

Smt. Mohini Badhwar vs Raghunandan Saran Ashok Saran on 27 April, 1989

Equivalent citations: 1989 AIR 1492, 1989 SCR (2) 748, AIR 1989 SUPREME COURT 1492, 1989 3 SCC 583, (1989) 2 JT 259 (SC), 1989 RAJLR 262, (1989) 17 DRJ 41, (1989) 1 RENCJ 583, (1989) 1 RENCJ 494, 1989 (3) SCC 72, (1989) 38 DLT 135

Author: R.S. Pathak

Bench: R.S. Pathak

PETITIONER:

SMT. MOHINI BADHWAR

Vs.

RESPONDENT:

RAGHUNANDAN SARAN ASHOK SARAN

DATE OF JUDGMENT 27/04/1989

BENCH:

PATHAK, R.S. (CJ)

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VENKATACHALLIAH, M.N. (J)

CITATION:

1989 AIR 1492 1989 SCR (2) 748

1989 SCC (3) 72 JT 1989 (2) 259

1989 SCALE (1) 1123

ACT:

Delhi Rent Control Act, 1958 : Section 14(1)(h) -- Tenant obtained vacant possession of own house -- Sold it four days later -- Circumstance that tenant lost possession on the date of filing of eviction petition -- Whether affords protection against eviction -- 'Acquired vacant possession of a residence' -- Interpretation of.

HEADNOTE:

The respondent-landlord filed a petition for eviction of the appellant-tenant from the suit premises under s. 14(1)(h) of the Delhi Rent Control Act, 1958 on the ground

that the appellant had acquired vacant possession of her house on November 20, 1973, after the suit premises had been let out to her on April 1, 1971. The appellant contended that she was not liable to be ejected.

The Assistant Rent Controller and the Rent Control Tribunal concurrently held that even though the house owned by the appellant was not in her occupation on the date the petition was filed, it was sufficient for the purpose ors. 14(1)(h) that sometime before the filing of the petition she had obtained vacant possession of the house, and thus had alternative accommodation during November 20-24, 1973, i.e., from the date she obtained vacant possession from her tenant till she sold it. The High Court also held that the ground for ejectment had been made out when the eviction petition was filed.

In the appeal before this Court, on behalf of the appellant-tenant it was contended that before the earlier tenant had vacated the house, the appellant had already entered into an oral agreement to sell the house to another person, which was formalized on a written document on November 24, 1973 and as the appellant was under legal obligation to sell the house she was not entitled to enter into and to continue in possession of the house when it was vacated, and therefore, the house could not be said to constitute alternative accommodation, for the purpose ors. 14(1)(h) of the Act.

Dismissing the appeal,

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HELD: The Rent Control Tribunal has found against the existence of any oral agreement for the sale of the suit house. It was only after four days of obtaining possession on November 20, 1973 from the original tenant that the appellant executed an agreement for sale. Thus, it is clear that the appellant came into the house belonging to her on November 20, 1973 and it was available to her for her occupation. The circumstance that she lost possession on the date when the eviction petition was filed does not protect the appellant against s. 14(1)(h) of the Act. [750F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1842 of 1981.

From the Judgment and Order dated 30.4.1981 of the Delhi High Court in S.A.O. No. 418 of 1978.

Mrs. Shyamala Pappu, H.K. Puri and S.D. Lal for the Appellant.

Dr. Y.S. Chitale, S.N. Kacker, Mukul Mudgal and N.S. Das Bahl for the Respondent.

The Judgment of the Court was delivered by PATHAK, CJ. This is a tenant's appeal arising out of proceedings for her ejection.

The respondent, as landlord of the premises let to the appellant, filed a petition for her eviction on the ground set forth in s. 14(1)(h) of the Delhi Rent Control Act, 1958, that is to say, that the appellant had "acquired vacant possession of a residence" after the commencement of the Act, viz, her own house D-196, Defence Colony, New Delhi and was therefore liable to hand over possession of the rented premises occupied by her to the respondent. It was alleged that the appellant had acquired vacant possession of her house on 20 November, 1973 after the premises in suit had been let out to her on April, 1971. The appellant denied that she was liable to ejection.

The Assistant Rent Controller, Delhi, and the Rent Control Tribunal concurrently held that the appellant was owner of house D-196, Defence Colony, New Delhi, that on 20 November, 1973 the previous tenant had vacated the premises and handed over vacant possession and that thereafter she had sold it to one Smt. Leela Wati on 24 November, 1973. It was observed that during the period 20 November, 1973 to 24 November, 1973 it must be taken that she was in possession of alternative accommodation. It was also held concurrently that even though on the date the petition for eviction was filed, the house, D-196, Defence Colony, New Delhi, was no longer in the occupation of the appellant it was sufficient for the purpose of s. 14(1)(h) that some time prior to the filing of the eviction petition the appellant had obtained possession of the house. The High Court endorsed the view taken by it earlier in *Hem Chand Baid v. Smt. Prem Wati Parekh.*, AIR 1980 Delhi 1 and in the view that the ground for ejection had been made out when the eviction petition was filed it dismissed the appeal. In this appeal it is urged on behalf of the appellant that before the earlier tenant of the appellant had vacated the house the appellant had already entered into an agreement to sell the house to another person, and that therefore in the presence of that obligation it was not possible to say that when the house was vacated the appellant was entitled to enter into and to continue in possession of the house. It is contended before us that before the original tenant vacated the house there was an oral agreement between the appellant and Smt. Leela Wati to sell the house to Smt. Leela Wati and that the agreement was only formalized in a written document on 24 November, 1973. It is urged that when the original tenant vacated the house on 20 November, 1973 the appellant was under a legal obligation to sell the house to Smt. Leela Wati, and that in the circumstances, the house cannot be said to constitute alternative accommodation for the purpose of s. 14(1)(h) of the Act. The Rent Control Tribunal has found against the existence of any such oral agreement. Upon that it would seem that it was only after obtaining possession on 20 November, 1973 from the original tenant, that is, four days later, that the appellant executed an agreement for sale with Smt. Leela Wati. It is apparent that on 20 November, 1973 the appellant came into the house belonging to her and it was available to her for her occupation. The circumstances that she lost possession on the date when the eviction petition was filed does not protect the appellant against s. 14(1)(h) of the Act. In the result, the appeal fails and is dismissed but there is no order as to costs.

N.P.V.

Appeal dismissed.

