Smt. A.N.Kapoor vs Smt. Pushpa Talwar on 31 January, 1992

Equivalent citations: 1992 AIR 799, 1992 SCR (1) 472, AIR 1992 SUPREME COURT 799, 1992 (2) SCC 80, 1992 AIR SCW 630, (1992) 1 JT 348 (SC), 1992 (1) JT 348, 1992 (1) UJ (SC) 685, 1992 SCFBRC 129, 1992 HRR 77, (1992) 1 SCR 472 (SC), 1992 (1) SCR 472, 1992 (1) ALL CJ 572, (1992) 1 PUN LR 30, (1992) 1 RENCJ 371, (1992) 1 RENCR 341, (1992) 1 RENTLR 122, (1992) 1 SCJ 482, (1992) 1 ALL RENTCAS 321, (1992) 1 CURLJ(CCR) 650, (1992) 46 DLT 712

Author: T.K. Thommen

Bench: T.K. Thommen, S. Mohan

PETITIONER:
SMT. A.N.KAPOOR

Vs.

RESPONDENT:
SMT. PUSHPA TALWAR

DATE OF JUDGMENT31/01/1992

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
MOHAN, S. (J)

CITATION:
1992 AIR 799 1992 SCR (1) 472
1992 SCC (2) 80 JT 1992 (1) 348
1992 SCALE (1)204

ACT:
Delhi Rent Control Act, 1958:
Section 14 (1) (e) Explanation-Right of landlord to seek eviction of tenant-`premises let for residential purposes'-Interpretation of-Includes Premises let for residential purpose but incidentally used for commercial purpose without consent of landlord.
Premises let for residential purpose-Landlord aware that foreign students were staying with the tenant as paying guests-Held premises used as boarding house and not private residence-Landlord not entitled to evict tenant.

HEADNOTE:

The respondent was the daughter of the original landlord who had let out the premises to the appellant on October 1, 1961. She purchased the property from her father on June 27, 1964 and thus stepped into his shoes as the `landlord' as defined under section 2 (e) of the Delhi Rent Control Act, 1958.

The respondent sought eviction of the appellant from the demised premises on the ground of personal bonafide requirement. The appellant resisted the eviction petition on the grounds that the premises were not let out for residential purpose only but for commercial purpose also i.e. for keeping foreign students as paying guests, and that the respondent does not have a bonafide need or requirement as such.

Relying upon the Rent Note and the appellant's letters dated October 7, 1961 and August 18, 1962 addressed to the respondent's father, and the earlier proceedings between them for eviction of the appellant on the ground of sub-letting the premises for commercial purpose, both the statutory authorities-the Additional Rent Controller and the Rent Control Tribunal found that the premises which had also been used incidentally for commercial purposes so as to exclude the application of section 14(1) (e) read with the explanation thereto, and dismissed the respondent's application for eviction.

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This finding was reversed by the High Court in the respondent's second appeal under Section 29 of the Act. The High Court found that there was no evidence for the statutory authorities to come to the conclusion, which they did, as regards the premises having been used for commercial purpose. The High Court accepted the appeal and set aside the judgment and order of the Rent Controller and the Rent Control Tribunal, and allowed the eviction application.

The tenant appealed to this Court by Special appeal. On behalf of the respondent-landlord it was submitted that even if the High Court was wrong in coming to the conclusion that there was no evidence about foreign students being lodged by the tenant, the mere fact that foreign students stayed as paying guests in the premises did not imply either that they lodged with the consent of the landlord or that such lodging amounted to a commercial use of the building, and that the High Court was right in saying that the ground contained in clause (e) of sub-section (1) of section 14 was attracted.

Allowing the appeal, and setting aside the judgment of the High Court, and restoring the orders of the Additional Rent Controller and the Rent Control Tribunal, this Court,

HELD: 1. The finding of the High Court is unsustainable. The High Court was not justified in saying

that there was no evidence to hold that the premises were used for boarding and lodging foreign students. The specific plea of the landlord in the earlier proceedings was that the tenant had sub-let the premises for commercial purposes. The tenant contended that she had never parted with her exclusive possession of any part of the premises and the foreign students who were lodging with her were her paying guests and were not her tenants. The plea of sub-tenancy raised by the landlord was thus rejected on the ground that those who lodged with her were not sub-tenants but only paying guests. [476 G-H]

2. The letters dated October 7, 1961 and August 18, 1962 clearly disclosed the fact that foreign students were lodged in the premises as the guests of the appellant. The evidence let in by the appellant and not contradicted by the respondent clearly showed that apart from the appellant all the other inmates of the premises were foreign students staying with her as her paying guests. The appellant testified that she earned her livelihood from the income she received as lodging fee from students who lodged with her, and

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that is was out of that income that all her personal expenses including the rent payable by her for the premises had been met. These are the findings of the two fact-finding authorities, and those findings are based on oral and documentary evidence. To have reversed those findings by the High Court in Second Appeal on the ground that they were perverse was totally uncalled for. [477 A-C]

3. In the absence of any question of law, much less any substantial question of law, the High Court was not justified in reversing the concurrent findings of the statutory authorities. [480 B]

4. Clause (e) of section 14(1) of the Act is applicable only if the landlord is in a position to establish that the premises let for residential purposes are required bona fide by him for occupations as residence. Assuming that the bona fide requirement of the landlord is established the landlord must still prove that the premises had been let for residential purposes. The Explanation of clause (e) makes it clear that the words `premises let for residential purposes' included any premises let for residential purposes but used incidentally, without the consent of the landlord, for commercial or other purposes. The Explanation is attracted when : (1) the premises have been let for residential purposes, (ii) the premises have been used incidentally for commercial or other purposes,and (iii) the landlord has not given his consent for such incidental use for commercial or other purpose. [478 D-F]

5. If the premises have never been used for any non-residential purpose, the aid of the explanation is unnecessary to attract clause (e). The Explanation is called in aid only where premises let for residential

purpose have been used incidentally for commercial or other non-residential purpose, but without the consent of the landlord. [478 G]

6. If the landlord is in a position to establish that the premises have been let for residential purposes and that he has never consented to the user of the premises for any other purpose, the mere fact that such premises have been incidentally used for commercial or other purposes would not change or affect the residential character of the premises. [479 A]

7. If the premises have been regularly and openly used for non-residential purposes, the knowledge and consent of the landlord, unless proved to the contrary, are ordinarily presumed and in

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that event the explanation would be of no avail to save the ground under clause (e). [479 B]

8. In the instant case, it is not disputed that the premises had been let for residential purposes, but it is also beyond doubt that to the knowledge of the landlord the premises have been regularly used by the tenant not only for her own residence but also for her foreign guests. The landlord has as all material times known or is presumed to have known that foreign students have been staying with the appellant as her paying guests and that she has been ever since 1961 running a boarding house in the premises. At no time did the landlord object to the user of the premises by the appellant for such purpose. [479 C-D]

9. The continued user of the building ever since 1961 for the purpose of lodging paying guests shows that the respondent-landlord and her father have not only been aware of such user of the building, but have also impliedly consented to such user. This presumption is irresistible from the evidence on record. Such user takes the premises in question out of the ambit of `premises let for residential purpose' so as to exclude the ground contained in clause (e). [479 E]

Dr. Gopal Dass Verma v. Dr. S.K. Bhardwaj & Anr., [1962] 2 SCR 678; Kartar Singh v. Chaman Lal & Ors., (SC) (1969) IV All India Rent Control Journal 349; Hobson v. Tulloch, [1898] 1 Chancery Division 424; Thorn & Ors. v. Madden, [1925] All E.R.321 and Tandler v. Sproula [1947] 1 All E.R. 193, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1993 of 1982.

From the Judgment and Order dated 9.2.1982 of the Delhi High Court in S.A.O No. 59 of 1979.

M.K.Ramamurthi, Mrs. Chandan Ramamurthi and M.A.Krishnamoorthi for the Appellants.

Harish N. Salve and A.K.Sanghi for the Respondents. The Judgment of the Court was delivered by T.K.THOMMEN, J. This appeal arises from the judgment of the Delhi High Court in S.A.O.No. 59 of 1979 whereby the High Court, reversing the concurrent findings of the Additional Rent Controller and the Rent Control Tribunal, allowed the respondent-landlord's application for eviction of the appellant-tenant under section 14(1)(e) of the Delhi Rent Control Act, 1958 (the `Act'). The respondent is the daughter of the original landlord who had let out the premises to the appellant on 1.10.1961. The present respondent purchased the property from her father on 27th June, 1964 and thus stepped into his shoes as the `landlord' as defined under section 2(e) of the Act.

Relying upon the Rent Note and the appellant's letters dated 7.10.1961 and 18.8.1962 addressed to the respondent's father and the earlier proceedings between them for eviction of the appellant on the ground of sub-letting the premises for commercial purposes, both the statutory authorities found that the premises which had been let out for residential purposes to the appellant had also been used incidentally for commercial purposes so as to exclude the application of section 14 (1) (e) read with the Explanation thereto. This finding was reversed by the High Court by the impugned judgment. This High Court found that there was no evidence for the statutory authorities to come to the conclusion, which they did, as regards the premises having been used for commercial purpose. This is what the High Court says:-

> ".....No documentary evidence has been brought on record to hold that the premises were ever used for boarding and lodging foreign students.....Thus there is no evidence on record to hold that the premises were used for boarding and lodging of the foreign students or that the premises were let to the respondent for commercial purposes. Thus, I am of the view that the premises were let to the respondent for use as residence and the findings to contrary by the controller and the Tribunal are without any evidence on record and are perverse".

This finding of the High Court is, in our view, unsustainable. The High Court was not justified in saying that there was no evidence to hold that the premises were used for boarding and lodging foreign students. The specific plea of the landlord in the earlier proceedings was that the tenant had sub-let the premises for commercial purposes. The tenant contended that she had never parted with her exclusive possession of any part of the premises and the foreign students who were lodging were her paying guests and were not her tenants. The plea of sub-tenancy raised by the landlord was thus rejected on the ground that those who logged with her were not sub-tenants but only paying guests. Letters dated 7.10.1961 and 18.8.1962 addressed by the appellant-tenant to the respondent-landlord were considered by the authorities in coming to the conclusion, which they did. These letters clearly disclosed the fact that foreign students were lodged in the evidence let in by the appellant and not contradicted by the respondent clearly showed that apart from the appellant, all the other inmates of the premises were foreign students staying with her as her paying guests. The appellant testified to the effect that she earned her livelihood from the income she received as lodging fee from students who lodged with her. It was out of that income that all her personal expenses including the rent payable by her for the premises had been met. These are the findings of the two fact-finding

authorities and those findings are based on oral and documentary evidence. To have reversed those findings by the High Court in Second Appeal on the ground that they were perverse was totally uncalled for.

Mr Harish Salve appearing for the respondent-landlord submits that even if the High Court was wrong in coming to the conclusion that there was no evidence about foreign students stayed as paying guests in the premises did not imply either that they lodged with the consent of the landlord or that such lodging amounted to a commercial use of the building. Counsel submits that the High Court was right on the facts of this case in saying that the ground contained in clause (e) of section (1) of section 14 was attracted.

There is no substance in the contention that the landlord was unaware that the premises had been used for lodging foreign students. The two letters relied on by the statutory authorities leave no doubt that this fact was well-known to the landlord at all material times. To the knowledge of the landlord the premises have been regularly used by the tenant ever since 1961 for the residence of not only herself but also of the foreign students who were lodged by her for gain as paying guests. The evidence is that she had no income other than what she received as lodging fee from foreign students. The question then is whether the facts found excluded the application of the ground contained in clause (e) of the section 14 (1).

Section 14, insofar as it is material, reads:

> "S.14. Protection of tenant against eviction:- (1) 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 favour 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 purpose 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".

The only ground which is relied on by the landlord is that which is contained in clause(e) read with the Explanation. Clause (e) on the facts alleged is applicable only if the landlord is in a position to establish that the premises let for residential purposes are required bona fide by him for occupation

as a residence. Assuming that the bona fide requirement of the landlord is established, the landlord must still prove that the premises had been let for residential purposes. The Explanation to clause (e) makes it clear that the words `premises let for residential purposes' include any premises let for residential purposes, but used incidentally, without the consent of the landlord, for commercial or other purposes. The Explanation is attracted when (i) the premises have been let for residential purposes, (ii) the premises have been used incidentally for commercial or other purposes, and (iii) the landlord had not given his consent for such incidental use for commercial or other purposes. If the three ingredients contained in the Explanation are attracted, the premises do not cease to be "Premises let for residential purposes"

> falling under clause (e). In respect of such premises, the bona fide requirement of the landlord referred to in clause
>
> (e) is a ground for eviction.

If the premises have never been used for any non- residential purpose, the aid of the Explanation is unnecessary to attract clause (e). The Explanation is called in aid only where premises let for residential purposes have been used incidentally for commercial or other non-residential purposes, but without the consent of the landlord. The fundamental question in respect of residential premises is whether the landlord had consented to the user of the premises for any other purpose, albeit incidentally.

If the landlord is in a position to establish that the premises have been let for residential purposes and that he has never consented to the user of the premises for any other purpose, the mere fact that such premises have been incidentally used for commercial or other purposes would not change or affect the residential character of the premises. In respect of such premises, it is open to the landlord to prove his bona fide requirements and thus establish the ground mentioned under clause (e). On the other hand, if the premises have been regularly and openly used for non- residential purposes, the knowledge and constant of the landlord, unless proved to the contrary, are ordinarily presumed and in that event the Explanation would be of no avail to save the ground under clause (e).

In the present case, it is not disputed that the premises had been let for residential purposes, but it is also beyond doubt that to the knowledge of the landlord the premises have been regularly used by the tenant not only for her own residence but also for her foreign guests. The landlord has at all material times known or is presumed to have known that foreign students have been staying with the appellant as her paying guests and that she has been ever since 1961 running a boarding house in the premises. At no time did the landlord object to the user of the premises by the appellant for such purpose.

The continued user of the building ever since 1961 for the purpose of lodging paying guests shows that the respondent-landlord and her father have not only been aware of such user of the building, but have also impliedly consented to such user. This presumption is irresistible from the evidence on record. Such user takes the premises in question out of the ambit of `premises let for residential purposes' so as to exclude the ground contained in clause (e).

We are fortified in our conclusion by the views expressed by this Court in Dr. Gopal Dass Verma v. Dr. S.K. Bhardwaj & Anr., [1962] 2 SCR 678 and Kartar Singh v. Chaman Lal & Ors., SC (1969) IV All India Rent Control Journal 349.

The position would have been probably different, and the Explanation would have been still available, had foreign guests been lodged only occasionally and for short periods, even if it be on the basis of payment to cover expenses. All this is a question of intention. Was it an occasional accommodation of paying guests consistently with the character of the premises as a private residence?

The evidence on record leaves no doubt that the premises have been regularly used by the appellant as a boarding house and not as a private residence in the ordinary acceptation of the term. She has in fact been carrying on, in the words of Romer, J., "a species of business". See Hobson v. Tulloch [1898] 1 Chancery Division 424. See also Thorn & Ors. v. Madden [1925] All E.R. 321 and Tendler v. Sproule [1947] 1 All E.R.

193. In the absence of any question of law, much less any substantial question of law, the High Court was not justified in reversing the concurrent findings of the statutory authorities.

In the circumstances, we set aside the impugned judgment of the High Court and restore the orders of the Additional Rent Controller dated 29.9.1976 and Rent Control Tribunal dated 18.11.1978. The appeal is allowed in the above terms with the costs of the appellant throughout.

N.V.K. Appeal allowed.