landlord and hence the landlord was not entitled to a decree for eviction. The learned counsel further submitted that a decree for eviction should not be granted to the landlord as the petition suffers from laches.

17. As regards the first submission of the learned counsel for the appellant, we have already held that the division bench in Battoo Mal's case has correctly laid down the law and the judgment of Avadh Behari, J. In Muni Lal's case does not represent correct position of law, on interpretation of proviso (h) of sub-clause (1) of Section 14 of the Act. Hence the first submission of the appellant is rejected.

18. The tenant went to reside in other premises on May 18, 1967 and on August 7, 1967, the landlord filed his application before the Slum Clearance Authority and expressly mentioned the said allegation in his application. Considering the fact that in Delhi, the permission of the Slum Clearance Authority, where the premises are situated in Slum area is a mandatory requirement of law, (before the eviction petition is filed by the landlord) we hold that the landlord had expeditiously taken legal steps as required by law. Since we have held that with one default the tenant dis-entitles him to protection and that it is not necessary that the default should continue till the notice of termination is giving by the landlord, date of notice to quit has no relevance in deciding whether the petition was belated or not. The second submission of the appellant, therefore, also fails.

19. In the result we confirm the order of eviction passed under clause (h) of the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act passed by the Rent Control Tribunal on 1st September 1976. The appeal is dismissed. No order as to costs.

Cases Referred.

1. 1976 RCR 33 (SC) : 1976(1) S.C.R. 53
2. 1976 RCR 220

3. 1970 RCR 532 : (ILR (1970) 1 Delhi 748)
4. 1971 DLT 59
5. AIR 1965 Supreme Court 1767
6. (1968) 1 S.C.H. 455.
7. 1969 RCR 300 : (1969) 3 S.C.R. 989
8. (1969) 3 S.C.R. 989,
- 9.(1976 RCR 220)