

(1993) 03 DEL CK 0010

In the Delhi High Court

Case No : Second Appeal No. 12 of 1990

Sunil Puri and Others

APPELLANT

Vs

Modi Spinning and Weaving Mills Company Ltd.

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Delhi Rent Control Act, 1958 — Section 21

Citation : (1993) 50 DLT 257 : (1993) 26 DRJ 366

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : Madan Bhatia, V.K. Makhija, Sanjeev Sindwani, Rajiv Nayar, R.L. Tandon, Vijay Gupta, R.S. Endlaw and G.D. Goel, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The appellants in this second appeal are owners/landlords of property bearing No.12, Friends Colony (West), New Delhi, who had initially let out these premises to the respondent M/s. Modi Spinning and Weaving Mills Company Limited, (for short "the Company"), for a period of five years four months by means of an application, filed before the Rent Controller, u/s 21 of the Delhi Rent Control Act, 1958, (for short "the Act"), on 16.8.77. This application came up before the Additional Rent Controller on 17.8.77 when statements were recorded. The application had been made on behalf of three owners/landlords, who are brothers, signed by two of them personally, and by their mother as duly constituted attorney of the third brother, namely, Suresh Puri. At the time statements were recorded, one of them, namely, Sunil Puri, appeared and reiterated on oath the averments that had been made in the application u/s 21 of the Act, and expressly stated that premises were contemplated to be let out to the respondent company for a limited period of 64 months, as per terms and conditions contained in the draft lease deed, annexed to the application as A-2.

(2) It may be noted that in the application details were given as to why the premises were not required for this period of 64 months, by the three brothers

for their residence, implying- thereby that these would be required by them on the expiry of the said period.

(3) On behalf of the respondent Company, Mr. Namo Narain, company secretary, appeared and accepted the terms set out in the application u/s 21 of the Act, as correct. It was also signed by him on behalf of the company as Company Secretary, and he further stated explicitly that he had been authorised to make statement on behalf of the company by means of a letter of authority, which he filed as Ex.R-1.

(4) Permission was granted in terms of the application and the statements made by order dated 17.8.77, and the lease deed executed on 18.8.77, on the same terms as set out in the draft lease deed. The lease deed was duly registered subsequently on 29.8.77. This lease deed was signed on behalf of the Company by Mr. Namo Narain as Company Secretary, preamble whereof expressly stated that it was being executed between the owners/landlords on the one hand, as Lessors, and the Company as a lessee, through Secretary of the Company, Mr. Namo Narain. Salient features of this lease deed, in so far as these are relevant to the present appeal, were that term of the tenancy was agreed to be 64 months, effective from the date of grant of permission, and that the premises shall be used by the lessee for residential purposes only. There is also a reference in the preamble that the lease deed was pursuant to the order u/s 21 of the Act.

(5) It appears that shortly before the expiry of the period of limited tenancy, the appellants, as owners/landlords, called upon the Company to hand over vacant possession of the premises on the due date, which fact is indicated from a reply dated 6.12.82 sent on behalf of the Company, through M/s. Khaitans & Partners, Advocates by registered post, proved, on record as Ex.DHW1/1. There is a clear reference in the subject title of this reply that it was being sent on behalf of the clients, (M/s. Modi Spinning and Weaving Mills Co. Ltd.), namely, the respondent company, and it was also admitted that the letting was by means of permission u/s 21 of the Act for a period of 5 years 4 months, but the contention advanced was that real intention was that the tenancy would be a general p=09 tenancy, and not circumscribed by any limit of the period for which it was to subsist, and that it was only because of the insistence of the appellants that the letting would be by means of an application u/s 21, and on the assurance that this was by way of formality, and that in case rent was paid regularly, and there was no other cause for complaint, then the lease would continue. The plea of the landlords that the premises were required by them for their own use and occupation was also repudiated in details set out in this reply.

(6) Apparently, possession of the tenancy premises was not handed over to the owners/landlords after expiry of the limited tenancy and they moved a second application which can be described as execution application, seeking possession of the premises in terms of order u/s 21 of the Act. This application was moved on 11.5.83, i.e. within the period of six months after the due date, but the respondent company instead of vacating the premises, filed objections through

the Managing Director, Mr. Yogendra K. Modi, on 4.5.84, reiterating practically all the contentions that had been set out in the reply sent on 6.12.82.

(7) Preliminary objections were also taken that, in fact, the permission u/s 21 was for letting of the premises in favor of Mr. Namo Narain, and not in favor of the Company, and accordingly in strict sense of the term, the company was not a judgment-debtor or bound by the terms of the order u/s 21 of the Act. It was reiterated, on the pattern of the reply sent on 6.12.82, that the application u/s 21 and the entire proceedings were byway of camouflage, and the real intention was to create a general tenancy subject to the tenant complying with the terms of the lease, such as payment of rent regularly, and not giving any other cause for grievance to the owners/landlords. It was further contended that the petitioners, namely, the three brothers, had various other properties, belonging to their family in Delhi, and that it was not a case that they genuinely required the tenancy premises after expiry of the limited tenancy of 5 years 4 months, and further that the grounds stated as to why each of the three brothers did not immediately require the premises for occupation when the permission was sought, and would so require after the expiry of the limited period, were all false, and as such, the tenancy cannot be treated a limited term tenancy, and the respondent was not obliged to hand over vacant possession on the expiry of the said period.

(8) These objections found favor both with the Addl. Rent Controller and the Rent Control Tribunal, primarily on the view that there was an obligation on the part of the appellants while making an application u/s 21 of the Act to disclose what properties were owned by them, or their family, and further that on the facts and circumstances that came on record, it did not appear to be a genuine case where they did not require the tenancy premises only for a particular limited period, and the reasons set out in the application were made up grounds for the purpose of taking benefit of section 21, and that, in fact, those provisions were not available, and as such they were not entitled to seek possession of the tenancy premises, after expiry of the said period.

(9) Before proceeding further with the disposal of this second appeal, it may be mentioned that in so far as the objection as to the tenant being Mr. Namo Narain, Company Secretary, in terms of the order u/s 21, and not the Company, was concerned, that became in fructuous because on appellants making an application u/s 152 of the CPC before the Addl. Rent Controller, who was seized of the matter, the same was allowed, by expressing the view that from the application moved and statements made before the Addl. Rent Controller at the time of grant of permission as well as the proposed lease deed, the intention was clear that the premises were being taken on rent by the company, and that Mr. Namo Narain was only appearing as an authorised person on behalf of the Company, for the purpose of making statement. The Rent Control Tribunal also endorsed this view and dismissed the cross-objections filed by the respondent in this respect. However, on merits, the Rent Control Tribunal, as already noted,

found it to be a case where permission u/s 21 of the Act was obtained by way of subterfuge to get over the general law applicable to the tenancies governed by the Act, and that the appellants were not entitled to seek possession after expiry of the limited period for the reason that they had not made out any case at the time of letting of the premises that they did not require them only for a limited period, and that they were under obligation to disclose complete facts to the Controller including total number of properties, in the family pool.

(10) Appellants, while assailing this order of the Rent Control Tribunal, have pleaded that both the authorities below have erred in taking the view that the letting u/s 21 of the Act was not for real, and that in fact it was a make believe exercise for the purpose of circumventing the general law of the land, relating to tenancies.

(11) The respondent has also persisted in the contention about the tenant, under terms of the order u/s 21, being Mr. Nemo Narain, by filing cross objections in this second appeal.

(12) In so far as the appeal is concerned, Mr. Bhatia appearing for the appellants, has argued at the outset that the issue involved is no longer rest integra, and it has not only been finally settled by a catena of judgments of the Supreme Court, but also by this court in some cases, decided recently, on a resume of the entire case law on the subject. The learned counsel contended that in face of this state of law, the objections taken up by the respondent were not even maintainable. Mr. Bhatia further highlighted the fact that whatever has been urged, besides the preliminary objection about the tenant being Mr. Namo Narain, which is to be dealt with separately, there is no new point made in the objections, but is merely a reiteration of what was already stated by the respondent company in the reply sent on 6.12.82. That being the case, according to the learned counsel, the objections, after expiry of the limited period, on grounds that real intention of the parties was different or that the permission u/s 21 was obtained by statement of false facts or by subterfuge to get over general law of the land, or by a fraudulent concealment of the correct state of affairs on the part of the landlords, were not maintainable.

(13) Mr. Bhatia based his arguments on the principle that unless the tenant is able to show that there were some such fresh facts coming to his knowledge after the expiry of the period of tenancy, which would vitiate the permission u/s 21, the law as now laid down by the Supreme Court is that the tenant cannot be heard to take up pleas of facts after enjoying full period of limited tenancy, and that too in reply to execution application filed by the landlord. The learned counsel referred to the following Supreme Court judgments, propounding the aforesaid proposition of law, starting from the case of J.R. Vohra Vs. India Export House Pvt. Ltd. and Another, , Smt. Yamuna Maloo Vs. Anand Swarup, , Shiv Chander Kapur vs . Amar Bose, , Panjak Bhargava and another Vs. Mohinder Nath and another, , Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, , where entire case law has been summed up, overruling the view propounded earlier,

particularly in the case of S.B. Noronah Vs. Prem Kumari Khanna, to the effect that at the time of granting permission u/s 21 of the Delhi Rent Control Act, it was incumbent on the Rent Controller to scrutinise correctness of the grounds stated before him, and it was correspondingly obligatory upon the landlord to set out true facts, and disclose all the relevant material, and that in case it is found on the plea of the tenant that either the grounds stated were false or by way of camouflage, or misrepresentation, and further that the Rent Controller in turn had failed in his duty to critically examine the correctness or otherwise of the grounds stated, or had mechanically accorded permission, then it was open to the tenant subsequently, when the landlord seeks possession, to come and show to the court as to what was the true state of affairs, and contest right of the landlord to recover possession, by taking objections to the order passed u/s 21 of the Act.

(14) The Supreme Court has very expressly in the case of Pankaj Bhargava (supra) ruled that it was not obligatory on the landlord to state the grounds or reasons for seeking permission for limited period of tenancy, nor it is obligatory for the Rent Controller to examine at length the purpose behind the statement made and that there can be no challenge to an order made u/s 21 of the Act on the ground of the same being nullity or lacking in validity for the reason that the grounds did not, in fact, exist.

(15) The judgment in the case of Pankaj Bhargava (supra) subsequently endorsed the view taken in the case of Shiv Chander Kapoor (supra). It was further elaborated that objections other than that of jurisdictional fact, were not available to the tenant after the expiry of the limited period of tenancy, and that in such type of objections, it was incumbent on the tenant to come during the subsistence of the limited tenancy, and not after the landlord took out execution, which view was confirmed very explicitly in the latest judgment in the case of Shrisht Dhawan (supra).

(16) Mr. Bhatia pointed out that in the present case not only that the sections were filed long after the expiry of the period of tenancy, but about a year after the execution was taken out, and it is on record that even then every endeavor was made to evade service of notice of execution, so much so that ultimately substituted service had to be ordered by the court by publication in the newspaper, and it was only thereafter that objections were filed, reiterating all that had been already stated in the reply dated 6.12.82, which means that no new fact was being disclosed, which would entitle the respondent to come up with objections at the stage they came, in -the light of the aforesaid judgments, referred to above.

(17) The learned counsel has also placed strong reliance on the judgments of this Court in the cases of Shri O. Bahree vs. M/s. Rikhi Bros., 1993 (1) DL 21 and Oriental Express Co. Pvt. Ltd. vs. Smt. Usha Pasricha, 1993 (1) DL 43, where this Court after detailed discussion of the entire case law, and all the possible contentions, which could be raised by the tenant, came to the conclusion that the

only jurisdictional facts, which could entitle the tenant to approach the Court to resist landlord's application for possession, were elaborated by the Supreme Court in the case of Shrisht Dhawan (supra); (1) that letting was not for residential purpose, and (2) that the premises were not vacant for being let out for a particular period. Mr. Bhatia mentioned during hearing that S.L.Ps. against both the judgments have been dismissed.

(18) Mr. R.L.Tandon, appearing for the respondent tried to make out the present to be a case, distinguishable on facts by contending that the second jurisdictional fact could not be limited to the issue that the premises were not vacant for letting, and that in fact in Shiv Chander Kapoor's case, the position stated was that the premises should not be required by the landlord for a particular period, which in turn was in consonance with the terms of section 21 itself, and that accordingly the plea in this case is not that the premises were not vacant for letting, as in the case of O. Bahree (supra) or in the case of Oriental Express Co. Pvt. Ltd. (supra), but that the statement made at the time of applying u/s 21 that the premises were not required for a limited period, was not correct, and that essential jurisdictional fact was lacking at the time permission was sought and applied for.

(19) I have given my careful thought to this contention raised by Mr. Tandon. I am in respectful agreement with what has been laid down as to the intention and scope of the expression, "jurisdictional fact" in the case of Shiv Chander Kapoor (supra) vis-a-vis the dictum laid down in Shrisht Dhawan's case (supra), because the emphasis in both the cases is that in case it is shown that the statement was false to the effect that the premises were not required for a particular period, and were vacant as such then that may be tantamount to absence of essential Jurisdictional fact u/s 21 of the Act. But after saying so, the Court in Shrisht Dhawan's case, (supra), went on to observe as a proposition of law that the question still remained to be examined as to what objections could be filed by the tenant after the limited period of tenancy, and what made it obligatory on the tenant to come during the subsistence of a tenancy period, and came to a clear finding that where deceit or fraud is alleged or an attempt at circumvention of law is attributed, then it is a case not of lack of jurisdictional fact, and if facts set out in the objections were within the knowledge of the tenant before the expiry of period of limited tenancy, then he cannot be heard qua those objections after expiry of the tenancy period, and in no case in response to the execution application filed by the land lord.

(20) In the present case the objections precisely were that there was, in fact, nondisclosure of correct facts or there was concealment of essential facts, when the permission u/s 21 was obtained, and the same was not for genuine reasons but was a camouflage; and that the real intention was that the letting would continue even after the period of limited tenancy.

(21) Apart from the fact that on the authority of Shrisht Dhawan (supra) judgment these objections are to be shut out as it is evidenced by the reply

dated 6.12.82 sent through advocates that all these alleged facts were within knowledge of the respondent otherwise also, on the question as to what the real intention between the parties was, in view of the fact that there is a registered lease deed containing all the terms and conditions of the tenancy, and this in turn corresponds with the draft lease deed, filed Along with application u/s 21 of the Act. I do not think that in view of section 92 of the Evidence Act, it is open to the respondent to plead otherwise.

(22) It is interesting to note that the objections have been filed through the Managing Director Mr. Yogendra K. Modi who, according to evidence or. record, has been in occupation of the tenancy premises under the terms of the lease deed and it is under his letter of authority that Mr. Namo Narain made statement before the court at the time of permission u/s 21 of the Act,, as evidenced by Ex.R1. It is, Therefore, not a case where Mr. Yogendra K. Modi was not in the picture, at the time of letting u/s 21 of the Act, because it is he who authorised Company Secretary Mr. Nemo Narain to make statement on behalf of the company, which was shown to be the respondent in the application u/s 21 of the Act.

(23) It, Therefore, does not now lie in the mouth of Mr Modi who, for all purposes, is the objector in the case, being presently in occupation, and also being the managing director of the respondent company, who was shown the proposed tenant, in the application and the draft lease deed, to now urge that the tenancy was in the name of Mr. Namo Narain, and not in his name. Even when the reply was sent through lawyer on 6.12.82, even then it was no where pleaded that the respondent company was not the tenant, and in fact reply was sent on behalf of the Company stating all the facts, as now set up in the objections. The logical corollary of such a contention would be to render possession of the Company or Mr. Yogendra K. Modi as unauthorised, with inevitable implication of not having right to occupy or continue in possession of the tenancy premises. That surely is not the position taken up by the respondent.

(24) There is thus no merit or substance in the contention as strenuously urged by Mr. Tandon that Mr. Nemo Narain was the real tenant, and till the amendment of the order u/s 21 had taken place, execution application itself was not maintainable against the company, as the Addl. Rent Controller had rightly held that the real tenant, from the inception, was the Company, and that was the real intention of the parties, and that it was only a case of accidental slip that name of Mr. Namo Narain was mentioned in the order. To that extent, I do not find any error committed by the authorities below, in accepting the pica of the appellants that the respondent company was the real tenant, and dismissing the preliminary objection of the respondent that the execution application was not maintainable against the company, as name of Mr. Nemo Narain, in the order has been rightly held to be a result of accidental slip, and what was required was only a clarification of the actual position, particularly when Mr. Nemo Narain throughout represented himself to be the Secretary of the Company, and letting was

intended to be in favor of the Company, and he gave statement in court on behalf of the Company, under letter of authority of very same Mr. Yogendra K. Modi, who filed objections.

(25) On facts, as already discussed, I see no reason to take a view different as taken by me in the case of O. Bahree (supra) and Oriental Express Co. Pvt. Ltd. (supra), and as observed in another case, namely, Smt. Raj Kumari Walia vs. P.N. Premanandan, 1993 (1) DL 152, that here the facts, speak of the conduct of the respondent tenant being mala fide, because not only that objections were not filed during subsistence of the tenancy period, but every effort was made to avoid service, after the execution was taken out, and eventually substituted service had to be ordered, and objections were filed only thereafter, by which time a period of more than 1-1/2 years had already been gained by the tenant, even after expiry of the limited period of tenancy.

(26) Mr. Bhatia has also explained during arguments that in fact the intention was to let out the premises for a limited period of five years, but since the letting took place in the month of August, it was at the instance of the respondent company to round up the period up to December, that the period of limited tenancy worked up to 5 years 4 months. The learned Rent Control Tribunal fell into manifest error by holding that at the time permission was applied for, and obtained, the appellants had to make out a case in the same way as if a petition u/s 14(l)(e) were to be filed, and satisfy the Controller that the premises would really be required bona fide for their residence after the expiry of the limited period. That is not the requirement of section 21 as has been held expressly in the case of Shiv Chander Kapoor (supra) and by this Court in the case of Oriental Express Co. Pvt. Ltd. (supra). The Supreme Court in the case of Shrisht Dhawan (supra) has categorically laid down that neither reasons need be stated by the landlord nor scrutinized by the Rent Controller, and as held in the case of Pankaj Bhargava (supra), there can be no challenge to the validity or legality of permission granted u/s 21, nor any collateral challenge allowed to be made, and further that all objections on questions of fact should be taken up by the tenant during the subsistence of the tenancy, and not after enjoying full period of limited tenancy, when the landlord applies for being put in possession. The present is also not a case where tenant was unlike Noronah's case (supra), in any unequal bargaining position vis-a-vis the landlords.

(27) It is, Therefore, a case where both the courts below erred in appreciating the scope and ambit of section 21 of the Act, and dismissing the execution application of the appellants, as landlords, on objections which were not even maintainable at the time these were filed, and not being open to the tenant at that stage.

(28) I also do not find any merit in the contention, set forth by Mr. Tandon, that appellants' stand deprived of their right to contend that objections on facts were not maintainable for the reason that after objections were set out for evidence, they filed a petition under Article 227 of the Constitution, challenging the order

of the Rent Controller in fixing the date for evidence, which was disposed of by the High Court, by fixing a time frame for disposal of the execution application filed by the appellants. A reading of the order, under reference, passed on March 25, 1987 makes it abundantly clear that the court did not express any opinion as to the maintainability of the objections on facts, but Finding the order in disposal of the landlords' application, appalling, directed as an interlocutory measure that it be disposed of by a given date, and observed unequivocally that the order was "without prejudice to their rights to raise contention on merits at any subsequent stage, if so advised or if so found necessary". It cannot, Therefore, be urged on the strength of this order that appellants are estopped from contending that objections were not maintainable.

(29) I, Therefore, allow .the present appeal with costs. Counsel fee Rs.5,000.00 . The cross-objections are also dismissed.

(30) The respondent company shall hand over peaceful vacant possession of the tenancy premises to the appellants within two months from today. In the event of failure on the part of the respondent to do so the appellants shall be entitled to take out warrant of possession, on the expiry of two months from today.

(31) Trial court records, Along with that of execution application, be sent back with a copy of this judgment.