(1980) 12 DEL CK 0029

In the Delhi High Court

Case No : Civil Revision Appeal No. 792 of 1979

Satish Swarup Gupta APPELLANT

Vs

Vraj Lal Mani Lal and Co. RESPONDENT

Date of Decision : 19-12-1980

Acts Referred:

Citation : (1981) 19 DLT 162 : (1981) 2 DRJ 37

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : R.B. Gupta and B.S. Charya, for the Appellant;

Judgement

Sultan Singh, J.

(1) This is a revision petition on behalf of the landlord under the proviso to Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter called ''the Act'') directed against the order of the Additional Controller dated 8th January, 1979 dismissing his application u/s 14(l)(e) of the Act for the eviction of the respondents.

(2) On 2nd September, 1976 the petitioner filed the eviction application against the respondents with respect to a garage in Property No. 5024, Plot No. 7B, ''Ragunath Sadan'', Netaji Subhash Marg. Delhi alleging that the garage in suit was let for parking a car, that the same is bona fide required by him, who is the owner, for parking his Fiat Car No. Dha 475, that he has no other reasonably suitable residential accommodation for parking his car. The petitioner has been living on the first floor of the suit property. The petition was tried under the summary procedure detailed in Chapter Iiia of the Act. The respondents filed an application for leave to contest but the same was dismissed on 18th November, 1976 by the Additional Controller and an order of eviction was passed. The respondents filed revision u/s 25B(8) of the Act (C.R. No. 366 of 1977) in this court which was accepted on 22nd August, 1977 and they were granted leave to contest on the question whether the suit premise were let out to them for

residential purposes. The matter was remanded. The respondents thereafter filed the written statement in terms of this court''s order dated 22nd August, 1977. The respondents in their written statement pleaded that the garage was let out to a commercial concern dealing with wholesale commercial business of manufacture and distribution of Bidis having its Head Office at Sagar (Madhya Pradesh), that it was let out for commercial purposes, that the garage was not let for residential purposes and has never been used as such, that the garage has been used for parking the various cars/vehicles belonging to it. It is further pleaded that the parking of a car is not a residential purpose and the fact that the garage is situated in a residential area would not be relevant for determining the letting purpose. The petitioner in his replication pleaded that the garage in question was let out to the respondents for parking their private car and not for parking the commercial vehicles in connection with their business. It was further pleaded that the garage was taken for the parking of the car of the General Manager of the respondents who had been living since 1954 in the same vicinity where the garage is situated. The petitioner further pleaded that the garage is attached to the residential flats forming part of the building and is situated in residential area, that in terms of the lease deed between the Delhi Improvement Trust and the predecessor of the petitioner relating to the plot of the property in suit, the garage could not be let out or used for purposes other than parking a private car, as the garage is attached to the residential flats.

(3) As already stated, the only question for determination in this revision petition is whether the garage, premises in suit, was let out for residential purposes. Both the parties have not raised any other question for determination u/s 14(l)(e) of the Act.

(4) Anant Ram Jain, General Manager of the respondents in his deposition admits that he has been living in Darya Ganj, i.e., near the garage in suit when the same was taken on rent by the respondents, that he is still residing in that area, that the garage was taken on rent for parking the passenger car and that he has no garage for parking his personal car. The petitioner deposes that the garage has been used for parking domestic car, that it was never used for commercial vehicle or business van and that the premises are residential. He also proves a copy of the lease deed dated 22nd December, 1939 entered into between the Delhi Improvement Trust and the predecessor of the petitioner. Besides the petitioner himself he examined Sohan Lal through whom it is alleged that the premises were let.

(5) The lease deed dated 22nd December, 1939 contains the clause regarding the user of the property in suit. Clause 6 of the lease deed says, "not to use the said land and buildings that may be erected thereon during the said term for any other purpose than the purpose of shops and residential flats without the consent in writing of the said Lesser; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the Lesser". This lease deed was granted for

a period of 90 years with effect from 22nd August, 1939 and in accordance with various other terms the plan for the construction of the building on the said plot consisting of shops and residential flats was to be approved by the Lesser, i.e. Delhi Improvement Trust, it appears that after the grant of lease the predecessor of the petitioner constructed the building in suit in accordance with the sanctioned plan. On the ground floor there are shops in front and garages on the back. On the upper floors there are residential flats. Section 14(l)(e) of the Act reads as under :

"14(L)(E): Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant : Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :- (e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. Explanation : For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes".

(6) Under this section the requirement that the premises were let for residential purposes has to be examined in relation to the date when the letting was done. The letting was done on or about 10th February, 1954 as is evident from the respondents'' letter of that date to Smt. Bhagwan Dai, predecessor of the petitioner. Thus it is to be seen what was the purpose of letting on that date. The letter dated 10th February, 1954 from the .respondents reads as under:-

"TO Shrimati Bhagwan Dai, "Raghunath Sadan" 7, Faiz Bazar, Delhi. Dear Madam, As verbally agreed with your grandson, we shall be pleased to fake over your Garage facing East of your building "Raghunath Sadan" 7, Faiz Bazar, Delhi on a monthly rent of Rs. 55.00 (Fifty five only) plus house tax which is Rs. 5.00 at present. We undertake to pay the rent regularly every month in advance by the fifth of each month. The garage will be used only for keeping the car and shall not be used for any other purpose whatsoever. No mechanical work shall be carried on therein, Motor driver or anybody else shall not reside in it. The water connection in the garage shall be used for car only. We will not sublet the garage and when we vacate it, it will be properly handed over to you or your agent. The tenancy is terminable on one month''s notice on either side. A cheque for Rs. 93.00 (Rupees Ninety three only) No. Dls 219583 on Punjab National Bank Ltd. S. B. Delhi in your favor is enclosed herewith. This amount is towards the rent for the period 10th February, 1954 to 31st March, 1954. Kindly send us a receipt for the payment we are making. sd/- Anant Ram Jain".

(7) By this letter the respondents undertook to use the garage for keeping the car and they further undertook not to use the same for any other purpose whatsoever. In other words, the respondents agreed that no mechanical work would be carried on, that the motor driver or anybody else would not reside and that water connection in the garage would be used for car only. The emphasis is on the fact that the garage would be used only for the parking of the car. It thus appears that the premises were taken on rent by the respondents and were let by the predecessor of the petitioner for the purpose of parking car in the garage in suit. The short question Therefore is whether letting for parking a car means letting for residential purposes within the meaning of clause (e) of the proviso to sub-section (1) of Section 14 of the Act. "".The words let for residential purposes'' used in this clause do not mean the premises let only for dwelling or sleeping having a kitchen. They mean and include also the premises let for purposes incidental to residence such as drawing room, dining room, store room and other places which an occupant of a house requires for his comfortable living for storing or keeping his articles. He requires a place for parking his car also. A garage where a person parks his car is thus a part of his residence. Parking of car by an individual would be incidental to his residence. Suppose a tenant was living in a house which had no garage of its own and he took a garage nearby for parking his car the purpose would not be commercial simply because only garage had been taken on rent for parking the car but the tenant had taken the garage for the parking of the car which purpose is incidental to actual residence.

(8) The purpose of letting can also be determined from the terms of lease between the owner of the property and the Lesser of the land underneath the building. If the purpose of user of land in terms of the lease deed is restricted, it may be presumed that the lessee of the land would use the land and building erected thereon in terms of lease otherwise there is always danger of his lease being forfeited. In terms of the lease deed relating to the land of the property in suit the building can be used for shops and residential flats. The shops are situated in front portion and garages are situated on the back portion of the ground floor. The upper floors are residential. The garages are the part of the residential flats and are to be used for parking cars. All persons who may be occupying residential flats on upper floors cannot use them for commercial purposes and hence garages attached to residential flats also cannot be used for commercial purposes. Thus it seems that there is an implied prohibition in terms of the said lease deed dated 22nd December, 1939 for the user of the garages for commercial purposes. In other words, the garages cannot be used for non-residential purposes. The letter dated 10th February, 1954 is the basis for the letting of garage in question to the respondents. It has to be determined what was the real purpose of letting or what was the intention of the parties at that time.

(9) Under the Act, the word ''premises'' has been defined in Section 2(i) of the Act as under :

"(I) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes- (i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building; (ii) any furniture supplied by the landlord for use in such building or part of the building ; but does not include a room in a hotel or lodging house".

(10) It seems that the premises can be let for three purposes only under the Act; (1) residence, (ii) commercial and (iii) any other purpose. The last category can include residence and commerce combined. In Act the last category would include all those purposes which cannot be included either in the first or in the second category. These three categories are used in the Act in a larger sense to include other allied uses in each category. In residence, one can include purposes which are incidental to residence. Similarly in the words ''commercial use'' would include commerce, industry and other commercial purposes. The premises in the instant case before me were let for parking a car. There is a writing to this effect as contained in the letter dated 10th February, 1954 set out above. This letter does not specify whether the purpose of letting falls under the first category, second category or the third category. It has to be determined by reference to other circumstances of the case to determine what was the intention of the parties at the time of letting i.e. in 1954 as regards the letting purpose within the meaning of the Act. In Section 14(l)(e) of the Act, the word ''residence'' has been used twice, (i) for the purpose of letting and (ii) for the purpose of requiring the premises for occupation as a residence. For both these purposes the word ''residence'' has to be given a wide meaning so as to include all those residences which in fact may not be actually used for residence but are let or required for purposes incidental to residence. The intention of the landlord to determine the letting purpose, in the absence of a writing mentioning any one of the said three purposes under the Act, may be determined from the nature of the properly, area where the property is situated, terms and conditions of the lease deed under which the landlord had obtained the plot for construction of the building. In the present case the property is situated in a residential area although there are shops in the front portion of the ground floor. The landlord-petitioner had taken the plot on lease. As already stated, under the deed dated 22nd December, 1939 the land and building thereon can be used only for purposes of shops and residential flats. The garages are attached to the residential flats. In terms of the lease deed between the predecessor of the petitioner and Delhi Improvement

(11) Trust it is certain that the premises cannot be used for commercial purposes. There is implied prohibition to use the building for commercial purpose except that part of the premises where the shops have been constructed. The remaining portion of the building in question can be used only for purposes of residence, or for purposes incidental to residence. The user of garage for any other purpose except parking of a car is prohibited under the said letter dated 10th February, 1954. It, Therefore, appears that the letting purpose of the suit

property cannot fall in the last category i.e. ''for any other purpose''. If the purpose falls in the last category, it means giving a license to the tenant to use it for any purpose he likes. He may use it for commercial purpose; he may use it for residential purpose and he may use it for both or any other purpose. If this license was intended to be given to the respondents, they would not have used the language as used by them in their said letter dated 10th February, 1954. Carrying on mechanical work is prohibited. Use of water connection for any purpose other than for the use of car is also prohibited. Residence of the driver or anybody else is also prohibited. The only permitted user of the garage is parking of a car. Thus it seems to me that the keeping of the car in the garage is a purpose incidental to residence of the occupants in the suit property. If the letting purpose does .not fall either in the last category i.e. ''for any other purpose'' or in the second category i.e. ''the commercial'', it can be safely held that parties intended to let out the garage in question for the purpose falling within the first category i.e. ''for use as a residence''. If the landlord had expressly let out the suit premises for the purpose of ''commercial use'', or ''for any other purpose'' i.e. a purpose which is neither residence nor commercial or had let out for the composite purpose of residence and commercial use, it could have been said that the letting purpose was expressly known to and mentioned by the landlord within the meaning of Section 2(i) of the Act. But in the present case there is no such express purpose agreed to by the landlord in the said letter dated 10th February, 1954 within the meaning of Section 2(i) of the Act. From the implied conditions of the lease deed with Delhi Improvement Trust and the purpose for which admittedly the garage is being used i.e., for keeping the car and as the garages in the property are attached to the residential flats on the upper floors it seems that the intention of the predecessor of the petitioner was to let the premises in suit i.e., the garage for purpose incidental to residence. In other words, the garage was let for use as a residence. It is contended on behalf of the respondents that the motor driver or anybody else is not allowed to reside in it and, Therefore, it cannot be said that the premises were let for residential purposes. I do not agree. I have already observed that the premises may be let for purposes incidental to his residence. The General Manager of the respondents has been residing in the vicinity of the suit premises. He may require the garage for keeping his car. This was a purpose incidental to his residence. Moreover, if there is prohibition for the residence of anybody in the garage it does not mean that the premises ceased to be used as incidental to residence. The garage is meant for parking which is a purpose incidental to residence and Therefore if residence of anybody is prohibited it cannot be said that the garage is not let or meant for residential purposes.

(12) The Additional Controller after referring to the letter dated 10th February, 1954 by the respondents to the predecessor of the petitioner came to the conclusion that the premises were not let for residential purpose as there is prohibition for residence of the driver or anybody else. As already stated, prohibition of driver or anybody else to reside in the garage cannot mean that

the garage cannot be used for purpose incidental to residence. I am, Therefore, of the view that the garage in question was let to the respondents for a purpose incidental to residence. In other words, it was Jet out for use as a residence within the meaning of Sections 2(1) and 14(l)(e) of the Act.

(13) Lastly, it was contended by the learned counsel for the respondents that the garage was taken by the commercial firm, and, Therefore, it must be held that the garage was let for commercial purposes. The respondents have not carried out any business activity in the garage. They have not used it for commercial purposes. As already observed, commercial use of the garage is prohibited under the terms of the lease deed dated 22nd December, 1939. By any stretch of imagination it cannot be held that the promises were let for commercial use to the respondents. In International Radio and Electric Engineers Co. v. Smt. Sheela Wanti 1980 (1) R.C.R. 691 it was held that a garage let to a company on rent for parking company''s car does not amount to use of garage for business purposes. I, Therefore, hold that the Additional Controller was in error in holding that the premises i e. the garage in question was not let out for residence. The order of the Additional Controller is set aside. The petition for eviction satisfies all the ingredients of Section 14(l)(e) of the Act. An order of eviction is, Therefore, passed against the respondents with respect to the garage in suit. The eviction order shall not be executable for a period of six months. Parties are left to bear their own costs.

