

(1978) 08 DEL CK 0002

In the Delhi High Court

Case No : Civil Revision Appeal No's. 279, 577 and 730 of 1977 and Second Appeal No. 148 of 1977

R.K. Pamkh

APPELLANT

Vs

Uma Verma
 J.K. Murthy Vs M.L. Chawla

Kailash Chander Bhai Vs Mangal Singh Sachdev

RESPONDENT

Date of Decision : 02-08-1978

Acts Referred:

Citation : AIR 1979 Delhi 17 : (1978) ILR Delhi 786

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : P.K. Jaitely, D.R. Mahajan, S.P. Pandey, R.L. Tandon, H.N. Chaudhary and Ajit Singh, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) These three civil revisions and one second appeal from order raise a common question of law. This judgment will govern them all.

(2) The facts of these cases are very much similar. Three separate applications were made by three different landlords for the eviction of their tenants. In two cases out of which C.R. 577 of 1977 and C.R. 279 of 1977 have arisen the ground of ejectment was bona fide requirement of the premises by the landlord for occupation as a residence for himself and the members of his family dependent on him under clause (e) of the proviso to sub-section (1) of s. 14 of the Delhi Rent Control Act 1958 (the Act). In the third case in which S.O. 148 of 1977 and Cr 730 of 1977 have been filed the landlord was a Government servant and he claimed eviction of his tenant on the ground that he was required to vacate the premises allotted to him by the Central Government and Therefore a right had accrued to him to recover immediately possession of the premises let out by him to the tenant.

(3) The three applications were tried by the Additional Rent Controller under s.

25B of the Act. In each case the tenant filed an affidavit stating the grounds on which he sought to contest the eviction claim. The landlord opposed the tenant's prayer for leave. Rejecting the landlord's opposition the Additional Controller granted leave to the tenants to contest the applications.

(4) Dissatisfied with the order granting leave to the tenants the landlords went in appeal to the Rent Control Tribunal under s. 38 of the Act. The landlords succeeded before the Tribunal in all the three cases. The tribunal allowed the appeal, dismissed the tenants' applications for leave holding that the tenants' affidavits did not disclose any such fact as would disentitle the landlords from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of s. 14 in two cases and " under s. 14A in the third one. The eviction petitions were remitted to the Additional Controller. He passed orders of eviction in, all the three cases under sub-section (4) of s. 25B of the Act as nothing else now remained to be done.

(5) The tenants have come in revision to this court, challenging the validity of the eviction orders on the sole ground that the appeal to the Tribunal was not competent and it had no power to rescind the leave which had been granted by the Additional Controller. The central question in these cases is : Did an appeal lie to the Tribunal against the order of the Additional Controller granting leave to the tenant to contest the application for eviction ? If no appeal lies the order of eviction cannot stand. It will fall with the order of the Tribunal. This raises the question of the true construction of section 25B which in fact is at the heart of these cases.

(6) Sections 14A, 25A, 25B and 25C were introduced in the Act by Ordinance 24 of 1975 which came into force on 1st December, 1975. The Ordinance was later replaced by the Delhi Rent Control (Amendment) Act (18 of 76) which was given effect to from the date of the ordinance. Section 25A, 25B and 25C are contained in a newly introduced Chapter Iia entitled as "Summary trial of certain applications". By section 25B every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of s. 14, or under s. 14A, has to be tried in accordance with the procedure specified in this section.

(7) Section 25A which is the first of the fasciculus of sections appearing in Chapter Iia provides that the provisions of this Chapter or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for, the time being in force. The marginal note to s. 25A reads "Provisions of this Chapter to have over-riding effect". Section 25A in the first place provides that the provisions of Chapter Iia containing sections 25A, 25B and 25C shall have an over-riding effect over every other provision of the Act which is inconsistent with anything contained in Chapter Iia in the second place s. 25A provides that the provisions of Chapter Iia shall also have over-riding effect over anything inconsistent therewith contained in any other law for the time being in force.

(8) It is plain that by virtue of section 25A the provisions of Chapter Iija must prevail over the provisions of s. 38 of the Act. The reason is that s. 38 which provides for appeal to the Tribunal is inconsistent with the provisions of Chapter Iiia which prescribes a special procedure for dealing with the applications for eviction filed under clause (e) of the proviso the sub-s. (14) of s. 14 or under s. 14A of the Act. Chapter Iiia devises an over-riding procedure by which the application for eviction is to be tried by a summary procedure. The question is and this is the only question : Is section 38 inconsistent with the procedure of Chapter Iiia of the Act.

(9) Section 25B proves that that procedure incorporated in that section shall be followed. The outlines of that procedure are these. The Controller issues summons in the prescribed form to the tenant. Sub-s. (3) (a) lays down that the tenant can be served by registered post and by publication in the newspaper in addition to and simultaneously with the ordinary mode of service. Sub-s. (3) (b) says that the acknowledgment purporting to be signed by the tenant or his agent or an acknowledgment by the postman that the tenant or his agent has refused to take delivery of the article will amount to a valid service of summons. Sub-s. (4) provides that the tenant when he appears in court "shall not contest the prayer for eviction from premises unless he files an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller." It further provides that if he fails to appear or fails to obtain such leave the statement made by the landlord for eviction in his application shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order of eviction. Under sub-s. (5) the Controller can give to the tenant leave to contest the application if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining recovery of premises. Sub-sec. (6) says that where leave is granted to the tenant to contest the application the Controller shall commence the hearing of the application as early as practicable. By sub-sec. (7) the Controller is required to follow the practice and procedure of a Court of Small Causes, including the recording of evidence. Sub-sec. (8) is the one directly relevant for our purpose. It reads :

"No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section :

PROVIDED that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."

(10) SUB-SECTION (9) empowers the Controller to exercise the power of review under O. 47 CPC in cases where no application has been made to the High Court on revision.

(11) A glance at the provisions of Chapter Iiia shows that the policy and purpose of the legislature in enacting ss. 25A, 25B and 25C is to introduce a swift and

expeditious procedure for trial where the landlord's application for eviction is founded on the ground of bona fide requirement. Such cases could not be decided for years under the old procedure as from the order of the Controller first appeal lay to the Tribunal under s. 38 and a second appeal lay to the High Court on a substantial question of law under s. 39 of the Act. This meant great delay. The legislature was impatient with law's delays" and has therefore devised a shortened procedure of a speedy trial cutting out the right of first and second appeals altogether and substituting in its place the remedy of revision to the High Court.

(12) The legislature seems to have entered a period of cautious weighing and adjusting. Fashions in legal thinking and parliamentary draftsmanship are not unchanging. The legislature now wanted to free the procedure from the shackles and constraints of the Slum Act, the rigidity of a full length trial and the road blocks of the first appeal and the second appeal. All these consumed time. How to shorten the time was the question. The old procedure was dilatory. It did not keep pace with the time. The landlord's need was urgent. The procedure was tardy. The pace was too slow. The legislature has now increased its pace. Where once the courts and tribunals moved slowly the legislature of late has accelerated their pace. It has introduced in Ch. IIIA . "an accelerated remedial procedure", to use a phrase of Krishna Iyer J. In a word the legislature has quickened the pace of procedure.

(13) The Slum Areas (Improvement and Clearance) Act enacted in 1956 with the object of ameliorating the condition of tenants has now been done away with where the premises are needed for bona fide requirement. The tenant had enjoyed the protection of the Slum Act and a slow moving procedure for 20 years. The legislature has now turned the tide. "The door to defense" has been "narrowed down" by a "chain of stiff provisions". Indeed narrow is the path that the tenant is required to tread. The truth is that over a quarter of a century and ever since the Delhi Ajmer Marwar Act 1952 the legislature has been between the Scylla of the landlord and the Charybdis of the tenant. The key problem is one of balance.

(14) Summary trial procedures well known to commercial courts in cases of negotiable instruments have been adopted in the adjudication of landlord tenant disputes.: Underlying the whole legislative plan is the fundamental anxiety to recover for the landlord his own premises when he needs them "on the ground of bona fide requirement" in the words of the marginal notes to s. 25B. A procedure at once accelerated and abbreviated is the legislative answer to the economics of scarcity. Out of this helplessness was born s. 14A and Ch. IIIA of the Act.

(15) Dispatch is the dominant note of this summary procedure. This appears from a variety of considerations which seem to have weighed with the legislature. It is a "special procedure" as the marginal note of s. 25B says. It is a "summary trial" as the heading indicates. Even the mode of service of summons is specified for in the experience of the legislature service itself was one great

reason for delay. Even the right to defend has been taken away for the section says that the tenant "shall not contest the prayer for eviction" unless he obtains leave to contest the application by filing an affidavit which "discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises." Sub-section (6) says that if leave is granted to the tenant the Controller shall commence the hearing of the application "as early as practicable". Sub-sec. (7) says that in the inquiry he holds he shall follow the practice and procedure of the court of Small Causes, including the recording of evidence. Then the right of first and second appeal is expressly taken away. This "chain of stiff provisions", to use again an expression of Krishna Iyer J., has one dominant purpose and it is to cut down delays. As the Supreme Court has said :

"The tenant is even deprived of the elementary right of a defendant to defend a proceeding brought against him, save on obtaining leave of the Rent Controller. If the leave is refused by Section 25B(4) the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord is entitled to an order for eviction. No appeal or second appeal lies against that order. Section 25B(8) denies that right and provides instead for a revision to the High Court whose Jurisdiction is limited to finding out whether the order complained of is according to law."

(16) The paramount object of Chapter IIIA being to avoid delay in the trial of applications for eviction on the ground of bona fide requirement it would be absurd to hold that an appeal lies to the Tribunal under s. 38 of the Act from the order of the Controller granting the tenant leave to contest the application. The truth is that in the scheme of Chapter IIIA the Tribunal has no role to play and no function to perform. It has completely gone out of the picture. When first and second appeals are expressly barred from the final order of recovery of possession it is inconceivable that the legislature intended to retain for the landlord his right to appeal to the Tribunal from an intermediate order granting leave to the tenant. So incompatible and incongruous is the right of appeal to the Tribunal with the "accelerated remedial procedure" provided by s. 25B of the Act that the legislature could never have intended to preserve it.

(17) Section 25B is even narrower than O. 37, Civil Procedure Code. It is a procedure of its own type. It would be fallacious to approximate s. 25B(5) with O. 37 rule 3, Civil Procedure Code. The Supreme Court has said :

"The social setting demanding summary proceeding, the nature of the subject-matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The legal ambit and judicial discretion are wider in the latter while, in the former with which we are concerned, the scope for opening the door to defense is narrowed down by the strict words used".

(18) When the legislature has given its attention to a separate subject and made its provisions for it, the presumption is -that other provisions are not intended to interfere with the special provision unless it manifests that intention very clearly.

Each enactment must be construed in that respect according to its own object matter and its own terms. Here the legislature has given provisions of Chapter Iha "an overriding effect". Nothing "inconsistent therewith" contained elsewhere in the Act or in any other law for the time being in force can have precedence over chapter IIIA.

(19) In s. 14A we discern the same legislative design to give it an "overriding effect". This "emergency provision" as s. 14A has been called was enacted to rehabilitate the government officer in his own hoase by a procedure at once "summary" and "special". In the "significant language of s. 14A, the right to recover immediately possession, of the premises let out by him shall "acruce" to the government officer

"NOTWITHSTANDING anything contained elsewhere in the Act or in any other law for the time being in force or in any contract (whether express or implied), custom of usage to the contrary."

(20) The object of the legislature in incorporating the non obstinate clause both ins. 14A and s. 25A of the Act is to do away with the first and second appeals contained in ss. 38 and 39 of the Act because they are "inconsistent". And anything inconsistent to be found "elsewhere in this Act" must give way to the paramount provisions of s. 14A and s. 25A.

(21) The non obstinate clause, the vesting or a right to immediate recovery in the landlord under s. 14A, the creation of a summary procedure under s. 25B, the overriding effect of that special procedure, he tons and tenor of the new amendments, all emphasise that the right of appeal (s. 38) and second appeal (s. 39) have been abolished at one single stroke with a view to meet an old standing and persistent "demand for simplifying the procedure" for eviction of tenants in case the landlord requires the premises bona fide for bids personal occupation (Statement of Objects and reasons dated 4th Tanuary, 1976).

(22) On the ground that the legislature has given a primacy to Chapter Iiia which has an overriding effect even over the provisions of the Slum Clearance Act the Supreme Court held in that the Slum Act is inconsistent with Chapter Iiia of the Act. Following that line of reasoning I would hold that the right of first appeal to the Tribunal under s. 38 is inconsistent with the symmetry and design of Chapter IIIA. The two cannot co-exist. This is what "inconsistent" means. The overriding procedure such as we have in Chapter Iiia is both dominating and hegemonic. So superior is its authority that it subordinates evierything to itself.

(23) Mr. R. L. Tandon appearing for the landlord in C.R. 279 of 1977 tried to distinguish his case from the other two cases. He argued that in his case the landlord being a Government servant had a right to immediate possession under s. 14A and his right would be frustrated if the landlord were denied a right to appeal to the Tribunal in a case where the Controller has given leave to the tenant to contest the application on insufficient grounds. I do not agree. Whether the claim for eviction is on the ground specified in clause (e) of the proviso to sub-

s. (1) of s. 14 ors. 14A does not make the slightest difference to the legislative plan. Both are "applications for eviction on the ground of bona fide requirement". To both the special procedure of summary trial applies. That the government servant is under the order of instant eviction does not make his case any different from a landlord who has a pressing need to occupy his own premises. In one case the tenant is allowed 6 months to vacate and in the other 2 months. Apart from this there is no essential difference. S. 14A was necessitated because of the Central Government's decision of September 9, 1975, that a person who owns a house in his place of work should vacate the Govt. accommodation allotted to him on or before December 31, 1975. Cases of bona fide requirement of private landlords under clause (e) of the proviso to sub-s. (1) of s. 14 were also placed in the same class and subjected to the same procedure, perhaps with a view to avoid the charge of discrimination. The legislature has grouped together this genera of cases. There is one procedure for both and that does not admit of any right of appeal to the Tribunal under s. 38. Such a right is inconsistent with the paramount purpose of Chapter IIIA, as I have said.

(24) Mr. Tandon, next argued that in his case the tenant was not entitled to come in revision to this court as he had approached this court earlier when he challenged the order, of the Tribunal before the order of eviction was passed against him by filing a revision (CR 710 of 1976) which I dismissed in limine on 22nd October, 1976. I cannot accept this argument. There are several answers to it. The order of the Tribunal could not be challenged in revisions because no order of eviction had been passed till then. It was after the case was remitted to the Additional Controller that he passed the order of eviction. Now the tenant has filed a revision against the order of eviction contending that, based as it is on the order of the Tribunal, it cannot stand. I do not see why he cannot now question the validity of the order of eviction. In my opinion the revision is competent. That the respondent landlord was at Govt. servant or that the tenant had come in revision earlier will not stand in the way of the tenant.

(25) The tenant in Mr. Ajit Singh's case has also filed a second appeal from order. That, the tenant's counsel submitted, was by way of abundant caution. But a second appeal is incompetent.

(26) My conclusion Therefore is that the Tribunal misconstrued and misunderstood the provision of s. 25B. Consequently the orders passed by the Tribunal in these cases are coram non judge.

(27) For these reasons I would allow C.R. 577 of 1977, C.R. 279 of 1977 and C.R. 730 of 1977 and set aside the order of the Tribunal in all the three cases. I would also set aside the orders of eviction passed in these cases and remit the applications for eviction to the Additional Controller to decide the same in accordance with the procedure of Chapter IIIA. S. A. O. 148 of 1977 is dismissed as incompetent. In the circumstances the parties are left to bear their own costs throughout.