

## **DELHI HIGH COURT**

Smt. Krishna Devi Nigam

Vs.

Sham Babu Gupta, (Delhi)

Civil Revision No. 676 of 1979

(Rajinder Sachar and S.B. Wad, JJ.)

4.2.1980

### **JUDGMENT**

#### **Rajinder Sachar, J.**

1. Does the Slum Areas (Improvement and Clearance) Act 1956 (hereinafter to be called the Slum Areas Act) continue to apply to an application brought under Clause(e) of proviso to Sub-section 1 of Section 14 of the Delhi Rent Control Act (hereinafter to be called the Rent Act) after the amendments made in the Rent Act incorporating amongst others IIIA by means of Act 18 of 1976 is the question that has been referred to a Chapter larger bench for decision, because of the different views expressed by the learned single Judges of this Court.

2. Clauses (a) to (e) of proviso to Sub-section (1) of Section 14 of the Rent Act provide grounds on which an application for recovery of possession of any premises can be made by the landlord Clause (e) permits an application for recovery of possession to be made on the ground that the premises are required *bonafide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him..... Prior to the commencement of the Rent Act, Slum Areas Act had been enacted and came into force in the Union Territory of Delhi i.e. 8.2.1957. Originally Section 19(1) of the Slum Areas Act barred execution of a Decree passed against tenants unless permissions were obtained from the Competent Authority. Section 19 was later amended by Act 43 of 1964 w.e.f. 8.2.1965 and provided that notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing, of the Competent Authority institute any suit or proceeding for obtaining any decree or order for eviction from any building or land in Slum Areas. Section 39 made the provisions of the Slum Act to prevail,

notwithstanding anything inconsistent therewith contained in any other law. The Rent Act which replaced the earlier Rent Act of 1952 came into force in Delhi w.e.f. 9.2.1959. Being aware of the Slum Areas Act the legislature by Section 54 of the Rent Act provided that nothing in the Rent Act shall effect the provisions of the Slum Areas Act. Thus by virtue of the provisions of the Rent Act as well as the Slum Areas Act, before a landlord could institute an eviction application, in regard to building in a Slum Area prior permission from the competent authority was necessary.

3. Major amendments were made in the Rent Act when Chapter IIIA was incorporated adding Section 25A to C by means of Act 18/1976 w.e.f 1.12.1975. Another provision incorporated by the said Act 18/76 was Section 14A which provided that where a landlord who being a person in occupation of residential premises allotted to him by the Central Government or any local authority is required, by or in pursuance of any general or special order made by the government to vacate such residential accommodation on the ground that he owns, in the Union Territory of Delhi, a residential accommodation either in his name or in the name of his wife, there shall accrue on and from the date of such order, to such landlord, *notwithstanding anything contained in the Act or any other law for the time being in force a right to recover immediately possession of any premises let out to him.*

4. The question whether in an application for eviction brought under Section 14A of the Rent Act Slum Areas Act would be applicable has been answered in negative in *Sarwan Singh and others v. Kasturi Lal*.<sup>1</sup> That case has settled the controversy and has held because of the overriding effect of Section 14A read with Section 25A of the Rent Act the provisions of Slum Act are not applicable to such application. The question, however, whether the same results follow in an application brought under clause (e) to proviso to Sub-section (1) of Section 14 of the Rent Act was raised in this court. In *R.K. Parikh v. Smt. Uma Verma*,<sup>2</sup> , Avadh Behari, J., held that the Slum Areas Act, by virtue of Chapter IIIA of Rent Act, has not been done away with where the premises are needed for *bonafide* requirement. M.L. Jain, J., has also held similarly in C.R. 37/78 decided on 17.11.1979. However, in *Wazir Chand v. Narain Devi and others*,<sup>3</sup> and *Gyasi Ram v. Hazari Lal*,<sup>4</sup> respectively, Kapur, J. and Yogeshwar Dayal, J., have held that notwithstanding the decision in Sarwan Singh's case the provisions of the Slum Areas Act continue to apply to an application brought

under Section 14(1)(e) of the Rent Act. We, with respect, cannot accept the correctness of the view taken by Kapur and Yogeshwar Dayal, JJ. We are of the view that the ratio of *Sarwan Singh's decision* is applicable not only to applications for eviction brought under Section 14A of the Rent Act but also to those brought under Section 14(1)(e) of the Act. In our view the force and overriding effect of Section 25A of Rent Act cannot be cut down in its effectiveness to Section 14A only. The reason is that both under Sections 14A and 14(1)(e), the requirement is the *bonafide* need of the landlord and Chapter IIIA is meant to sub serve this special need. That this was so is clear from the statement of objects and reasons which form part of Amendment Act 1976 and lays down, "that there has been a persistent demand for amendment of Rent Control Act with a view to confer the right of tenancy of certain heirs of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the eviction of tenants in case the *landlord requires the premises bonafide for his personal occupation*. Further the Government's decision of 9.12.1975 that a person who owns his own house should vacate the accommodation allotted to him before 31st December, 1975, the government considered that in the circumstances the Act needs be amended urgently". Thus the Act of 1976 though it introduced Section 14A, nevertheless by incorporating Chapter IIIA evinced an intention to treat alike those who were seeking eviction whether under Section 14(1)(e) of 14A. That is why in rejecting the argument of the unconstitutionality of Chapter IIIA of Rent Act on the ground of being discriminatory, the Supreme Court in Civil Appeal 1291 of 1978 decided on 4.10.1979 has observed that "it appears to us that it was for these reason that the legislature in its wisdom thought that a short and simple procedure should be provided for those landlords who generally want the premises for their *bonafide* necessity so that they may be able to get quick and expeditious relief". That both Sections 14A and 14(1)(e) are to be treated on the same level, was further made clear when the Court observed with reference to Section 25B that "it is obvious that this section does not govern all grounds open to a landlord for evicting the tenant but is confined only to the ground in Section 14A and proviso to Section 14(1)(e). In other words, the *bonafide* necessity of the landlord has been put in a separate class or category having regard to the peculiar incidents of this right." "The statute thus puts personal necessity of the landlord as a special clause requiring special treatment for quick eviction of the tenant and cuts out all delays and plugs all the loop holes which may cause

delay in getting the relief by the landlord..... The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable."

5. This case reinforces the submission of the respondent's counsel Mr. Nayar that the interpretation given in *Sarwan Singh's case* must apply with equal vigour even to an application brought under Section 14(1)(e), of the Rent Act. In interpreting Section 25-A, of the Rent Act in *Sarwan Singh's case* the court has thus to say that "it is patent that the virtue of the first part of the Section 25A the provisions of Chapter IIIA must prevail over the provision of Section 54 of the Delhi Rent Act. The reason is that to the extent to which Section 54 saves the operation of the Slum Clearance Act, it is inconsistent with the provisions of Chapter IIIA which prescribes a *special procedure for dealing with applications for eviction filed under clause (e) of the proviso to Section 14(1) or under Section 14A of the Delhi Rent Act.* (Emphasis supplied) it is equally clear that by reason of the second part of Section 25A also, the provisions of Chapter IIIA would prevail over those of the Slum Clearance Act. The reason is that the relevant provisions of that Act devise an overriding procedure by reason of which no suit or proceeding can be instituted without the previous permission in writing of the Competent Authority, Sections 19 and 39 of the Slum Clearance Act are to that extent inconsistent with the procedure prescribed by Chapter IIIA of the Delhi Rent Act and have to be subordinated to it."

6. The language of the Supreme Court is absolutely clear namely the object of the non-obstinate clause is to free the proceedings arising out of the newly created rights falling within Chapter IIIa, from the restraint imposed by Section 19 of the Slum Areas Act. Kapur, J. however though that the observations in *Sarwan Singh's case* though having relevancy for Section 14 a were only obiter with respect to Section 14(1)(e). The learned Judge accepts that though Section 54 of the Rent Act would be non-operative but yet holds the provisions of Section 19 of the Slum area Act as amended in 1964 would continue to apply, as it is not inconsistent with Section 25A. Both the learned Judges have held that as the permission under the Slum Area Act has to be sought prior to the institution of a suit, there is nothing inconsistent with the procedure given in Chapter IIIA, they operate in different fields as the permission under the Slum Area Act is anterior to the institution of eviction application where Chapter III

provides a procedure after the institution of eviction application. Thus it was held that the permission under the Slum Areas Act and procedure under Chapter IIIA can operate together and do not impinge on each other. In our view this conclusion runs counter to specific observations of the Supreme Court wherein it has been held that the effect of Section 25A is that Section 54 being inconsistent with it cannot prevail and also the procedure which provides that no suit can be instituted without obtaining permission from the Competent Authority under the Slum Areas Act is inconsistent with the procedure prescribed by Chapter IIIA. The error which Kapur and Yogeshwar Dayal, JJ. feel was assuming as if permission under Slum Areas Act was something different and distinct from the summary procedure provided under Chapter IIIA both for Sections 14(1)(e) and 14A. There is no distinction between the procedure to be followed with regard to applications for eviction brought under either of those sections. It is true that there are some minor differences in some matters like 25(1) exempting from the provision of Sub-section (6) of Section 14 which provides that no application for recovery of possession under clause (e) to Sub-section (1) of Section 14 unless a period of 5 years has lapsed from the date of acquisition of property to those persons who apply under Section 14A and also that the period given to the tenant to vacate the premises against whom eviction is ordered under Section 14A is two months while the period under Section 14(1)(e) given to the tenant is six months by virtue of Section 25C(2). But there are not so vital as to show that one can make distinction between the applicability of Chapter IIIA to application for eviction brought under Section 14A or 14(1)(e) of Rent Act. Yogeshwar Dayal distinguishing *Sarwan Singh's case* recognized that the observation of para 15 in that case would support the contention that the Slum Areas Act would not apply to application under Section 14(e) of Rent Act would no thought that the further discussion in the Supreme Court case showed its finding as to the non-applicability to Section 14A was on the ground of the Non-obstante clause being found in 14A of Rent Act which was missing to 14a(1)(e), With respect we feel that was only an additional reason given by the Supreme Court while holding that Section 14A created an immediate right of possession and to emphasize that the applicability of section 19 of the Slum Areas Act could not possibly apply after the coming into force of Chapter IIIA of the act. But that does not in any way dilute the clear language used by the Supreme Court in the earlier portion of its Judgment that Section 25A which also uses a son obstante

clause would make the provisions of Section 54 of the Rent Act and Section 19 of the Slum Act inconsistent with the procedure provided in Chapter IIIA. Kapur, J. also thought that by holding Slum Areas Act to be inapplicable would mean that act had been impliedly repealed and this could not be accepted. That his reasoning of Kapur, J. is erroneous because as Supreme Court has said, in para 23 of the Judgment that "the argument of implied repeal has also no substance in it because our reason for according priority to the provisions of the Delhi Rent Act is not that the Slum Clearance Act stands impliedly repealed *pro tanto*. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non obstante clauses in the earlier law, we have come to the conclusion that the provision of Section 14A and Chapter IIIA of the Rent Control Act must prevail over those contained in Sections 19 and 319 of the Slum Clearance Act." Yogeshwar Dayal, J. laid much stress on the non obstante clause in Section 19 of the Slum Areas Act. That this reasoning is on uncertain base is clear from the observation that the legislature gave overriding effect to Section 14A Chapter IIIA with the knowledge that Section 14 and 39 of the Slum Clearance Act contained non obstante clause of equal efficacy. Therefore the later enactment must prevail over the former.

7. In our view when the legislature had specifically taken away the rights of appeal and second appeal in application brought under clause (e) to proviso to Sub-section (1) of Section while maintaining the rights of the appeal under the other clause of proviso to Sub-section (1) of Section 14 of the Rent Act it had clearly expressed its intention for expedition. Legislature showed its urgency by providing that a tenant must get leave to contest the eviction application. Having done everything for urgency it seems to us as indicated aptly by Supreme Court when it observed that "the special and specific purpose which motivated the enactment of Section 14A and Chapter IIIA of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act requiring permission of the competent authority were to prevail over them."

8. As a result we are of the view that of an application brought under clause (e) of proviso to Sub-section (1) of Section 14 the provisions of Slum Areas Act are not applicable. We, therefore, must with respect express our dissent and overrule the decisions given in [1978(1) RLR 702) and (1978(1) RLR 115) (supra) as being not correct. In our view the decision given by Avadh Behari, J.

in (AIR 1979 Delhi 17) (supra) took the correct view and we approve of it.

9. The leave had been granted to the tenant to contest on two grounds. One of the ground urged by tenant was the absence of permission under the Slum Areas Act. As we have found that against the petitioner tenant the additional Rent Controller was right in refusing to give leave on this ground.

10. The result is that the revision petition must fail and is dismissed with no order as to costs. Of course the proceedings which are continuing before the Rent controller in pursuance of the leave which has already been granted will be decided in their own due course under the law and on merits.

Revision dismissed.

Cases Referred.

1. 1977(1) RCR 378
2. 1978(2) RCR 275
3. 1977(2) RCR 628
4. 1978(2) RCR 358