

(2006) 07 DEL CK 0069

In the Delhi High Court

Case No : C.R.P. No. 404 of 2000

Mr. P. Jayantilal Shah (Deceased through LRs) and Another	APPELLANT
Vs	
Mr. Ramakant Sanoriya (Deceased through LRs) and Others	RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Delhi Rent Control (Amendment) Act, 1976 — Section 3
Delhi Rent Control Act, 1958 — Section 14(1), 2(1)
Easements Act, 1882 — Section 52

Citation : (2006) 131 DLT 388 : (2006) 91 DRJ 761

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Anip Sachthey and Sanjeev Rajpal, for the Appellant; B.R. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The Revision petition is directed against the order passed by the Additional Rent Controller dated 6.12.1999 declining leave to defend the eviction proceedings filed by the respondent/landlord u/s 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the said Act).

2. The landlord claimed in the eviction petition that the property in question was originally owned by M/s. M.L. Sanoriya & Sons, HUF consisting of Shri M.L. Sanoriya and his only son Shri Sajjan Sanoriya. Shri Sajjan Sanoria in turn had three sons, Ramakant Sanoriya, the petitioner in the eviction petition, Shri Suresh Kumar Sanoriya and Shri Hemant Sanoriya. All these persons are stated to be residing in various portions of property bearing No. 2/44, Roop Nagar, Delhi. The petitioner, tenant herein is stated to be in occupation of the back side of the first floor labelled as flat No. 2. The premises was stated to be let out for residential purposes and it is stated that, in fact, the tenant is no more even residing in the premises and has permanently shifted to Ahmedabad and the tenancy is stated to have been created in the year 1966.

3. The landlord claimed that the entire first floor of the property had fallen to his share by way of the mutual partition between the father and the three sons and the oral partition was reduced into a Memorandum of Partition dated 18.1.1988, which was filed in suit No. 177/88 before the learned Additional District Judge wherein a decree and judgment has been passed in terms thereof. In pursuance to the partition, the HUF had informed the tenant and the tenant had started paying rent to the sole landlord instead of the earlier HUF.

4. The landlord claimed that he was residing in a different portion of the suit property now as licensee and all the family members were short of accommodation with the result that the landlord wanted to shift into his portion of the property. The family of the landlord was set out as himself, his wife, one daughter Kanika aged five years and one son Chetanya aged one and a half years.

5. The petitioner filed an application for leave to contest the eviction proceedings and one of the grounds was that there were two separate tenancies. This plea has arisen on account of the fact that the petitioner in the present proceedings is the father, whereas in favor of the son a separate tenancy was created in respect of the front portion of the first floor of the premises. An alternative suitable residential accommodation was also stated to be available with the landlord at A-79, Weavers" Colony, Opposite Bharat Nagar Transport Authority, Ashok Vihar. The details of another property being residential property at I-34, Ashok Vihar, Phase-I, Delhi was also given as an alternative accommodation.

6. The Additional Rent Controller found that even the affidavits filed by the tenant were defective but still examined the matter on merits. It was held that the petitioner was the sole tenant in respect of the portion referred to in the eviction proceedings and the accommodation at Weavers" Colony was stated to be not habitable for residential purposes. Insofar as the property at I-34, Ashok Vihar, Phase-I, Delhi is concerned, a finding was arrived at that the Sale Deed in respect of the same has been placed on record, which shows that the same was sold on 31.3.1997. The partition decree established exclusive rights of the landlord in the first floor. The ground floor had fallen to the share of other family members and thus the landlord had no right to continue to occupy the same. An eviction order was thus passed.

7. The landlord had filed a separate eviction petition in respect of the front side of the first floor against the son of the petitioner also on ground of bonafide requirement. In the said eviction petition an eviction order was passed by the Additional Rent Controller on 11.3.1999. In the said eviction order, it was held that property at Weavers" Colony was not habitable. The tenant aggrieved by the said order filed Civil Revision No. 723/99, which was dismissed by a speaking order of the learned single Judge of this Court on 28.7.1999. This fact is even noticed in the impugned order.

8. The tenant aggrieved by the said order filed a SLP before the Supreme Court,

which was registered as Civil Appeal No. 910/2000. The Civil Appeal was allowed by the order dated 10.12.2003. In order to appreciate the fact of the said order some of the salient features as recorded in the order have to be set out. It is recorded that the Supreme Court, in order to put a quietus to the litigation, directed the Local Commissioner to be appointed for inspecting the property in the Weavers" Colony. The plea about the availability of another accommodation at I-34, Ashok Vihar, Phase-I, Delhi was not pressed on behalf of the appellant and the availability of the said accommodation thus became irrelevant. On inspection of the property at Weavers" Colony as per the report of the Local Commissioner, it was found that the same was divided into two parts belonging to the landlord and his brother and the possession was with a third party. The Supreme Court also records that the complete property at Roop Nagar was a joint family property and on division the first floor had fallen to the share of the landlord. It is thus noticed that the question of partition assumed significance because in that event the landlord would become separate from his brother and the properties falling to the share of the landlord and his brother each would be separately owned by them. The consequence would be that the property falling to the share of the brother of the landlord would cease to be relevant so far as the requirement of the landlord was concerned. The Supreme Court specifically observed that it was not expressing any opinions on the merits of the case but in the light of what has been mentioned hereinbefore leave to defend ought to be granted. This is so since the landlord does own a property at Weavers" Colony and that aspect would have to be examined by the Trial Court. The question of the property at Ashok Vihar was directed not to be gone into in view of the concession of the tenant.

9. The Additional Rent Controller thereafter proceeded to record evidence and delivered a judgment dated 9.3.2005 allowing the eviction petition of the landlord. The tenant aggrieved by the same filed revision petition before this Court but no interim relief was initially granted. The eviction order was executed and possession of the tenanted premises was taken over by the landlord. The revision petition was thereafter withdrawn.

10. It is in the conspectus of the aforesaid facts and circumstances that a plea was advanced by the learned Counsel for the petitioner herein that since the Supreme Court in terms of the order dated 10.12.2003 in Civil Appeal No. 910/2000 had found that a case had been made out for grant of leave to contest the petition, in the present petition also leave ought to have been granted and thus the revision petition has to be allowed. It is further submitted that though the part of the tenanted portion forming subject matter of the other eviction petition already stands taken possession of by the landlord, the same cannot prejudice the petitioner in the present petition and in fact supports the case of the petitioner. This is so since two supervening facts are stated to have occurred: (i) in view of the possession having been taken of the front portion of the first floor the requirement of the landlord in any case stands satisfied; (ii) the landlord has since then unfortunately passed away on 22.9.2005 and his legal

heirs have been brought on record being the wife and the children apart from the mother.

11. I have heard learned Counsel for the parties and examined the record placed before this Court. It has to be appreciated that the stand of the tenant in the eviction proceedings was that really speaking there was one tenancy which has been bifurcated into two parts. However, since two separate petitions were held maintainable now the plea was sought to be raised that the eviction order having been already executed in respect of the front portion of the first floor of the property would not prejudice the right of the tenant to defend the present eviction proceedings, which is in respect of the back portion of the first floor. Learned Counsel for the petitioner submitted that even though the premises were reduced into half the same were being utilised by the tenant.

12. A reading of the order passed by the Supreme Court shows that only controversy which really arose and on which the matter was required to be decided in trial was the availability of the property at Weavers' Colony. Evidence was led by both the parties on this issue and thereafter the Additional Rent Controller passed the eviction order dated 9.3.2005. It is the finding consistently recorded in that eviction order and the order under challenge in the present proceedings that the first floor of the Roop Nagar property fell to the share of late Shri Ramakant Sanoriya, the landlord. This is in pursuance to a decree dated 15.2.1989 and even mutation of these premises in the records of the MCD in favor of the late landlord has taken place. The allegation of the premises being earlier let out for residential use and thereafter being used for residential and commercial purpose with the consent of the landlord was found to be without any basis. Insofar as the requirement of the family is concerned, it has been noticed that the landlord and his wife would require one bed room, while his children would need a separate bed room and a drawing-cum-dining room would be required and one room for the guest. The landlord was residing in the share of his brother which could not be considered as a portion available with the landlord. The said eviction petition in respect of the front side of the first floor was in respect of two bed rooms, one drawing-cum-dining room, two verandahs, kitchen, latrine, bathroom and one terrace. No other suitable accommodation was stated to be available with the landlord and the aspect of the availability of a property at Weavers' Colony has been discussed. It was found that the landlord had purchased plot No. A-79 while plot No. A-80 was purchased by his brother. These are not residential plots but were allotted by the DDA to the categories of weavers to rehabilitate them. The plots or the super-structure thereon could not be used for any other purpose other than non-residential purpose. On the ground floor of the place there is a departmental store and on the first floor there is a room to keep the goods of the departmental store. The colony is an undeveloped colony where there is not even motorable road. Water facilities have not been provided by the MCD and there is no sewage line laid.

13. The aforesaid facts show that the evidence led by the parties leave no

manner of doubt that the property at Weavers" Colony is not an alternative suitable residential accommodation. It was the allegation in respect of this property which weighed with the Supreme Court while passing the order dated 10.12.2003 and granted leave to the tenant. I am thus of the considered view that the plea of the learned Counsel for the petitioner that on the basis of the order of the Supreme Court the matter ought to be remanded after grant of leave cannot be accepted.

14. I am of the considered view that the purpose of the order passed by the Apex Court has been served whereby the aspect of the feasibility of use of the plot at Weavers" Colony as an alternative accommodation available with the landlord has been gone into and in view of what has been recorded hereinabove it has been categorically found that the said plot is hardly fit for any residential use. The eviction petition filed against this order was also not ultimately pressed albeit on the ground that the eviction order stood enforced and implemented.

15. A reading of the impugned order leaves no manner of doubt that insofar as Shri Ramakant Sanoriya being the exclusive owner of the first floor of the property is concerned, there is no doubt in respect of the same. The oral family partition was reduced into writing and same forms part of the decree. It was found that the tenant had tendered rent exclusively to the said landlord and the property stood mutated in the name of the landlord.

16. The purpose of letting specified is residential and the bald plea of there being any commercial use could not be accepted. This is also a finding arrived at after trial in the eviction case relating to the front portion of the said property.

17. The issue of alternative residential accommodation has also been gone into. The documents in relation to the property at Ashok Vihar have been filed to show that the same does not belong to the landlord. Not only this, the plea in that behalf was given up in the Supreme Court in the other eviction case which also shows that really speaking there was no substance in the said plea. As noticed above, the other property at Weavers" Colony is not a suitable accommodation.

18. In view of the aforesaid position, the only question to be examined is whether there is sufficient accommodation available with the family of the landlord especially in view of the supervening fact of the landlord having taken possession of the front portion of the property and the landlord himself having passed away. It may be noticed that the petitioner in the present case has also passed away and his legal heirs have been substituted in his place being his two sons. As noticed one of the sons is the tenant in respect of the front portion of the first floor in respect of which the other eviction petition was filed. The accommodation now available with the landlord is what was taken possession of in pursuance to the eviction order dated 9.3.2005 consisting of two bed rooms, one drawing-cum-dining room, two verandahs, one latrine, one bathroom, one kitchen and one terrace. The family size of the late landlord consist of the wife and two children. The wife would require one bedroom for herself. Since the time

when eviction petition was filed, eight years have elapsed. The daughter would be now aged thirteen years while the son would be nine and a half years old. Both would require separate bedrooms specially as they are of different sex. One bed room would be required for the guest. The requirement would be thus of at least four bed rooms. Even if the requirement as existing then was considered, it would be three bed rooms. Indisputably the landlords now do not have more than two bed rooms in their possession. While considering such requirement the status of the family has to be seen and the family cannot be expected to live in a congested fashion even though they can afford to live comfortably. No doubt the requirement of the landlord should not be fanciful but the requirement of one bed room each can hardly be said to be fanciful. There is, thus, no doubt that the landlord at present require the accommodation occupied by the petitioner.

19. I am thus of the considered view that a perusal of the impugned order read along with subsequent facts brought to the notice of this Court show that the same does not require to be interfered with. The impugned order suffers from no patent error or erroneous exercise of jurisdiction especially in view of the subsequent facts, which have transpired as explained above.

20. The demise of the petitioner/tenant has also given rise to another legal issue. The deceased tenant passed away on 9.2.2001 and in terms of CM No. 3068/2001 an application for impleadment of his legal heirs was filed. The tenant was survived by his two sons, Ashok Jayantilal Shah and Kalyanbhai Jayantilal Shah, aged 50 & 52 years respectively at that time, who were imp leaded as legal heirs. The premises were let out for residential use and thus the heritability of tenancy would be governed by the provisions of Section 2(I) of the said Act. It appeared that the wife of the tenant had pre-deceased him and in terms of the succession same devolved on the two sons. Explanation (ii) of Section 2(I) prescribes as under:

2. Definitions. -...

(a)...

(b)...

(c)...

(d)...

(e)...

(f)...

(g)...

(h)...

(i)...

(j)...

(k)...

[(l) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes -

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's -

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to date of his death, but does not include, -

(A) any person against whom an order or decree for eviction has been made except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);

(B) any person to whom a license, as defined by Section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

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Explanation I. - The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not

ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II. - if the person, who acquires, by succession, the right to continue in possession after the termination of tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

21. It is thus noticed from the reading of the aforesaid Explanation II that the succession was limited to a period of one year unless the successor was financially dependent on the deceased person. The two sons were majors and carrying on business and thus can hardly be called financially dependent on the deceased. The period of one year had passed long time ago.

22. The question which thus arises in the aforesaid circumstances is whether the respondent/landlord should be relegated to a civil suit or whether an eviction order can be passed in these proceedings. In this behalf, it may be noticed that the legal heirs who have been imp leaded really have no defense as they have no right to continue to occupy the premises after the expiry of one year. This question has formed subject matter of adjudication in *Gian Devi Vs. Jiwan Kumar*, where it was held that the Rent Controller does not lose jurisdiction on the death of a statutory tenant since the obligations of the deceased tenant has to be considered and not that of his heirs. Thus an order for recovery of premises made against the legal representatives can be duly executed and the relief granted against such legal representatives will not become nugatory. The extent of liability of such legal representatives was held to be ultimately decided by the extent of the assets or the estate of the deceased and thus the liability would extend to their putting the landlord back into possession. It was further held that legal representatives may put forward such contentions as are appropriate to their representative character but not the contentions which were personal to the deceased tenant. In the end it was observed that if the legal representatives have no defense to raise in law the landlord cannot be driven to file a suit against them for their eviction. The Division Bench of this Court in *Smt. Krishna Prakash and Another Vs. Dilip Harel Mitra Chenoy*, dealt with a similar situation and it was observed in para 22 as under:

22. Learned Counsel for the defendants/appellants placed reliance on a Single Bench decision of this Court in *Shri Kishori Lal (Deceased) represented by his legal representative) v. Shri Siri Krishan* 1996 II AD (Delhi) 36, in support of their plea against the jurisdiction of the Civil Court. We, however, find that reliance on the decision in *Kishori Lal's* case (supra) is wholly misplaced. It was a case where an eviction petition had been filed against the tenant after terminating his tenancy and in the course of proceedings on the death of statutory tenant his legal representatives were brought on record. The legal representatives of the deceased statutory tenant on the date of his death. In

spite of the fact that no relationship of landlord and tenant existed between the petitioner and the legal representatives of the deceased statutory tenant, an eviction order was passed against them. The decision in Kishori Lal's case (supra) simply lays down that where in an eviction petition before the Rent Controller filed against a statutory tenant, his legal representatives are substituted on the death of statutory tenant, notwithstanding that the legal representatives of the statutory tenants did not inherit the right of the statutory tenant to continue in possession of the tenanted premises beyond one year, an eviction order could be passed against such legal representatives even if no relationship of landlord and tenant existed any longer. There is nothing in that decision to support the plea that even where proceedings to seek recovery of possession from the legal heirs of the deceased statutory tenant, who have acquired no right to continue in possession of the tenanted premises beyond a period of one year and have become trespassers/unauthorised occupants, the proceedings are to be initiated in the Court of Rent Controller and the Rent Controller will have jurisdiction to entertain and decide the eviction petition.

23. The learned single Judge of this Court in Kishori Lal and Mukat Behari Lal Mathur Vs. Siri Krishan, S.N. Nigam and Another, went into the question of heritability of residential premises and came to the conclusion that the legal heirs are entitled to make defenses, which are appropriate to character as a legal representative. The learned single Judge relied upon the judgment of the Apex Court in South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others, where it was held that in case a tenancy has become extinct, the recovery of possession can be directed against all persons in occupation so that the landlord might without further trouble recover possession and multiplicity of proceedings must be avoided. The learned Judge held that in view of the legal heirs not being entitled to retain possession for more than a year an eviction order could straightway be passed in the second appeal. Thus to that extent there is similarity of even the facts and the stage of proceedings as in the present case.

24. The conclusion of the aforesaid legal position is that apart from any other reason the petitioners have no right to continue to occupy the premises on the death of the deceased father beyond the period of one year of the death.

25. It must be noticed that the present proceedings were in fact kept pending by both the parties possibly to await the result of adjudication on trial in respect of the remaining half portion. It is possibly only the strained relationship between the landlord and tenants, which is resulting in the petitioner still continuing to prosecute the eviction petition despite what has transpired.

26. I am, thus, of the considered view that no ground is made out to interfere with the impugned order and the revision petition is dismissed leaving the parties to bear their own costs.

27. The petitioner is granted one month's time to vacate the tenanted property.