

(1983) 02 DEL CK 0020

In the Delhi High Court

Case No : R.A. No. 52 of 1982 in L.P.A. 192 of 1970

Mohammed Sayeed (Deceased) through his Legal
Representatives

APPELLANT

Vs

Chiranji Lal Gupta and Others

RESPONDENT

Date of Decision : 25-02-1983

Acts Referred:

Citation : AIR 1984 Delhi 104 : (1983) 24 DLT 93

Hon'ble Judges : Prakash Narain, C.J;S. Ranganathan, J

Bench : Division Bench

**Advocate : I.D. Garg, for the Appellant; R.S. Narula and D.S. Narula, for the
Respondent**

Final Decision : Dismissed

Judgement

Prakash Narain, C.J.—By our judgment dated May 28, 1982 we had disposed of three connected appeals, L.P.A. 190 of 1970, L.P.A. 191 of 1970 and L.P.A. 192 of 1970. All the three appeals were dismissed. We had further directed that the Competent Authority under the Slum Areas (Improvement & Clearance) Act 1956, hereinafter referred to as the Act, will decide the matter afresh in accordance with law keeping in view the principles set out by us.

2. This review application has been moved in L.P.A. No. 192 of 1970. The contention is that though the appeal has been dismissed, it should have been dismissed as no longer competent and our observation to the effect that the Competent Authority under the Act will decide the matter afresh should not have been given. It is submitted that it had been urged on behalf of the respondents that inasmuch as the appellant Mohd. Sayeed, the original tenant, was dead, his legal representatives could not maintain the appeal and claim that protection of the Act be given to them. This point, it is said, was argued but has not been dealt with by us by inadvertence .

3. Notice of this application was given to the legal representatives of Mohd.

Sayeed, the appellant in the appeal. The application is opposed.

4. Before we dilate on the contentions urged before us, it would be apposite to notice a few facts. Chiranji Lal and Moti Lal are the landlords of the premises bearing Municipal Nos. 147 to 156 in Gali Masjid, Ward No. VII, Delhi. These premises fall within slum area within the meaning of the Act. Premises bearing Municipal Nos. 149, 153 and 154 were in the tenancy of Mohd. Sayeed. Premises bearing Municipal No. 156 were with Mohan Lal and Kirori Mal, premises bearing Municipal No. 152 were with Mohd. Ramzani and premises bearing Municipal Nos. 147 and 148 were with Pannu Ram, Chela Ram, Takan Dass and Kishan Chand. Girajuddin, Ghansham Dass and Mool Chand were no longer occupying the premises. The landlords obtained a decree for ejectment of the aforesaid tenants u/s 13(1)(g) of the Delhi Ajmer Rent Control Act, 1952 on the ground that they wanted to reconstruct the premises and such reconstruction could not be done unless the premises were vacated by the tenants. The landlords subsequently made an application u/s 19 of the Act for permission to execute the decree for ejectment against all the tenants. This application was moved in 1960. It was disposed of by the Competent Authority in October 1963, who granted permission for execution of the decree for eviction against Mohd. Ramzani, Mohan Lal and Kirori Mal in respect of premises bearing Municipal Nos. 152 and 156 and against Mohd. Sayeed in respect of premises bearing Municipal No. 149. Permission was refused with regard to premises bearing Municipal Nos. 153 and 154, which were with Mohd. Sayeed as also premises bearing Municipal Nos. 147 and 148 with Chela Ram, Kishan Chand, Takan Ram and Pannu Ram. Appeal against the order of the Competent Authority filed by the landlords was dismissed by the Administrator in August 1965. Three writ petitions were filed in this Court. Civil Writ No. 916-D of 1963 was filed by Mohd. Ramzani, Mohd. Sayeed and M/s. Mohan Lal Kirori Mal through Mohan Lal in respect of properties bearing Municipal Nos. 149, 152 and 156, Civil Writ No. 129-D of 1966 was filed by Chiranji Lal and Moti Lal in regard to premises No. 153 and 154 and Civil Writ No. 126-D of 1965 was filed by Chiranji Lal and Moti Lal in respect of premises Nos. 147 and 148. These three writ petitions were disposed of by V.S. Deshpande, J. (as he then was) by his judgment dated August 28, 1970 and certain directions were given to the Competent Authority. Three appeals were filed.

5. No review application has been filed in the other two appeals. Therefore, we are not called upon to make any observation with regard to the subject matter of those appeals. We are only concerned with the subject matter of Civil Writ No. 129-D of 1966, which are properties bearing Municipal Nos. 153 and 154. We are not concerned with the property bearing Municipal No. 149 which was not subject matter of the present appeal or Civil Writ No. 129-D of 1965.

6. Admittedly, Mohd. Sayeed has died. The contention of Mr. Garg is that the legal representatives of Mohd. Sayeed are not entitled to any protection vis-a-vis properties let out for commercial purposes as heirs of Mohd. Sayeed do not

become statutory tenants within the meaning of the provisions of the Delhi Rent Control Act, 1958, as amended, in commercial properties or properties let out for commercial purposes on the demise of the tenant. If that be so they are not entitled to seek protection in respect of properties bearing Municipal Nos. 153 and 154 also inasmuch as the tenancy in favor of Mohd. Sayeed in respect of properties bearing Municipal Nos. 149, 153 and 154 was a composite tenancy. That the protection under the Rent Control Act is available to the heirs of a deceased tenant in respect of exclusively residential properties let out for residential purposes is settled law, urges the learned counsel. So, he says the appeal should have been held as no longer competent on the death of Mohd. Sayeed. He has referred to various decisions including the case reported as Haji Mohammed Din and Another Vs. Narain Dass, , Natraj Studios (P) Ltd. v. Navrang Studios and Anr. 1981 (1) R.C.R. 351 and an unreported decision in Sat Pal Singh and Ors. v. Smt. Bhagwati Devi and Ors., R.F.A. No. 211 of 1981 decided by a Full Bench of this Court on November 5, 1982. Learned counsel contends that he argued this point but we have omitted to give a decision on it. He submits that as the heirs of Mohd. Sayeed are not entitled to protection, which we should hold, the appeal filed by Mohd. Sayeed and continued by his heirs should have merely been dismissed with no directions to the Competent Authority under the Act.

7. Mr. R.S. Narula, Senior Advocate appearing for the heirs of Mohd. Sayeed has brought to our notice that Civil Writ No. 129-D was filed by the landlord regarding properties bearing Municipal Nos. 153 and 154. Civil Writ No. 916-D was filed by the tenants. Deshpande, J. had allowed the writ petition vis a-vis property bearing Municipal No. 149 in respect of which the tenants had filed the writ petition. No appeal was filed by the landlords. Therefore, he contends that in this appeal we could not have given any finding regarding property No. 149. L.P.A. 192 was with regard to the order passed in Civil Writ No. 129-D.

8. In our view, the review application is misconceived. The applicant is not correct in saying that we have not dealt with the contention of the learned counsel. In the appeals before us the question involved was how the Competent Authority is to exercise his powers in granting or not granting permission in the context of the provisions of Sub-section (4) of Section 19 of the Act. It was not within the ambit of the controversy in the appeals as to whether the protection of Section 19 of the Act is or is not available to a particular party keeping in view the provisions of Section 2(1) of the Delhi Rent Control Act. It is for that reason that towards the end of our judgment we observed that all the other enquiries, including whether a person is a tenant or is not a tenant, or a landlord needs or does not need the premises, are outside the scope of the enquiry contemplated by Section 19 of the Act. Those are matters which have to be considered by civil courts or by Rent Controllers. In the appeals before us, we could not possibly have decided whether the heirs of Mohd. Sayeed are or are not tenants within the meaning of Section 2(1) of the Delhi Rent Control Act. That is why we did not decide it and made only the observation referred to above Section 25 of the Delhi

Rent Control Act permits a decree or an eviction order to be executed against anybody. It was entirely for the applicants to decide whether or not to pursue their applications u/s 19 of the Act moved against Mohd. Sayeed vis-a-vis the properties in question.

9. The scope of the appeal in L P. A. 192 of 1970 was to reconsider the opinion of the learned Single judge vis-a-vis the properties bearing Municipal Nos 153 and 154. By means of the review application the applicant cannot be allowed to expand the scope of their appeal. No such review application has been moved in L.P.A. 191 of 1970. We cannot in L.P.A. 192 review our judgment in L.P. A. 191 of 1970. We mention all these aspects though the reading of our judgment makes it very clear as to what was the point in controversy.

10. In L.P.A. 191 of 1970 Mohd. Sayeed was one of the appellants. On his death his name was deleted from the array of the appellants. His legal representatives were not brought on the record. Therefore, there is no question of conflicting judgments also in L.P.A. 191 and L.P.A. 192 of 1970 as was feared by learned counsel for the applicants.

11. In the view that we have taken, we do not find any force in the application and dismiss the same. Parties are left to bear their own costs.