
(2011) 11 DEL CK 0093

In the Delhi High Court

Case No : RC.Rev. 453 of 2011 and CM No's. 20603-04 of 2011

Budh Singh and Sons and Others

APPELLANT

Vs

Sangeeta Kedia

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Delhi Rent Control Act, 1958 — Section 14(1), 14A, 25B
Slum Areas (Improvement and Clearance) Act, 1956 — Section 19

Citation : (2011) 185 DLT 580 : (2012) 1 RCR(Rent) 82

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : G.P. Thareja and Mr. Vikas Kakkar, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Order impugned before this Court is the order dated 19.7.2011 vide which the application for leave to defend filed by the tenant in a pending eviction petition u/s 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord and owner Sangeeta Kedia. This petition has been filed for a bonafide requirement. The bonafide requirement has been described in para 18 (a) of the petition. It is stated that the petitioner is the owner and landlady of the premises. It is stated that for herself and her family members the premises is required bonafide for carrying on business. The petitioner is also doing business of stitching of suits in her own name for the last eight years. She has no other reasonable suitable accommodation for carrying on the said business. This premises is located in a commercial area and is suitable for the business of the petitioner; she has no other accommodation in her name; she has bonafide requirement for the purpose noted hereinabove. 3. The premises is comprised of

a Chabutra at 1855 Chandani Chowk, Delhi. In the application for leave to defend these facts are disputed.

(i) The first contention raised by the petitioner/tenant which as per him has amounted to a triable issue is that the premises in this case are commercial premises; purpose of letting out was commercial; as such Section 14(1)(e) even in view of the judgment of the Apex Court reported in Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, is not applicable. His contention being that the facts of Satyawati (supra) were peculiar to their own factual matrix; that was a case where the premises were residential premises and the tenant was using it for a commercial purpose; in this scenario the Apex Court had noted that no distinction can be drawn between a residential and a commercial premises; in this case the premises which were admittedly commercial had been let out for a commercial purpose; the judgment of Satyawati is not applicable.

(ii) Learned Counsel for the petitioner has further submitted that the Apex court in the case of Satyawati (supra) while holding that certain part of the provisions of Section 14(1)(e) of the DRCA is violative of Article 14 of the Constitution of India had only in part deleted Section 14(1)(e) of the DRCA; it is not as if the whole provision of Section 14(1)(e) had been deleted; submission being that this modified Section 14(1)(e) of the DRCA has to be read in the context of the facts of that particular case only; it is a precedent which precedent is applicable to its own factual matrix; alternate submission being that in case this Court is of the view that this is applicable in a larger and wider form and applicable to other cases as well, it would amount to a legislation which the courts are not permitted to do. In support of this submission he has placed reliance upon a judgment of the Apex Court reported in P. Ramachandra Rao Vs. State of Karnataka, ; submission being that a clear distinction should be made between a legislation and a precedent; further submission being that the judiciary is required only to interpret the law; it may lay down guidelines and principles but it cannot in any manner legislate. Reliance has also been placed upon a judgment reported in State of Orissa and Others Vs. Md. Illiyas, to support his submission that it is not everything said by a judge while giving a judgment that constitutes a precedent; the findings in such decision i.e. the ratio alone is applicable and the enunciation of the reason or principle on which a question before the court has been decided is alone binding as a precedent; submission being that the judgment of Satyawati is applicable to the facts of those cases only where the premises were residential but were being used for a commercial purpose and not in the instant case where the premises admittedly were commercial and had been permitted to be used for a commercial purpose. This has raised a triable issue.

(iii) Next submission is that necessary permission u/s 19 of the Slum Areas (Improvement and Clearance) Act 1956 is also mandatory; that condition also could not be waived. Judgment of Ravi Dutt Sharma Vs. Ratan Lal Bhargava, has no application to the facts of this case. The impugned order holding that that no

such permission is required is an erroneous finding; this in fact raises a triable issue.

(iv) The further submission of Learned Counsel for the petitioner is that the landlady in her ground for eviction has stated that the premises are required for herself and her dependants; where the bonafide need is for the family members and dependants the procedure contained in Section 25B of the DRCA is not available and the petition u/s 14(1)(e) of the DRCA has to be tried as an ordinary eviction petition as it is not a "personal necessity".

(v) Last submission of the Learned Counsel for the petitioner is that there is no bonafide need of the petitioner; the petitioner has not disclosed the place from where she is doing her business, which was incumbent upon her to do so; she has admittedly been carrying on business from somewhere and the accommodation now sought by her is an additional accommodation; in cases based on need for an additional accommodation the Supreme Court has time and again reiterated that it raises a triable issue and unconditional leave to defend should be granted. To support this submission reliance has been placed upon a judgment of Apex Court in S.M. Mehra Vs. D.D. Malik, C.A. No. 120 of 1990 decided on 11.01.1990 and also upon a judgment reported in (2001) 1 SCC 255 Santosh Devi Vs. Chand Kiran CA No. 412 of 2000 decided on 17.01.2000. Submission of the petitioner is that all these are triable issues which have not been dealt with by the Additional Rent Controller in its correct prospective.

4. Record has been perused.

5. The Supreme Court in the case of Satyawati (supra) has struck down a certain part of provision of Section 14(1)(e) of the DRCA as being violative of the doctrine of equality embodied in Article 14 of the Constitution of the India and in paras 38 and 39 they are noted herein in below:

38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the Learned Counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under :-

that the premises are required bona fide by the landlord 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 accommodation.

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, and *Lt. Col. Sawai Bhawani Singh and Others Vs. State of Rajasthan and Others*, .

As a sequel to the above, the explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.

6. It is thus clear that the discrimination on the purpose of letting out of a premise for a residential or a non-residential purpose has been struck down; the remaining part of Section 14(1)(e) of the DRCA (after a portion of it having been struck down) has also been reproduced supra. It is thus clear that now no distinction can be drawn between premises let out for a residential purpose or a non-residential purpose where the landlord seeks eviction on the ground of bonafide requirement as contained in Section 14(1)(e) of the DRCA. The submission of the Learned Counsel for the petitioner that this judgment is not applicable to the facts of his case is rejected.

7. The further submission of the Learned Counsel for the petitioner that the deletion of the part of Section 14(1)(e) of the DRCA is restricted in its applicability and would apply only to premises which were residential and had been given for commercial purpose, as noted supra, has been rejected; the alternate submission of the petitioner on this count is that if section 14(1)(e) of the DRCA is to be read in wider perspective it would amount to legislating which the Courts are not permitted to do; and for this proposition he has placed reliance upon a judgment of the Supreme Court reported in *P Ramachandra Rao* (supra); this argument is meritless. The powers of the constitutional authority to declare as repugnant a part of a statute which is violative and offending to the constitutional provisions is an unbridled power of the High Court and Supreme Court and by striking down a part of the provision of the offending statute it in no manner amounts to legislating as is the contention of the petitioner. This argument is not only ill founded but is hopelessly misguided. The Apex Court in the case of *Satyawati* (supra) had in fact quoted with approval its earlier pronouncements on this issue in the judgments reported in *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, and *Lt. Col. Sawai Bhawani Singh and Others Vs. State of Rajasthan and Others*, . As such the judgments of *P Ramachandra Rao* and *Mohd. Illiyas* (supra) do not come to the aid of the petitioner.

8. The Supreme Court in *Ravi Dutt Sharma* (supra) had held that the special procedure contained in Chapter III-A as introduced in the Rent Act by the amendment Act 1976 makes it no longer a requirement of the landlord to obtain a permission from the Competent Authority u/s 19 of the Slum Area

(Improvement and Clearance) Act, 1956 before instituting an eviction petition u/s 14(1)(e) of the DRCA. The submission of the Learned Counsel for the petitioner on this score is also accordingly rejected.

9. The eviction petition has also clearly and categorically disclosed the bonafide need of the landlady Sangeeta Kedia. It has come on record that she is carrying on business since the last eight years and this has been supported by her income tax returns which had been filed along with the eviction petition as also the bills supporting her submission that she is carrying on the business of stitching of suits and other apparel. There is no doubt that on this eviction petition it has not been mentioned from where she is carrying on the said business; her need for the present premises (which is a shop measuring 9 feet x 21 feet on the ground floor of premises bearing No. 1855, Chandani Chowk, Delhi) is for running the business of ladies suits and garments which she is admittedly carrying on and is supported by her documents as aforesaid. In this factual scenario the submission of the tenant that the petitioner is only a housewife and is not doing any business is negated. The premises in occupation of the respondent is also admittedly in a highly commercial area i.e. in the heart of the Delhi being on the main road of Chandani Chowk; the petitioner has also averred (unchallenged) that she has no other properties in her name and thus admittedly this disputed premises (being in a commercial area) from where she wishes to carry a business of ladies suits and garments would definitely be a viable and profitable business venture for her; her Todar Mal residence where she is residing is admittedly residential. In these circumstances mere fact that the landlady has not disclosed the address from where she is carrying on this business would not diminish her bonafide need.

10. The present case is also not a case of additional accommodation. The judgment of S.K.Mehra (supra) and Santosh Devi (supra) were distinct on their facts. In the first case the landlord was occupying the ground floor as also entire second floor; the question was whether the landlord required the first floor as well. In the second case the landlady was in the possession of the first floor; certain additional accommodation was thereafter subsequently made available to the landlady; it was in these circumstances that the court thought it fit as being described as a case of additional accommodation for which a trial would be required. From these judgments relied upon by the petitioner are half page judgments; further facts cannot be deciphered; each case even otherwise has to be weighed in its own context. In fact if the submission of the Learned Counsel for the petitioner on this score is accepted, all cases where the landlord is living even in a one room tenement owned by him would become a case of additional accommodation raising a triable issue and leave to defend should have to be granted and to which query the learned counsel has no answer. To say the least, this argument is wholly misplaced; this was definitely not the intent and purpose of the Legislature while engrafting the provisions of Section 14(1)(e) of the DRCA which has to be read with Section 25B of the DRCA wherein it has been reiterated time and again by the Apex Court that this is a summary procedure

which is available for effective and summary disposal of an eviction petition filed by the landlord on the ground of a bonafide need either for himself or any member of his family dependent upon him. In fact if this argument of the Learned Counsel for the petitioner is accepted this entire procedure would have to be given a go by; this argument is thus rejected. The language of this Section also clearly states that the need may be of the landlord or any member of his family dependent upon him and the landlord or such person has no other reasonably suitable accommodation.

11. In the judgment of Prithipal Singh Vs. Satpal Singh (Dead) through LRs., the Apex Court has noted herein as below:-

20. The scope of Chapter III-A of the Rent Act has been elaborately discussed in Ravi Dutt Sharma v. Ratan Lal Bhargava in which this Court duly discussed the object of the Rent Act and also the insertion of Chapter III-A of the same in the following manner:

The dominant object of the act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief, which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14(A) and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the Amending Act and the purposes, which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of property Act was still preserved, no genuine grievance could be made.

....

22. A challenge was thrown to Section 25B of the Rent Act in Kewal Singh Vs. Smt. Lajwanti, questioning the classification held to be not in consonance with the objective sought to be achieved and the aforesaid provision must be held to be unconstitutional wherein this Court held that the special provision namely,

Section 25B of the Rent Act providing summary procedure for eviction while the landlord pleading bona fide personal requirement, separate classification of such landlords were held to be justified as such classification must be held to be in consonance with the objective sought to be achieved and provision not unconstitutional. Accordingly, in the aforesaid decision, this Court held that Section 25B does not suffer from excessive delegation. Keeping in view the aforesaid observations of this Court in this case and considering the special provisions made in Section 25B of the Act, we conclude that Section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed.

12. In the instant case impugned order dismissing the application for leave to defend suffers from no infirmity.

13. Petition is without any merit. Dismissed.