

DELHI HIGH COURT

Vijay Kumar Bajaj

Vs.

Inder Kumar Minocha, (Delhi)

S.A.O. No. 99 of 1980.

(Parkash Narain, CJ and G.C. Jain, J.)

14.8.1981

JUDGMENT

G.C. Jain, J.

1. Shri Inder Sain Minocha and his son, Harish Chandra Minocha, are owners of house No. B-168, Gujranwala Town, Delhi. Apparently, on or about April 2, 1973 they entered into an arrangement with the appellant, Sri Vijay Kumar Bajaj, for creating a limited tenancy in his favor in respect of a portion on the second floor of the house consisting of one Barsati, one latrine-cum-bath, open verandah, after obtaining the necessary permission from the Rent Controller. In Pursuance of this arrangement an application under Section 21 of the Delhi Rent Control Act (for short 'the Act') for permission to create a limited tenancy for a period of two years was made before the Controller. The Additional Controller, granted the permission vide his order dated April 2, 1973. On March 31, 1975, respondent No. 1, Inder Sain Minocha, made a second application under Section 21 of the Act for permission to create limited tenancy for a further period of two years with effect from April 2, 1975. It was averred in the application that the premises sought to be let out were residential premises and that the period of previous agreement was to expire on April 1, 1975 but the landlord still did not need the said premises for another period of two years. After recording the statements of the parties and being satisfied that the landlords did not require the premises for a further period of two years, the Additional Controller vide order dated April 1, 1975 granted the permission to create a limited tenancy as prayed.

2. On April 11, 1977 the landlords filed an execution application for putting them in possession of the premises on the allegation that the period of limited

tenancy had since expired. The tenant contested the application on the ground that the second limited tenancy effective from April 2, 1975 was invalid, null and void and imperative for the reasons (a) the tenant was already in possession of the premises in suit on the date of the application and the grant of the permission i.e. April 1, 1975 and the permission was thus illegal; (b) the act of obtaining the permission for creating limited tenancy was a fraud upon the provisions of the Delhi Rent Control Act inasmuch as the landlords did not assign any cause whatsoever as to why the same were required subsequently; and (c) both the parties at the time of the agreement knew that the agreement was not lawful and was void.

3. Shri G.P. Thareja, Additional Controller, Delhi, vide his order dated May 26, 1979 dismissed the objections and directed the tenant to put the respondents into vacant possession of the premises in dispute. The tenant approached the Rent Control Tribunal in appeal. Before the Rent Control Tribunal it was urged - (a) that the application was not maintainable as it was not in accordance with the rules, (b) the application could not be filed directly before the Additional Controller, (c) the tenant was already in possession of the property by virtue of limited tenancy created earlier and no fresh limited tenancy could be created and (d) a fraud had been practiced on the Court. Some grievance was also made against the order of the Court refusing opportunity to the appellant-tenant to file a reply to the application moved by the landlords for additional evidence before allowing the same. None of these submissions found favour with the Rent Control Tribunal, who dismissed the appeal vide his order dated Feb. 29, 1980.

4. Feeling aggrieved, the tenant filed a second appeal. This appeal came up for hearing before a learned single Judge. Three questions were raised before our learned brother, namely (1) the landlord did not disclose reasons for not requiring the premises in question for a fixed period of two years either in his application or in the statement before the Controller and therefore, the permission was invalid; (2) after obtaining the permission dated April 1, 1975 from the Controller, the premises were not let under any agreement in writing for the said period of two years i.e. no lease deed was executed; and (3) before or after the grant of permission no lease deed or any agreement to lease was got registered as required under Section 17 of the Indian Registration Act, 1908 and Section 107 of the T.P. Act, 1882.

5. After discussing the submissions made before him, the learned Judge

formulated the following points:-

"1. Whether the permission under Section 21 of the Act is invalid in view of Supreme Court Judgment in S.B. Noronah's case (supra) if reasons for not requiring the premises by a landlord for a particular period are not disclosed in his application or his statement before the Controller?

2. Whether before or after permission execution of any agreement in writing to let the premises for the fixed period is necessary, if so, whether such a document requires registration ?

3. Whether the proposed agreement of tenancy in writing submitted along with the application under Section 21 of the Act, in this appeal required registration?

6. In view of the divergent views and importance of the matter the matter was referred to a larger Bench and that is how the matter has come before us.

7. The argument put forward on behalf of the appellant is that the respondents neither in their application under Section 21 of the Act nor in their statement had said a word as to why they did not require these premises for their occupation at that time and how their need would arise after the expiry of two years and in the circumstances there was no material before the Controller to ascertain whether the main requirement that the landlord did not require these premises for a period of two years was fulfilled and hence the order dated April 2, 1973 granting the permission was a mindless order and so non est and thus was not capable of execution. On behalf of the respondents it was contended that both the parties admitted before the Controller that the landlord did not require these premises for a period of two years effective from April 1, 1975 and in view of this admission the Controller was not required to prove the matter further and the order was perfectly legal and valid.

8. 'Lease' has been defined under Section 105 of the T.P. Act. A lease, according to this definition, is demise or a transfer of a right to enjoy immovable property for a term or in perpetuity in consideration of a price paid or promise or service or other things of the value to be rendered periodically or on specified occasions to the transfer. The relationship of the landlord and tenant, as is clear from the definition, is the creature of the contract between the parties. The rate of rent, duration of lease, purpose of letting, etc., are all governed by the terms of the contract entered into. Thus under the ordinary law

the landlord could evict his tenant on the expiry of the period for which the premises were let out.

9. Over population and shortage of accommodation necessitated the intervention of the legislature leading to the enactment of rent control legislation, including the Delhi Rent Control Act. According to its preamble, the Act was intended to provide for the control of rents and evictions and rates of hotels and lodging houses, and for the lease of vacant premises to Government in certain areas in the Union Territory of Delhi. Section 14 of the Act curtails the contractual rights of the landlords to claim eviction under contracts. Eviction now can be allowed only if the Controller is satisfied about the existence of one or more grounds given in clauses (a) to (1) of the proviso to Section 14(1) of the Act. Section 21, however, is a sort of departure from the general policy of the Act. It allows the creation of a limited tenancy and creates a right in the landlord to get vacant possession on the expiry of the period of the limited tenancy.

10. The scope, purport and effect of Section 21 of the Act has been considered in many judgments of this Court. It is, however, unnecessary to notice them as the Supreme Court in *S.B. Noronah v. Prem Kumari Khanna*¹ has settled the law in this regard. Indeed, ever since the judgment of the Supreme Court in Noronah's case a new type of litigation has come into existence wherein the landlord's right to claim eviction under Section 21 of the Act is challenged. Unscrupulous landlords taking advantages of the provisions of Section 21 had been letting out premises for limited periods. The judgment in Noronah's case will put an end to such malpractice. At the same time it cannot be lost sight of that, human nature being what it is, dishonestly of purpose is not the preserve of landlords alone. A fair section of tenants has been trying to defeat the purpose for which the Legislature enacted Section 21 of the Act by raising frivolous objections to eviction sought by landlords after obtaining permission for creating limited tenancies under Section 21 of the Act. It is, therefore, necessary to give guidelines for the courts of the Controllers and the Rent Control Tribunal as to the true scope and effect of the judgment of the Supreme Court in Noronah's case. That is why our learned brother, Sultan Singh, J. made the present reference to a larger Bench.

11. Section 21 of the Act reads as under:

"21. Where a landlord does not require the whole or any part of any premises

for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises."

12. The relevant parts of Section 14(1) of the Act read as follows:-

"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 possession of the premises on one or more of the following grounds namely :-

x x x "

13. A reading of Section 14(1) and Section 21 of the Act shows, as Krishna Iyer, J. says in Noronah's case, "The scheme of embargo on eviction makes a pragmatic swerve by the time we reach Section 21. We can correctly visualise carves out a category for special treatment. While no landlord can evict without compliance with Sections 14, 19 and 20 does a liberal eviction policy underlie Section 21 ? Apparently contrary but actually not, once we understand the raison d'etre of the section. Parliament was presumably keen on maximising accommodation available for letting, releasing the scarcity crisis. One source of such spare accommodation which is usually shy is potentially vacant building or part thereof which the landlord is able to let out for a strictly limited period provided he has some credible assurance that when he needs he will get it back."

14. The above quoted observations of the Supreme Court, which succinctly bring out the legislative policy, really highlight a problem which has assumed the proportions of a malady. On one hand there is extraordinary scarcity of accommodation, on the other there is a strong feeling in owners of property that

one they let it out they might as well write off the property as getting back possession is a remote possibility, if not an impossibility. The Rent Control Legislations in various States, which do not have a provision similar to Section 21 of the Act, have resulted in a situation where substantial accommodation, though available for letting, is lying vacant and utilized. At the same time rents have shot up sky high because of the compulsive need of human beings to find shelter at any cost. The Parliament conscious of this situation in the States, for Delhi at least tried to solve it by enacting Section 21. Unscrupulous parties cannot be permitted to negate the high purpose of Section 21 and hence a correct appreciation of the provisions is necessary.

15. Section 21 postulates the following requirements:-

- (a) The premises must be residential premises being let out for residence;
- (b) the landlord does not require the whole or any part of the said premises for a specified period;
- (c) the landlord must obtain permission of the Controller to let out the said premises for residence for a specified period;
- (d) the Controller may allow letting of specified premises for a particular period for the purpose of the residence of the tenant;
- (e) There should be in existence an agreement between the landlord and tenant to take the specified premises on lease for the particular period;
- (f) On the expiry of the said period possession may be obtained by the landlord, irrespective of protection given to the tenant by Section 14 and debars the grounds given in the proviso to Section 14(1) of the Act, on an application made to the Controller.

16. Inasmuch as Section 21 in a way counters the general scheme of the Delhi Rent Control Act, it must be restricted severely to its narrow sphere and every conditions which attracts Section 21 must be scrupulously fulfilled. The section had to be read as a positive section and each of its postulates has to be affirmatively fulfilled. As was observed in Naronah's case, "The doctrine of estoppel cannot be invoked to render valid a proceeding which the legislature has, on grounds of public policy, subject to mandatory conditions which are shown to be absent."

17. There are two distinct proceedings contemplated by Section 21 of the Act. The first proceeding is when the permission of the Controller is applied for and either granted or refused. The second proceeding is when the period of the limited tenancy comes to an end and an application is made by the landlord that he be put in possession of the premises let out to the tenant for a limited period. At both the stages the Controller has to discharge a judicial function. This presupposes that there will be an application of mind and not only a mechanical or ritualistic compliance with the provisions of law. Therefore, it is the duty of the Controller in the proceedings where his permission is sought for creation of a limited tenancy to satisfy himself that:-

"(a) the tenant or prospective tenant has agreed to take the premises for a limited period,

(b) The premises in question are being let out for residential purpose and not that the purpose though shown as residential but is really some other purpose which may either be commercial or some other activity.

(c) The landlord does not require the whole or any part of the premises for a particular period and not that he is playing fraud on the legislative policy by creating a limited tenancy and getting advantage of the procedure for summary eviction postulated by Section 21. It is in this context that the reason why the landlord does not require the premises for a specified period assumes importance. It is necessary that in the application for grant of permission that reason why a limited tenancy is being created must be sent out. The Controller has to satisfy himself that the landlord, if he has the premises available for letting for an indefinite period is not taking advantage of Section 21 merely to ensure that he has an easy way to get possession on the expiry of the specified term." Once the Controller is satisfied about the existence of the four conditions he may grant permission for creation of a tenancy for a limited period. The legislature has conferred on him what Supreme Court calls 'an important regulatory function on behalf of the community'. He is to keep in mind the paucity of accommodation for residential purposes and by property exercising his function, to some extent, help in decreasing the paucity of accommodation by promoting tenancies for a limited period. He is to ensure to the landlord who does not require his premises for specified periods that on the expiry of that period he will get possession of his property with comparative ease without having to undergo years of litigating process. Indeed, by the enactment of

Section 21 the frustration that landlords were feeling is not being able to get back their premises even if *bonafide* required by them for their own occupation is sought to be deceased. This new law is primarily meant to serve the social purpose of making rent control 'credit worthy'.

18. The second stage comes when the specified period is over and an application is moved to get possession. At that stage the Controller has again to act judicially and not mechanically. The tenant has, no doubt, the right to contend that the earlier order granting permission was a "mindless" order and that the requirements of Section 21 had not been fulfilled. The onus is heavy on the tenant to establish that fact as presumption of validity of the order earlier made under Section 21 of the Act would exist. At this stage it may not be open to the landlord to plead estoppels against the tenant to contend that having taken advantage of induction into the premises pursuant to the permission he cannot challenge the legality of the permission. All the same it is for the tenant to establish that the compulsive requirements of Section 21 were not fulfilled when the premises was originally granted. Merely because one or the other factors specified by us earlier is not specifically mentioned in the earlier order granting permission, it cannot be presumed that those factors were missing. It can be shown by producing evidence that these facts existed. The enquiry to be made at this stage, of course, cannot be converted into a prolonged litigation, as if a suit has been file which has to be tried as a long cause matter. It has to be summary enquiry and it is imperative on the Controller to conclude the same expeditiously. Though a tenant cannot be shut out by pleas of estoppels or having taken advantage of the situation to contend that the earlier order under Section 21 of the Act was only what has often been called "ritualistic", yet the proceedings at this stage cannot defeat the legislative purpose of Section 21 and make the law non-creditworthy. As observed by the Supreme Court in Noronah's case "Law that non-performs stultifies the rule of law."

19. One other factor which at the second stage the Controller has to keep in mind is that he is concerned with delivery of possession at the expiry of the latest lease and has to examine the alleged non-fulfillment of the conditions of Section 21 of the Act with reference to the latest lease obtained. When a tenant pleads at the second stage that a fraud has been played upon the court, the Controller may be required to consider the doctrine of *pari dilicto potior est conditio defendantis* i.e. the court will not assist a party which is involved in a

fraud played on the court. At the execution stage the executing court can decline to execute an order for possession in limited circumstances. It is difficult to enumerate all of them but we might illustrate some of those. The executing court may decline to execute an order of possession which is non est or void ab initio. It may decline to execute the order of possession if the party seeking possession is not a party entitled to take possession. The executing court has no power to go behind the order of grant of permission and opined whether the permission under Section 21 should or should not have been granted in the circumstances of the case.

20. The next point for consideration is whether the agreement in writing must precede the application for grant of permission under Section 21 of the Act or should an agreement or a lease be executed subsequent to the grant of permission to create a tenancy for a limited Period. On this the law is settled and we need only refer to the decision in *Avtar Singh v. Shanti Devi*,² decided by T.V.R. Tatachari, J. (as his Lordship then was) on Sept. 10, 1970. The agreement for creation of a tenancy for a limited period may be executed before or after the grant of permission. If it is excused before it would be operative only when the permission is granted from such date as may be specified and would be operative for such period as has been mentioned in the order granting permission.

21. If a lease is entered into after grant of permission for period exceeding eleven months, it is contended, it would require registration by virtue of the provisions of the Registration Act. In normal circumstances a lease for a period exceeding eleven months would require registration. Inasmuch as the tenancy that is postulated by the Rent Control Act is a statutory tenancy, whether for a limited period or an unlimited period, former by virtue of the provisions of Section 21 of the Act and the latter by virtue of the protection given by Section 14 of the Act. The provisions of Registration Act would not be attracted. We are in entire agreement with the views expressed by our brother, Avadh Behari, J. in C.M. No. 275 of 1975 in S.A.O. No. 18 of 1975, decided on Mar. 19, 1975.

22. The next question that may arise for consideration is that when there is already an existing tenancy created after taking permission be applied for a further limited period and if so, whether the postulates of Section 21 have to be complied with ? In our opinion, if the Controller is satisfied that the landlord does not require the premises for a further period and has agreed to let the

premises to the tenant in occupation for that further limited period, permission can be granted. The Controller must be satisfied in granting permission for the further period that the postulates set out by us exist for the further period for which a tenancy is sought to be created. In such an event it will be assumed that on the expiry of the first limited period the tenancy is surrendered and a fresh tenancy is created for the further limited period. As observed by us earlier, when ultimately an application for possession is made it is the latest period of tenancy and the latest permission alone are matters which can be put in issue.

23. In view of our observations made above, our answers to the three questions formulated by the learned single Judge are as under:-

(1) Question: Whether the permission under Section 21 of the Act is invalid in view of Supreme Court judgment in S.B. Noronah case (supra), if reasons for not requiring the premises by the landlord for a particular period are not disclosed in his application or his statement before the Controller?

Answer: Not necessarily. The landlord or the tenant may be able to show that cogent reasons did exist or were within the knowledge of the parties as to why the landlord did not require the whole or a part of his premises for a specified period.

2. Question: Whether before or after permission execution on any agreement in writing to let the premises for the fixed period is necessary, if so, whether such a document requires registration ?

Answer: No registration is necessary. The agreement in writing may be entered into either before or after grant of permission.

3. Question: Whether the proposed agreement of tenancy in writing submitted along with the application under Section 21 of the Act, in this appeal required registration?

Answer: An agreement in writing submitted along with the application under Section 21 of the Act is really a proposed agreement. It comes into effect only after the grant of permission under Section 21 of the Act. It does not require registration.

24. The matter will now be placed before the learned single Judge for deciding the appeal on merit on August 21, 1981.

Order accordingly.

Cases Referred.

1. 1979(2) 455

2. S.A.O. No. 49 of 1970,