

(1984) 02 DEL CK 0046

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 80 of 1983

Rajinder Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-02-1984

Acts Referred:

Citation : (1984) 7 DRJ 77

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : G.S. Vohra, M.S. Vohra and R.M. Bagai, for the Appellant;

Judgement

S.S. Chadha, J.

(1) Petitioner No. I herein while in service of the Government filed an application for eviction against Respondent No. 1 in respect of ground floor and first floor of the premises No. Z/9, Rajouri Garden, New Delhi u/s 14-A of the Delhi Rent Control Act, 1958 (as amended) hereinafter referred to as the Act and presented it on January 7, 1977. Subsequently he made an application to the Rent Controller, Delhi that he did not want to proceed with is eviction petition and accordingly it was dismissed as withdrawn. After retirement from Government service, the petitioner against filed a petition for eviction on January 11, 1979 u/s 14-A of the Act in respect of the said premises being eviction petition No. B-53/79. Section 14-A was added by the Delhi Rent Control (Amendment) Act, 1976 with the object of conferring a right on Government servant landlords to recover immediate possession of premises belonging to them when the cause of action as mentioned therein accrued. During the course of arguments the Rent Controller, Delhi got it clarified from the learned counsel for petitioner No. I as to under what provision of law he was prosecuting his claim. The counsel stated that he was coming u/s 14-A of the Act because under law he could not combine the claim u/s 14-A and Section 14(1)(e) of the Act. The Rent Controller proceeded to consider the merits of that eviction petition and came to the conclusion that the case was not at all covered u/s 14-A of the Act. It was held

that a case u/s 14-A of the Act was not made out. The eviction petition was dismissed by order dated August 10, 1981. However, the Rent Controller, Delhi further considered that if it is to be taken that the petitioner had come u/s 14(1) (e) of the Act, then no right is available on account of the fact that the premises in question had not been let out for residential purposes. I may mention here that for the purpose of disposal of a petition u/s 14-A the use or purpose of letting is no conclusive test. Whatever, is suitable or adopted for residential uses can be designated as residential premises and is "residential accommodation" within the meaning of Section 14-A. The letting purpose was not to be determined in those proceedings.

(2) The petitioner then filed on October 21, 1981 a fresh petition u/s 14(1)(e) of the Act for eviction of Respondent No. 1, tenant from the said premises. The petition was tried under the summary procedure contained u/s 25-B and summons under Schedule Iii of the Act were issued to the tenant. The tenant filed an application dated December 2, 1981 for leave to contest the eviction petition. The grounds on which the leave was sought are contained in the affidavit of Shri S. B. Roy Chaudhry dated December 2, 1981. By order dated September 7, 1982 the Rent Controller granted leave to the tenant to contest the eviction petition on the ground alleged in Sub para 1(4) of Para 4 of the affidavit dated December 2, 1981.

(3) By the same order the Rent Controller proceed to consider the grounds of eviction. The Rent Controller noticed the filing of the earlier eviction petition No. E-53/79 u/s 14-A of the Act and the Judgment dated August 10, 1981. The Rent Controller then considered the finding recorded in the order dated August 10, 1981 that the premises had not been let out for residential purposes only. The Rent Controller proceeded to consider the lease deed and other documents were not let for residential purposes only. It is this part of the order which is challenged in this petition, under Article 227 of the Constitution of India.

(4) Two preliminary objections have been raised by the learned counsel for the tenant. Firstly, it is contended that the Rent Controller, is not amenable to the jurisdiction under Article 227 of the Constitution of India and as such the impugned order cannot be challenged in these proceedings. Reliance is placed on "S.K.Gulati v. Brigadiar Prithvi Raj Gulati" 1979 (2) R.C.J. 257, Mr. G.S. Vohra, learned counsel for the petitioner concedes that the petition under Article 227 is not maintainable and prays that it should be converted into a Revision Petition under proviso to Subsection (8) of Section 25-B of the Act. In my opinion, this court in the interest of justice has ample power to convert a petition under Article 227 into a Revision Petition u/s 25-B of the Act. There is no bar of limitation in this case. It is not disputed that this court has taken the view that Revision Petition u/s 25-B can be filed within a period of three years.

(5) The second objection raised by the counsel for the tenant is that the petition for revision is incompetent under the provision to Sub-section (8) of Section 25-B of the Act and that only an appeal as contemplated by Section 39 of the Act

could be filed before the Rent Control Tribunal. Reliance is placed on a decision in the case of "Bhagwati Pershad v. Om Parkash" 1979 R.L.R. 26. This also as no merit. The law is settled that it is not essential that a order to be covered by Section 25-B(8) of the Act must be an order for the recovery of possession of the premises; an order refusing recovery of possession is also so covered, against which no appeal lies to the Rent Control Tribunal, but the remedy of the landlord is by way of revision and revision only to the High Court u/s 25-B of the Act. This has been settled in "Vinod Kumar Chowdhry v. Narain Devi Taneja 1980 (1) D.L.T. 313-1980 Drj 15.

(6) I have again gone through the eviction petition dated January 11, 1979 in eviction case No. E-53/79. The application for eviction of the tenant is clearly made and so stated u/s 14-A of the Act. In fact it mentions "Under Section 14-A of the Delhi Rent Control Act (Amendment) 1976". The Rent Controller in the order dated August 10, 1981 considered that no case u/s 14-A had been made out. During the course of arguments the Rent Controller got it clarified from the counsel for the landlord as to under what provision of law he was prosecuting; the claim and the counsel for the landlord stated in unequivocal terms that he was coming u/s 14-A of the Act. In my view, the claim that was made in the earlier eviction petition was u/s 14-A of the Act. Claim for eviction of the tenant u/s 14(1)(e) of the Act was pleaded in the earlier petition. The findings of the Rent Controller in the order dated August 10, 1981 u/s 14(1)(e) of the Act are thus beyond the claim made and are without jurisdiction. The Rent Controller was not called upon to decide the case u/s 14(1)(e) of the Act. Any finding recorded by the Rent Controller on that aspect could not operate as resjudicate. For a finding to operate as resjudicate, the question or issue must have been directly and substantially in issue. For a matter to be directly and substantially in issue, it must be necessary to decide the issue in order to give relief. The relief claimed by the landlord in the earlier eviction petition was only u/s 14-A of the Act. Neither there was any occasion nor any need to go into the letting purpose in the earlier petition. Any finding recorded on an extraneous issue cannot operate as resjudicate. A mere opinion of the Rent Controller on a matter not necessary for the decision of the earlier case and not arising out of an issue before it is mere obiter dicta and cannot be said to be a decision on an issue. It cannot operate as Resjudicata.

(7) The order under revision has been passed by the Rent Controller entirely and in substance on the plead of res-judicata. The Rent Controller referred to the finding recorded in the earlier order dated August 10, 1981 that the premises had not been let out for residential purposes only. The . Rent Controller then referred to the evidence available-in the earlier case on the basis of which the finding was recorded. The finding recorded in the earlier order dated August 10, 1981 cannot form the basis of the order under revision. There is a clear mistake of law which has resulted in miscarriage of justice.

(8) There is some discussion to the documents on the record of the present

eviction petition before the Rent Controller to which a reference is made to support the conclusion arrived at. As already noticed the tenant was granted leave to contest the eviction petition in the order dated September 7, 1982 and the Rent Controller proceeded to determine the eviction petition again in continuation of that order. The allegations made in a para 4 of the eviction petition that the premises No. Z/9 Rajouri Garden, New > Delhi are residential premises. In para 18 of the eviction petition, the petitioners make allegations to the effect. The petitioners, being members of the Hud with petitioner No. 1 as karfa, are owners landlords of the suit premises which were let for residential purpose and are required bona fide for residence for themselves and members of their family dependent on them. The petitioners have no others reasonably suitable residential accommodation in Delhi.....

(9) If these were allegations that the premises are residential and were let out for residential purpose, then the eviction petition had to be tried. The Rent Controller without determining, the point for determination and without affording an opportunity to the parties of substantiating allegations made in the petition, preceded to determine the letting purpose. To say the least this is a gross violation of the principle of trial of the eviction petition and the procedure established by law. There are no basis to impute to the landlords a case which was not put at the trial. Whether the tenancy agreement was in writing or its terms varied later on could only be established during the trial.

(10) For the above reasons the petition succeeds and order dated September 7, 1982 is quashed. The Rent Controller will proceed to determine the eviction petition after affording the parties an opportunity of substantiating their allegations in accordance with law. On the facts and circumstances of the case I make no order as to costs.