

(1984) 06 DEL CK 0003

In the Delhi High Court

Case No : Second Appeal No. 359 of 1983

Delux Pictures (Delhi)

APPELLANT

Vs

Pritam Pal Singh (Retd.)

RESPONDENT

Date of Decision : 01-06-1984

Acts Referred:

Citation : (1984) 26 DLT 100

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : R.K. Anand and Y.K. Jain, for the Appellant;

Judgement

M.L. Jain, J.

(1) BRIG. Pritam Pal Singh made an application to the Controller on 7th July, 1978 for permission to create a fixed term tenancy u/s 21 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) in respect of ground floor of house No. D/386 defense Colony New Delhi in favor of M/s Delux Pictures, Delhi through their sole proprietor Shri Dhru. In this application Pritampal Singh stated that the ground floor has been constructed on an area of 325 Sq. yards for his own use and for the residence of his children. He did not require the premises for period of four years i.e. from 12th July, 1978 to 12th July, 1982 and, Therefore, agreed to let out the premises to the said Delux Pictures. After the expiry of the said period the landlord shall require the premises for his bona fide requirement and for the bona fide requirement of his children. He made a statement before the Controller that the premises were surplus with him for a period of four years. He had not let out any portion of it to anybody prior to it. His son has gone to a foreign country and he would return after four years when he shall require the premises. The Additional Controller, there upon, on 10.7.1978 granted permission for residential purpose for a limited period of four years.

(2) The landlord petitioner filed an application section 21 for the recovery of possession after the expiry of the said period. The Additional Controller issued

warrants for possession. But before they could be executed the tenant filed objections on 24.1.1983. He stated that no order for recovery of vacant possession can be made because permission u/s 21 was a mere make believe and was vitiated by fraud and collusion, and Therefore, was inexecutable because the petitioner concealed the material facts. It was not a case of a limited tenancy but a regular tenancy. The landlord misrepresented that his son would return after four years while the fact was that his son was a green card holder in U.S.A., had acquired citizenship there, had married a foreigner, had permanently settled abroad and had no intention to return and reside in India permanently. After the grant of permission the landlord took a loan of Rs. 50,000.00 from the tenant, constructed the first and second floors and servant quarters above the suit premises. He let the out Barsati floor. He is however, in possession of the entire first floor which consists of drawing room, three bed rooms, three bath rooms and a kitchen, where he is residing alone with his wife. This accommodation is sufficient for him. Even if his son returns he would not require any further accommodation. The landlord obtained the permission u/s 21 under the threat and pressure that if the tenant did not agree to his conditions the premises would not be let to him. The petitioner wanted to keep a sword of Damocles hanging on the head of the tenant in the form of a fictitious permission so that the petitioner should force the tenant to agree to a substantial increase in the monthly rent on the expiry of the four years period. It is what he is doing now. At present the tenant is paying Rs. 1700.00 per month, the petitioner has been asking the tenant to increase the rent to Rs. 5,000/-. It was further alleged that the petitioner made a false statement before the Additional Rent Controller on 10th of July, 1978 that he had not let out any portion to anybody prior to its. The fact is that he had let out the suit premises to one Kanodia prior to the present tenant for eight years. Kanodia had left just one or two months before the respondent became tenant in the suit premises. The petitioner had also obtained vacant possession of another premises which are owned by him and bear No. C-27 Lajpat Nagar-3, after obtaining an eviction order against the tenant Mr. V.P. Raman, which premises are also at the disposal of the petitioner landlord.

(3) The Additional Controller by his order dated 23.7.1983 held that no lease deed was produced and Therefore it was incorrect to say that it was created by concealment of material facts or collusion in the court. When the petitioner made a statement in the court that he would be requiring the premises after a period of four years for his son who had gone abroad, there was no concealment of facts from the court. Firstly, it was not certain at that time that petitioner's son may not intend to return to India at all. That apart, if for some reason the son is unable to return, it cannot be said that fraud was played upon the court at the time when permission was obtained. The subsequent construction on the first floor does not in any manner make the order of the court redundant. At the time when permission was obtained the petitioner owned only the demised premises and if he has constructed the first floor and servant quarters later on and has let

out some of it, it will not disentitle the petitioner from obtaining restoration of possession. The allegation that the tenant was pressurised into limited tenancy does not imply any fraud or collusion. It is also not material that the rate of rent currently has arisen more than that on which the premises were let out. The learned Additional Controller, Therefore, rejected the objections and issued warrants of possession.

(4) The learned Rent Control Tribunal dismissed the appeal of the tenant on 21-11-1983. Before the Tribunal it was urged that the respondent told the court that the property had never been let out earlier. The learned Tribunal held that this statement was not correct. In *S.B. Noronah v. Prem Kumari*, the Supreme Court held that before valid permission (1979) Dlt 116 can be granted twin conditions are necessary. Firstly that the property could be let for residential purposes and secondly the property was not required by the landlord for a limited period. If there was any fraud practiced or the permission obtained was a make believe then the order would be honest and the tenant can challenge the same even in execution. The learned Tribunal held that fraud on the court would be committed only if by a statement or mis-statement of fact the court is misled or if a fact were correctly stated, permission would have been refused. In this view of the matter, earlier tenancy created was irrelevant because the respondent let the property for a limited period for a specific purpose. If the respondent had disclosed this fact to the court, the net result would have been the same because the reason for creating the limited tenancy was not the same. As regards the subsequent construction of the first and second floors the learned Tribunal Was of the view that it was not of relevance because what the court is concerned is whether the initial permission was valid or not. If the initial permission is valid, then the order would remain executable and the subsequent events will not put an end to the valid permission. The tenant made a grievance that opportunity to lead evidence should have been given to show that the son was a green card holder and has become a citizen of U.S.A. But the tenant does not assert that when the permission was obtained, the son was a green card holder and had become a citizen of America. When the permission was taken, he was a citizen of India and the father must have expected the return of his son and could let the property for a limited period. Hence there was no question of allowing evidence on this question.

(5) In this second appeal against the aforesaid Judgment of the Tribunal it is pointed out that after letting u/s 21, the situation has changed in two ways. First and second floors have been constructed on the suit premises and the landlord is residing there and the house C-27 Lajpat Nagar, New Delhi which became available has been rented out. If there was a need in 1978 he could not let out for a limited period. If facts were disclosed to the controller he would not have granted permission. The Tribunal itself has found the statement as incorrect and in view of *V.S. Rehia and another v. Ram Chambeli* (1984) 25 Dlt 106 (S.C.) this amounts to suppression of facts. No evidence was permitted to tenant to show that the son was not coming at all and was a green card holder. The holder

deserves to be set aside even on this short ground in view of another decision of the supreme court reported in S.K. Khosh v. Boljit K. Sial (1984) 25 Dlt 167.

(6) Mr. Jain on the other hand contended that the statement that the petitioner had not earlier let out the premises was not stated in the application but it was stated in reply to a court question. Such a statement cannot be considered to be fraudulent. In this case, the tenant was not in a weak position. He was in dominant position. The landlord depends upon pension and rental income from his house. He has raised the construction by obtaining a loan of Rs. 1 lac or so apart from what he borrowed from the tenant and Therefore, there was no question of the landlord playing any fraud upon the tenant or giving any threat to the tenant. As far as the son is concerned, Mr. Jain said that the fact is that the son is not a green card holder and he has already come to India and is very much present with his wife and wants to settle down here. Therefore, the statement regarding the son that was made at the time of getting permission was not incorrect. The two courts below have found that no fraud was committed. Such findings cannot be re-opened. There is no substantial question of law. Mr. Jain contends that the appeal is liable to be rejected .

(7) In an application which was made here by the appellant under Order 6 Rule 17 Cpc, it is said that on 2-8-1972 an application u/s 14(1)(e) was filed by the landlord for the Lajpat Nagar house. At that time the respondent had only one son depending upon him. On 4-10-1973 an order of eviction was passed. The order of eviction was set aside by the Tribunal in April 1974 but the High Court in second appeal directed eviction on 23-5-1982. While the appeal in the said case on the ground of bona fide requirement was pending in the High Court the landlord filed a petition u/s 21 saying that the house was surplus with him for a limited period of four years. The bona fide requirement of the landlord continued from 1972 to 1982. That shows that on 10-7-1978 he had a bona fide requirement but did not disclose this fact to the Controller. At time of filing a petition u/s 21. If he had disclosed the fact that he had bona fide requirement at the relevant time, the Rent Controller would not have at all granted the permission on the ground that the premises in dispute was not required for a limited period only. This was a fraud played on the Rent Controller, Mr. Jain opposes this amendment in the objections on the ground that it is highly belated and malafide. The facts were in the knowledge of the tenant. Moreover, he says that his fact should not be taken into consideration at all because at the time the landlord applied for permission u/s 21 the appeal in respect of house at Lajpat Nagar, Delhi, was pending and he could not occupy the premises in defense Colony.

(8) There is no doubt that when the permission in July, 1978 was asked for, suit for eviction of the Lajpat Nagar, house was pending on the ground of bona fide requirement. The landlord had earlier let out the suit premises. But all these facts were concealed from the Controller. These facts are on record and can be and are permitted to be raised here by way of additional grounds of appeal.

According to the Supreme Court decision, the concealment of facts vitiates permission and converts the limited tenancy into a tenancy for an indefinite period. No doubt the son of the respondent has come back, has taken a job and may probably live here permanently, yet what we have to see is what was the position at the time of making the application u/s 21. Even if we ignore this fact from consideration, the two misstatements referred to above were definitely there and the Explanation given for them is not satisfactory one. The tenancy Therefore was not a limited tenancy.

(9) I Therefore, accept this appeal, set aside the impugned order and dismiss the application of the respondent for restoration of possession. No costs.