Vinod Kumar Chowdhry Vs. Smt. NaraIn Devi Taneja

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Court : Supreme Court of India

Decided On : Jan-11-1980

Reported in : AIR1980SC2012; (1980)2SCC120; [1980]2SCR746

Judge : A.D. Koshal,; P.S. Kailasam and; S. Murtaza Fazal Ali, JJ.

Acts : Delhi Rent Control Act, 1958 - Sections 14A , 14(1), 14(7) and 25B(8); Transfer of Property Act - Sections 106

Appeal No. : Civil Appeal No. 2691 of 1979

Appellant : Vinod Kumar Chowdhry

Respondent : Smt. NaraIn Devi Taneja

Advocate for Def. : B.P. Bhandari, ; R.C. Bhatia and ; P.C. Kopoor, Advs.

Advocate for Pet/Ap. : Rogesh Kumar Jain and; Mukul Rohtagi, Advs

Prior history : Appeal by Special Leave from the Judgment and Order dated August 7, 1979 of the Delhi High Court in Civil Revision No. 49 of 1979

Judgement :

A.D. Koshal, J.

1. This appeal by special leave is directed against the judgment dated August 7, 1979, of a Single Judge of the High Court of Delhi accepting a petition made by the landlady for revision of the order of an Additional Rent Controller (hereinafter called the Controller) of Delhi refusing to direct eviction of the tenant.

2. The landlady had sought eviction of the tenant from the premises in dispute on the ground covered by Clause (e) of the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act), namely, that she required them bona fide for occupation as a residence for herself. Her application being triable in accordance with the procedure laid down in Section 25B of the Act, the tenant sought the Controller's leave to contest it on grounds which were stated in his affidavit. The leave was granted and thereafter the tenant filed a written statement contesting his eviction which was ultimately disallowed. The learned Controller held that although the landlady had proved that she required the premises bona fide for her own occupation, she was disentitled to the relief claimed by her for two reasons which were (1) that she had not proved service on the tenant of a notice under Section 106 of the Transfer of Property Act, and, (2) that her application claimed eviction only in respect of a part of the premises let out which was riot

legally permissible.

The landlady went up in revision to the High Court and the learned Single Judge reversed both the findings which had been decided by the Controller against her. Two other points were raised before the High Court on behalf of the tenant. It was contended, firstly, that the petition for revision was incompetent in view of the provisions of Sub-section (8) of Section 25B of the Act and that only an appeal as contemplated by Section 38 thereof should have been instituted before the Rent Control Tribunal (hereinafter called the Tribunal). The contention was negatived with the observation that a petition for revision as envisaged by Sub-section (8) above-mentioned lay against an order accepting or rejecting an eviction application, and against such an order alone, as laid down in Devi Singh v. Chaman Lal (1977) Raj. L. R 566 R.K. Parikh v. Uma Verma I.L.R. (1978) 2 Del 786 Bhagwati Pershad v. Om Perkash (1979) Raj. L. R 26 and Mahavir Singh v. Kamala Narain (1979) Raj. L. R 159 The second contention was that the lease deed on which the landlady relied in support of the alleged tenancy was unstamped and therefore inadmissible in evidence. This contention was repelled for the reason that although the said deed was taken on the file subject to the objection made on behalf of the tenant, the objection was never pressed at the time of argument before the Controller. It was also observed by the learned Single Judge that the contention was practically meaningless as the tenant had never denied the tenancy in question.

In the result the learned Single Judge passed the impugned order directing the eviction of the tenant and, as already stated, that is the order impugned before us.

3. It has been vehemently contended before us on behalf of the tenant-appellant that the opinion of the High Court about the maintainability of the petition for revision of the order of the Controller is erroneous and that the only remedy open to the landlady against that order was by way of appeal to the Tribunal under Section 38 of the Act. In order to determine the acceptability of the contention it is necessary to undertake a somewhat detailed examination of some of the provisions of the Act, especially those which were introduced by a 1976 amendment with effect from 1st of December, 1975.

4. The Act as originally framed provided for the control of rents and of eviction of tenants. Various safeguards were created by it to ensure security of tenure to tenants residing in the urban area of Delhi and the right of the landlord to evict his tenant was restricted in ambit so as to be available only if the existence of certain specified grounds was proved. Those grounds are enumerated in Clauses (a) to (1) of the proviso to Sub-section (1) of Section 14 of the Act. The ground contained in Clause (e) runs thus:

(e) That the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent upon 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;

The jurisdiction to decide disputes arising under the Act was vested in Controllers and civil courts were divested thereof. Chapter VI of the Act made provision for appointment of Controllers, their powers and functions and appeals from their orders. Out of the sections appearing in that Chapter there are three with which we are here

concerned. They are Sections 37, 38 and 39. Section 37 lays down the procedure to be followed by the Controller and Sub-section (2) thereof states:

Subject to any rules that may be made under this Act, the Controller shall, while holding an inquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence,

Section 38 lays down that from every order of the Controller made under the Act an appeal shall lie to the Tribunal who shall have all the powers of a court under the CPC when hearing an appeal. Section 39 provides for an appeal to the High Court against an appellate order passed by the Tribunal but makes it clear that such a second appeal shall lie only if it involves some substantial question of law.

On the 9th of September, 1975, the Central Government took a decision that Government employees owning houses within the Union Territory of Delhi shall be required to vacate accommodation allotted to them by the Government within a period of three months beginning with the 1st of October, 1975, and that in case they failed to vacate such accommodation before the 1st of January 1976, they would have to pay therefore licence fee equivalent to rent at the market rate. In view of that decision it became necessary to make special provision for enabling such Government employees to evict their respective tenants and to shift to their own houses. It was also felt that procedural delays required to be cut down in the case of disputes between the landlord and the tenant when the landlord bond fide required the demised premises for his own occupation. The Act was therefore amended by Ordinance No. 24 of 1975 which was eventually replaced by the Delhi Rent Control (Amendment) Act (being Act No. 18 of 1976 and hereinafter referred to as the Amending Act). The Amending Act introduced in Chapter III of the Act Section 14A which provided for a right to a person in occupation of any residential premises allotted to him by the Central Government or any local authority to recover immediate possession of premises let out by him in case he was required by the Government or the authority to vacate the residential premises allotted to him. The only other change effected by the Amending Act was to add a new chapter, viz., Chapter IIIA, to the Act. The chapter is headed 'Summary Trial Of Certain Applications' and consists of three sections, viz., Sections 25A, 25B and 25C, the first two of which may be reproduced in extenso:

25A. The provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

25B. (1) every application by a landlord for the recovery of possession of any premises on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14, or under Section 14A, shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons, in relation to every application referred to in Sub-section (1), in the form specified in the Third Schedule.

(3) (a) the Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually

and voluntarily resides or carries on business or personally works, for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgment purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14, or under Section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) Notwithstanding anything contained in Sub-section (2) of Section 37, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit. (9) Where no application has been made to the High Court on revision, the Controller may exercise, the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the CPC.1908

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14, or under Section 14A, shall be the same as the procedure for the disposal of applications by Controllers.

5. The non obstante Clause occurring in Section 25A makes it quite clear that

whenever there is a conflict between the provisions of Chapter IIIA on the one hand and those of the rest of the Act or of any other law for the time being in force on the other, the former shall prevail. Section 25B provides a special procedure for the determination of an application by a landlord claiming recovery of possession from his tenant of the premises let out to the latter on either of two grounds, viz., those specified in Clause (e) of the proviso to Sub-section (1) of Section 14 and in Section 14A. Thus if such an application is based on the ground that the landlord requires the demised premises bona fide for his own occupation as a residential accommodation it has to be dealt with in accordance with the procedure specified in Section 25B and not under the provisions contained in chapters other than Chapter IIIA, in so far as the latter are inconsistent with the former. This follows directly from the provisions of Section 25A read with those of Sub-section (1) of Section 25B. That procedure envisages a short-cut to the conclusion of the proceedings before the Controller and for that purpose makes the right of the tenant to contest the application of the landlord subject to the Controller's leave obtained on grounds specified in an affidavit. If no such affidavit is filed, the question of leave does not arise nor that of a contest by the tenant. Furthermore, if the affidavit is filed but leave is refused, a contest by the defendant is again barred. In either case the proceedings immediately come to a termination by the passage of an order of eviction of the tenant. In case, however, the required affidavit is filed and leave to contest is granted, the Controller has to embark on the usual inquiry but the same has again to be conducted in conformity with the practice and procedure of a Court of Small Causes, including the recording of evidence. This is the mandate of Sub-section (7) of Section 25B, which makes a slight departure in the matter of practice and procedure from that to be followed in other applications under the Act as laid down in Sub-section (2) of Section 37.

Sub-section (8) of Section 25B makes another variation in the procedure and states that when an order for the recovery of possession of any premises has been made by the Controller on an application covered by Sub-section (1) no appeal or second appeal shall lie therefrom. In the case of such an order therefore the provisions of Sections 38 and 39 are specifically made inapplicable. The Sub-section further provides however for the remedy of revision by the High Court of any order made by the Controller under Section 25B, a remedy which is not available to a party in a dispute not covered by Chapter IIIA.

Reference may also be made here to Sub-section (10) of Section 25B pointedly. That sub-section makes it clear that even in the case of applications falling under Sub-section (1) of that section the procedure for their disposal by Controllers shall be the same as in the case of other applications, except as is provided in Chapter IIIA. The combined effect of Section 25A and Sub-section (1) and (10) of Section 25B is that in whatever respect Section 25B makes a departure from the procedure prescribed in other chapters of the Act, the provisions of Chapter IIIA shall prevail but that where that Chapter does not provide for a variation, applications covered by Sub-section (1) of Section 25B shall be treated at par with all other applications for the purposes of procedure.

6. It is in the above background that the question as to whether an appeal to the Tribunal or a revision to the High Court was competent against the order passed in the instant case by the Controller has to be decided, and that brings us directly to the meaning of Sub-section (8) of Section 25B. The proviso to that sub-section gives power to the High Court to revise 'an order made by the. Controller under this

section' which expression is no doubt capable of being construed as any order of whatsoever, nature passed by the Controller while acting in accordance with the procedure laid down in Section 25B. The proviso, however, has to be read as a legislative measure carved out of the Sub-section to which it is appended and the order mentioned therein has to be regarded as an order of the type which the sub-section speaks of, i.e. 'an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section.' Thus, the order covered by Sub-section (8)(and therefore, by the proviso also) would be a final order disposing of an application on a conclusion of the proceedings under Sub-section (4) or Sub-section (7) of Section 25B. This line of reasoning does not present any difficulty.

7. Learned counsel for the tenant however argued that for an order to be covered by Sub-section (8) of Section 25B it must be an order for the recovery of possession of any premises made by the Controller. According to him, if an order does not direct recovery of possession by the landlord from the tenant, it is not an order which Sub-section (8) would embrace. This contention, though not wholly implausible, runs counter to the decision in Devi Singh v. Chaman Lal (supra) which was followed in Bhagwati Prasad v. Om Prakash (supra) and Mahavir Singh v. Kamal Narain (supra) and does not find favour with us. Sub-section (8) no doubt in terms speaks only of an order 'for the recovery of possession of any premises' and does not mention one which refuses the relief of eviction to the landlord; but then it appears to us that the expression 'order for the recovery of possession of any premises' has to be construed, in the context in which it appears, as an order deciding an application for the recovery of the possession of any premises. Our reasons in this behalf are twofold. Firstly, if an order in favour of the landlord alone was meant to be covered by Sub-section (8), an order refusing such relief would be liable to be called in question by way of an appeal or second appeal under Section 38 so that there would be two procedures for the end product of the Controller's proceedings being called in question; one when the same is in favour of the landlord, and another when it goes against him, which would obviously entail discrimination and make the sub-section suffer from a constitutional invalidity. It is an accepted rule of interpretation that if a provision can be construed in a manner which upholds its legal or constitutional validity it should if possible be so construed rather than the other way round. We do feel that the language used is not happy but then it would not be doing violence to it if it is construed as just above stated.

Secondly, the scheme of the Act and the object of the introduction of Section 14A and Chapter IIIA into it by the Amending Act make us form the opinion that Sub-section (8) of Section 25B is exhaustive of the rights of appeal and revision in relation to the proceedings held under that Chapter. Before the enforcement of the Amending Act, all disputes between a landlord and his tenant were liable to be dealt with according to a uniform procedure before the Controller as also in appeal and second appeal. No distinction was made between one kind of dispute and another. When it was felt that the procedure prescribed in the Act defeated, by reason of the delay involved, the very purpose of an application made under Clause (e) of the proviso to Sub-section (1) of Section 14, especially in the case of landlords who themselves held accommodation allotted by the Government or a local authority which they were required to vacate, Section 14A and Chapter IIIA were introduced by the Amending Act so as to cut down the time-factor drastically, so much so that a tenant was required to obtain leave from the Controller for contesting an application for his eviction before he could put up his defence, and the Controller was given the power to refuse leave and straightway pass

an order of eviction if he found that the grounds disclosed by the tenant in support of his right to dispute the landlord's claim were not such as would disentitle the landlord from obtaining an order of eviction. Sub-section (7) further simplified the procedure on contest being allowed, even though Sub-section (2) of Section 37 itself provided for a procedure far simpler than ordinarily obtains in proceedings before a civil court. Then there is Sub-section (8) which provides for the abolition of the. right of appeal and second appeal and replaces it by a power in the High Court to revise an order passed by the Controller. That provision, as a part of the overall picture painted, must necessarily be construed as laying down procedure exclusive of that provided in Sections 38 and 39, and we hold that the four cases relied upon by the High Court in rejecting the contention raised on behalf of the tenant were correctly decided.

8. In the way of the above interpretation of Sub-section (8) of Section 25B, the provisions of Sub-section (10) thereof do not pose a hurdle. All that Sub-section (10) states is that the procedure for the disposal of an application for eviction covered by Sub-section (1) shall be the same as the procedure for disposal of other applications by Controllers, except as provided in Chapter HI A. Sub-section (8) as interpreted by us governs an application covered by Sub-section (1) of Section 25B and expressly takes away the right of appeal or second appeal, while providing the remedy of revision instead. As we have held the provisions of Sub-section (8) to be exhaustive of the remedies available to a person aggrieved by an order passed by the Controller in applications triable under Chapter IIIA, such applications fall outside the category of those which can be disposed of like other applications under Sub-section (10) read with the provisions contained in other chapters of the Act.

9. As a result of the above discussion we hold that the remedy of the landlady against the order of the Controller in the present case was by way of revision (and revision only) of that order by the High Court as laid down in the proviso to Sub-section (8) of Section 25B, even though it was an order not directing, but refusing recovery of possession of the premises in dispute.

10. Another contention raised on behalf of the tenant was that the order passed by the High Court while revising that of the Controller was illegal inasmuch as it did not specifically contain a direction that the landlady would not be entitled to obtain possession of the premises in dispute before the expiration of a period of six months from the date of the order. The contention seeks support from the provisions of Sub-section (7) of Section 14 of the Act which states:

Where an order for the recovery of possession of any premises is made on the ground specified in Clause (e) of the proviso to Sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of the order.

Now this sub-section does not at all require that an order for the recovery of possession of any premises should contain a 'direction of' the type above mentioned. On the other hand, the sub-section itself declares that such an order would not be executable before a certain period has expired. The declaration is part of the law of the land and would be operative as such so that the landlady would not be entitled to execute the order made by the High Court in her favour before the expiry of six months from the date thereof notwithstanding the fact that the terms of Sub-section (7) have not been made a part of that order.

11. The only other ground urged in support of the appeal was that the landlady had prayed for the tenant's eviction from only a part of the premises and that such eviction could not legally be granted to her. The contention embraces a question of fact which has been decided against the tenant by the High Court and for reconsidering which we do not find any reason.

12. In the result the appeal fails and is dismissed but with no order as to costs.