

PETITIONER:
RAM NARAIN ARORA

Vs.

RESPONDENT:
ASHA RANI & ORS.

DATE OF JUDGMENT: 31/08/1998

BENCH:
A.S. ANAND, S. RAJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT:

THE 31ST DAY OF AUGUST, 1998

Present:

Hon'ble Dr. Justice A.S. Anand
Hon'ble Mr. Justice S. Rajendra Babu

Ranjit Kumar, Chandra Bhushan Prasad, Ms. Binu Tamta and Ms. Anu Mohla, Advs. for the appellant
Gopal Subramanianiam, Sr. Adv., S.K. Mathur and V.B. Saharya, Advs. for M/s. Saharya & Co., advs. with him for the Respondents

J U D G M E N T

The following Judgment of the Court was delivered:
Rajendra Babu, J.

This is a tenant's appeal arising out of certain proceedings initiated under the Delhi Rent Control Act (hereinafter referred to as "the Act"). the respondent-landlord filed a petition under section 14(1)(e) read with Section 258 of the Act seeking for the possession of the house by evicting the appellant as he required the same for his bona fide need and occupation. The appellant before us filed his written statement contending that the landlord has alternate accommodation at Subzi Mandi and he has deliberately shifted to the disputed premises with an ulterior motive to make out a case for the eviction of the respondent and this fact of availability of the said premises in subzi Mandi had not disclosed in the petition.

In the course of the proceedings before the Rent Controller a finding was recorded by him as to the bona fide requirement of the respondent in the following terms:-

"If the accommodation in occupation of the petitioner on the ground floor of the house in dispute is compared with the extent of the family members of the petitioner excluding of course Kisahn Sarup Bhatnagar, the petitioner would be said to be too short of accommodation and if the petitioner does not have any other suitable residential accommodation he should be entitled to an eviction order.

On the question whether the respondent had disclosed the full facts necessary for the disposal of the petition filed by him, the Rent Controller noticed that from the evidence recorded, the allegation of respondent No. 1 in the written statement in respect of the accommodation in possession and available to respondent in No. 2772, Subzi Mandi, Delhi stands proved. And, therefore he has not come to the Court with clean hands. He had suppressed the information which was in his possession as to the availability of the house at Subzi Mandi at the time of filing of the petition and as well as filing of their replication. He surrendered this accommodation only on 21.8.1984, that is, during the pendency of the petition. The respondent No. 1 has alleged that the appellant shifted to the ground floor of the house in dispute about a year prior to 1.1.1983 and the petition was filed on 24.7.1983. he accepted the stand of the appellant that the respondent had done so with the mala fide intention to avict him.

Matter was carried to the High Court in Revision. The High Court agreed with the finding of the Rent Controller as regards bona fide requirement of the landlord-respondent. On the controversy of the non-mentioning of the availability of accommodation at 2772, Subzi Mandi and that there was not true disclosure of the facts, the High court examined the matter in detail. The High Court noticed that father of the respondent Din Dayal Bhatnagar had rented the premises at 2772, Subzi Mandi from a Trust in the year 1944 and thereafter he was residing in the said premises with his family. Din Dayal Bhatnagar died in the month of August 1980. After his death, Rameshwar Sarup Bhatnagar, the original petitioner in the eviction petition continued to reside in that accommodation at Subzi Mandi where his father was a tenant. Rameshwar Sarup Bhatnagar shifted from the said accommodation to the ground floor accommodation when the same became available to him sometime in 1982. The landlord of Subzi Mandi property had served a notice upon the respondent to vacate the premise in the year 1981. The actual possession of the Subzi Mandi house was handed over to the landlord in March 1984 as per receipt at Ex. AW1/1 to AW1/3. The said receipts disclose the name of Din Dayal Bhatnagar though he had demised long back and thus the landlord did not accept or recognize the respondent Rameshwar Sarup Bhatnagar as a tenant. For about two years prior to the actual handing over of the possession of the premises, the same remained locked an in possession of the respondent, Since Rameshwar Sarup Bhatnagar had shifted to the suit property along with his family in the year 1982. The High Court felt that in the peculiar facts of this case it was necessary to examine whether the said accommodation could be said to be "other reasonably suitable residential accommodation available to the respondent" and held firstly that the respondent had shifted to the in the suit premises long before filing of the present eviction petition and the Subzi Mandi accommodation was not reasonably suitable residential accommodation available for him and his family. Secondly in view of the notice of eviction served on the respondent by the landlord of the subzi Mandi property. he was under pressure of being evicted from the said premises. The High Court was of the view that the respondent could not be said to have other reasonably suitable accommodation and therefore non-disclosure thereof could not be fatal to the petition and on that basis allowed the petition.

Shri Ranjit Kumar, learned counsel for the appellant submitted that the landlord had not approached the Court with the necessary candor required under law in not

disclosing the availability of the premises. In the petition filed before the Rent Controller by the landlord at column No. 18, he has claimed that the suit premises is required by him for his occupation for himself and member of his family dependent on him and he has no other reasonably suitable residential accommodation. Again in column No. 19 at para (vi), the respondent states that he has no other residential accommodation except the suit property. In the affidavit filed by the respondent, the appellant has no answer to the petition filed by the respondent for his eviction. He has referred to the accommodation in house No. 2772, Gali Lala Ram Roop, Subzimandi in the 1st floor and the 2nd floor. He also refers to one more accommodation in Subzimandi which the respondent has deliberately concealed from the Court. It is claimed that in the written statement this position is reiterated. In the Rejoinder Affidavit filed by the respondent, he stated that it is wrong to state that he has any residential accommodation in House No. 2772, Gali Lala Ram Roop, Subzi Mandi as alleged and he has no portion in his possession and he has also denied that he has any other residential house in Subzi Mandi. The Secretary of the Trust who own the property at No. 2772, Subzi Mandi, Delhi stated that the property had been originally let out to Din Dayal Bhatnagar and he died about three years back. The original respondent was the son of Din Dayal Bhatnagar and the same remained locked for about two years and thereafter Rameshwar Sarup Bhatnagar delivered vacant possession to them in 1984. He stated that he has no personal knowledge of the accommodation available in the suit premises.

In the course of the affidavit of Rameshwar Sarup Bhatnagar, it was stated that he was not in possession of any part of the property and Din Dayal Bhatnagar was a tenant of the property which he has vacated on 21.3.1984. His father was a tenant of the first floor and the barsati on the second floor. Three rooms with kitchen and bath were in tenancy of his father and he cannot say that the size of one room was 14" x 18" and that the barsati was a pucca room and had a door. The trust has given a notice to him to vacate the premises in 1981.

Shri Ranjit Kumar, learned counsel for the appellant contended that under Section 25B(8) proviso, the powers of revision of the High Court were limited and would not extend to the re-examination of findings of fact in the case and suppression of the fact as to the availability of the premises was one such finding. The rent Controller also found that with a mala fide intention to evict the appellant from the suit premises he shifted the suit premises from Subzi Mandi. In support of his contention he relied upon the decision in Hari Shankar vs. Rao Girdhari Lal Chowdhury 1962 (Supp- 1) SCR 933, and Sushila Devi and Others vs. Avinash Chandra Jain and Others (1987) 2 SCC 219. He submitted that unless the findings are manifestly unjust the High Court could not have interfered in the matter.

Shri Gopal Subramaniam, learned Senior Advocate in his reply submitted that the power of revision includes correction of errors of law and on occasions would include intervention of findings of facts where the right of a party is involved which is conferred on a party; that when the bona fide requirement of the landlord was established, the fact that there was suppression of certain fact becomes extraneous; that the trial court having taken into consideration the accommodation available in Subzi Mandi premises came to the conclusion that the requirement of the landlord was bona fide, but even so it came to the conclusion that the suppression would not affect the case at

all; that pleas are raised in order to put the other party to notice and when the other party is already in the knowledge of such information, the relevance of the lack of pleadings is of no effect; that ascertainment of facts for the purpose of finding are requirement whether bona fide or not is a matter of detail and that exercise has been done in this case. Therefore, he submitted relying on the decisions in Meenal Eknath Kshirsagar (Mrs) vs. Traders & Agencies and another (1996) 5 SCC 344, and Ram Dass vs. Ishwar Chander and Others (1988) 3 SCC 131, that the view taken by the High Court must be upheld.

Section 141(1) (e) of the Act reads as follows : -

" Sec. 14(1) (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:

In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the Court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the Court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the Court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defend the claim of the landlord.

There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the Court to decide the matters. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyses from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.

It is no doubt true that the scope of revision petition under Section 25B(8) proviso of the Delhi Rent Control Act is very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but

in a given case the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances it became necessary for the High Court to re-examine the matter and then decide the entire question. We do not think that any of the decisions referred to by the learned counsel decides the question of the same nature with which we are concerned. Therefore, detailed reference to them is not required.

In the result, this appeal stands dismissed, but in the circumstances of the case, parties shall bear their own costs.

In the facts and circumstances of the case, it would be appropriate that the appellant be allowed time to vacate the premises till 31st of May, 1999 subject to his furnishing the usual undertaking in the Court within four weeks from today.