

Pukhraj Jain vs Mrs. Padma Kashyap And Anr on 20 March, 1990

Equivalent citations: 1990 AIR 1133, 1990 SCR (2) 25, AIR 1990 SUPREME COURT 1133, 1990 (2) SCC 431, (1990) 1 JT 486 (SC), 1990 (1) JT 486, 1990 UJ(SC) 2 213, (1990) 1 RENTLR 669, (1990) 1 CURLJ(CCR) 684, 1990 FAJ 1 547, (1990) 19 DRJ 277, (1990) 41 DLT 319, 1990 HRR 227, (1990) 1 RENCRA 466

Author: R.M. Sahai

Bench: R.M. Sahai, K.J. Shetty

PETITIONER:

PUKHRAJ JAIN

Vs.

RESPONDENT:

MRS. PADMA KASHYAP AND ANR.

DATE OF JUDGMENT 20/03/1990

BENCH:

SAHAI, R.M. (J)

BENCH:

SAHAI, R.M. (J)

SHETTY, K.J. (J)

CITATION:

1990 AIR 1133 1990 SCR (2) 25

1990 SCC (2) 431 JT 1990 (1) 486

1990 SCALE (1) 531

CITATOR INFO :

RF 1992 SC 1555 (2,5)

ACT:

Delhi Rent Control Act, 1958.' Section 21-Recovery of possession by landlord from tenant--Whether legal representatives of landlord can initiate and continue proceedings for recovery.

HEADNOTE:

The petitioner-tenant was let out the demised premises by the landlord for a period of three years, with permission

of Controller under section 21 of the Delhi Rent Control Act, the landlord died before the expiry of period of tenancy. After the expiry of the period, his legal representatives made an application for recovery of possession. This application was resisted by the tenant on the ground that proceedings for recovery of possession under section 21 could not be initiated and continued by legal representatives of the landlord who had obtained permission.

Having failed before the High Court, the petitioner has filed petition for special leave. It was contended on his behalf that 'landlord' in second part of section 21, entitling him to claim vacant possession, should be confined to the person who had obtained permission on the premise that he "does not require the whole or any part of the premises for a particular period."

Dismissing the special leave petition, this Court,

HELD: (1) Section 21 is a self contained code. The purpose and objective of its enactment as provision of short duration tenancy or periodical tenancy in Rent Control Act of Delhi is unique amongst such legislations. What was unique of it was not short duration tenancy but a fresh look on eviction. [27G; 28G]

Shiv Chand Kapoor v. Amar Bose, [1990] 1 SCC 234, referred to.

(2) Since section 21 is an exception to section 14 and it mandates restoration of possession, "notwithstanding any other law" it has to be construed strictly and against any attempt to frustrate it. [28G]

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(3) Recovery of possession under section 21 is not hedged, by any inquiry or opportunity, if permission is not challenged on any of the exceptions which have been carved out by courts, obviously to uphold fairness and honesty the core of our jurisprudence. Right to get vacant possession is thus absolute. [29D]

S.B. Noronah v. Prem Kumari Khanna, [1980] 1 SCC 52; V.S. Rahe v. Smt. Rem Chaben, [1984] 1 SCC 612; Shiv Chand Kapoor v. Amar Bose, [1990] 1 SCC 234, referred to.

(4) The expression "for the time being" in section 2(e) makes it clear that landlord has to be understood in present. That is anyone entitled to receive rent is the landlord. It does not visualise, past or future landlord. Therefore, the word "landlord" on plain reading of Section 21 does not warrant construction of the word in any other manner. [29G]

(5) Constructionally, Section 21 is in two parts: one creation of short term tenancy and other its execution after expiry of time. Both stand on their own and operate independently. Non-requirement of premises for time being furnishes basis for entering into agreement for periodical tenancy. Truth of it or its genuineness are relevant considerations for granting permission. And the permission granted continues unabated, unaffected irrespective of variation in requirement. [30D-E]

(6) Vacation is not linked with landlord but with time. Expiry of it obliges tenant to vacate. If he does not then whosoever is the landlord at the time of afflux of tenancy may approach Controller for putting him in vacant possession. Death of landlord does not either shorten or enlarge period nor the consequences envisaged are altered or affected. [30F]

(7) The doctrine of actio personalis moritur cum persona does not apply to Rent Control Acts. Its applicability was generally confined to actions for damages for defamation, seduction, inducing a spouse to remain apart from the other and adultery. [31D-C]

Supreme Bank v.P.A. Tindulcar, AIR 1973 SC 1104; Shanti Lal Thakur Das & Ors. v. Chaman Lal Magan Lal Lala, [1977] 1 S.C.R. 313; Phool Rani v. Naubat Rai, [1973] 3 S.C.R. 769, referred to.

(8) An action for eviction abates only if the cause of action does

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not survive. The cause of action for granting permission was the nonrequirement by the landlord of the premises for the time mentioned in the agreement whereas cause of action for eviction is non-vacation by the tenant after the expiry of period. Therefore, it is immaterial who is the landlord at the time when the action for vacation arose. [31F-G]

(9) Permission in the instant case was granted on statement of parties in regard to their necessity or non-requirement of the premises. Such necessity to let out or non-requirement by the landlord could not be brought into those exceptions which invalidated permission. Therefore, death of the landlord was immaterial as even the reason for letting out did not die with death of landlord. [32A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 7914 of 1989.

From the Judgment and Order dated 26.5.1989 of Delhi High Court in S.A.O. No. 296 of 1984.

V.M. Tarkunde and S.K. Gupta for the petitioner. Dr. Y.S. Chitale, Ramji Srinivasan, P.K. Jain and Ra- vinder Nath for the respondents.

The Judgment of the Court was delivered by R.M. SAHAI, J. Tenant inducted in 1979, for three years, by the landlord under a written agreement, in C-4/33, Saf- darjang Development Area, New Delhi, with permission of Controller under Section 21 of Delhi Rent Control Act (for brevity the 'Act') seeks leave of this Court on limited question of law if proceedings for recovery of possession under Section 21 of the Act could be initiated and continued by legal representatives of the landlord who had obtained permission but who died before expiry of period of tenancy. Answer of it shall

depend, primarily, on construction of word 'landlord' used in Section 21, a provision held to be self contained code in Shiv Chand Kapoor v. Amar Bose, [1990] 1 SCC 234 and also the purpose and objective of its enactment as provision of short duration tenancy or periodical tenancy in Rent Control Act of Delhi right from 1952, is unique amongst such legislations and is probably non-existent in any other State. It reads as under:

21. "Recovery of possession in case of tenancies for limited period:

(1) Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evict-

ing the tenant and every other person who may be in occupation of such premises.

(2) while making an order under sub-section (1), the Controller may award to the landlord such damages for the use or occupation of the premises at such rates as he considers proper in the circumstances of the case for the period from the date of such order till the date of actual vacation by the tenant."

What it, undoubtedly, projects is the legislative awareness of acute crisis of houses in the State. To resolve the paucity of accommodation, on one hand, due to enormous influx of office personnel and business class as a result of rapid growth of social, economic and political activity and apprehension of house owners, on other, bulk of whom hail from middle class or service class, of losing their houses if not for good then for substantial period due to development of strange phenomenon in big cities that allotted or rented houses are more economical than, even, own the legislature which is the best-judge of need of its people carved out an exception to usual rent control provisions of protecting tenants from eviction. What was unique of it was not short duration tenancy but a fresh look on eviction. Vacant possession was ensured, statutorily, without any notice, or termination of tenancy or the hazard of establishing bona fide need and comparative hardship etc. Since sec. 21 is an exception to Section 14 and it mandates restoration of possession, "notwithstanding any other law" it has to be construed strictly and against any attempt to frustrate it. Intensity of it can be appreciated better if its language, is compared with other provisions of recovery of possession even though those provisions, namely, secs. 14A, 14B, 14C and 14D, were introduced later. They also provide speedy remedy to recover possession. But the landlord cannot succeed unless he is able to prove circumstances mentioned in it. More than this the tenant has been given right to contest under Section 25B. Import of Section 21 on the other hand is altogether different. It enjoins Controller to place landlord in vacant possession after expiry of time without any right to tenant to contest it except to the limited extent that permission was vitiated by fraud as held in S.B. Noronah

v. Prem Kumari Khanna, [1980] 1 SCC 52 or misuse of the provision by land- lord taking advantage of helpless situation of the tenant as held in V.S. Rahe v. Smt. Rem Chambeh, [1984] 1 SCC 612; or the permission really did not create genuine tenancy as held in Shiv Chand Kapoor v. Amar Bose, supra. Recovery of pos- session under Section 21 is not hedged, by any inquiry or opportunity, if permission is not challenged on any of those exceptions which have been carved out by courts, obviously, to uphold fairness and honesty the core of our jurispru- dence. Right to get vacant possession is, thus absolute. Purpose and objective of the Section having been ascer- tained, it may now be examined if the word "landlord" used in the second part of the Section which empowers landlord to make an application for recovery of possession is to be understood as the same landlord who made the application or his legal representatives as well. In other words, is there any justification for construing the word "landlord" in a narrow sense so as to restrict it, only, to the person who made the application and obtained permission. "Landlord" has been defined in Section 2(e) as under:

"2(e). 'landlord' means a person who, for the time being is receiving, or is entitled to receive, the rent of any prem- ises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."

Expression, "for the time being" makes it clear, that land- lord has to be understood in praesentii. That is anyone entitled to receive rent is the landlord. It does not visua- lise, past or future landlord. Therefore, the word "land- lord". on plain reading of Section 21 does not warrant construction of the word in any other manner. Basis for submission, however, that landlord in second part of Section 21 entitling him to claim vacant possession should be confined to the person who obtained permission was rounded on use of expression, "who does not require the whole or any part of the premises for a particular period." Attempt was made to personalise eviction proceedings by linking it with the person, due to whose non-requirement the permission was granted resulting in automatic exclusion of legal representatives. To put it interpretationally the word "landlord", in second part was urged to be understood in a manner different than it is defined in Section 2(e). Can it be said that context or setting of Section 21 is such that the word "landlord" in second part of it should be understood in a different sense than that in definition clause? Not on prima facie reading of it which has already been adverted to. Neither on close analysis. What is visualised is occasion for short duration tenancy due to non-requirement of whole or part of premises by landlord for time being; method of its creation by writ- ten agreement entered with tenant, statutory status to it by permission obtained from Controller and execution by resto- ration of vacant possession if the tenant does not vacate after expiry of period. All condensed in one. Construction- ally it is in two parts one creation of short term tenancy and other its execution after expiry of time. Both stand on their own and operate independently. Non-requirement of premises for time being furnishes basis for entering into agreement for periodical tenancy. Truth of it on its genu- ineness are relevant considerations for granting permission. But it exhausts thereafter except to the limited extent pointed out in decisions referred earlier. And the permis- sion granted continues unabated, unaffected irrespective of variation in requirement. Necessity of landlord, again, does not entitle him to seek its revocation. Even his death cannot shorten the period. Similarly once period expires the agreement, the permission all cease to operate by operation of law. Nothing further is required. Vacation is not

linked with landlord but with time. Expiry of it obliges tenant to vacate. If he does not then the landlord may approach Controller for putting him in vacant possession. Which landlord? Obviously whosoever is the landlord at the time of afflux of tenancy. Death of landlord does not either shorten or enlarge period nor the consequences envisaged are altered or affected.

Use of expression notwithstanding any other law render it obligatory on tenant to vacate without questioning authority of landlord. Any other construction, may, as rightly observed by the High Court lead to disastrous consequences. Even on principles of civil law the provision for recovery of possession being in nature of execution it could not be successfully resisted on the death of landlord due to whose non-requirement the permission was granted. Such narrow and unrealistic construction of the word 'landlord' shall frustrate entire purpose of Section 21.

Maxim of *actio personalis moritur cum persona* cannot apply, either, on principle or on facts. In *Supreme Bank v. P.A. Tendulkar*, AIR 1973 SC 1104 this Court while discussing applicability of the maxim held "whatever view one may take of the justice of the principle it was clear that it would not be applicable to actions based on contract or where tortfeasors' Estate had benefitted from a wrong done. Its applicability was generally confined to actions for damages for defamation, seduction inducing a spouse to remain apart from the other and adultery." In *Phool Rani v. Naubat Rai*, [1973] 3 SCR 769; a decision which was relied by petitioner in support of submission that an application filed for eviction of a tenant on bona fide need lapses on the death of landlord and it could not be continued by his legal representatives overruled in *Shanti Lal Thakur Das and Ors. v. Chaman Lal Maganlal Telwala*, [1977] 1 SCR 313 it was observed that doctrine of *actio personalis moritur cum persona*, did not apply to Rent Control Acts. Even otherwise an action for eviction abates only if the cause of action does not survive. What is the cause of action for an application for vacant possession in Section 21 death of landlord or expiry of time for which tenancy was created. Obviously the latter, the failure of tenant to honour his commitment to vacate the premises after expiry of time for which he was inducted with permission of Controller. The death of the person who obtained the permission has nothing to do with it. Permission was obtained because the landlord did not require the premises on the date when it was let out to tenant. That does not continue on the date when the tenant does not vacate the premises. The necessity of not requiring the premises, for some time, or for the duration the tenant was inducted was confined to the date when the permission was granted. It could not be taken further to the time when the question of vacation arose. The cause of action for granting permission was the non-requirement by the landlord of the premises for the time mentioned in the agreement whereas cause of action for eviction is non-vacation by the tenant after the expiry of period. Therefore, it is immaterial who is the landlord at the time when the action for vacation arose.

Even on facts permission was applied for by the landlord as, premises was surplus to his need for a limited period of 3 years due to the reason that his son had gone abroad and he was expected to return after three years. Permission was granted for this reason on statement of parties. Such necessity to let out or non-requirement by the landlord could not be brought into those exceptions which invalidate permission. Therefore death of the landlord was immaterial as even the reason for letting out did not die with death of landlord.

In the result this petition for special leave fails and is dismissed. In the circumstances of the case the tenant is directed to suffer costs which we quantify at Rs.5,000. R.S.S. Petition dismissed.