

Delhi High Court

Anand Prakash Saxena vs Jagdish Chander Yamdagni on 1 October, 1981

Equivalent citations: 20 (1981) DLT 508

Author: Y Dayal

Bench: Y Dayal

JUDGMENT Yogeshwar Dayal, J.

(1) This order will dispose of two civil revision petition Nos. 897/80 and 1050/8U. The first petition is filed on behalf of the tenant, Sh. Anand Prakash Saxena against the order for eviction and the second petition has been filed by Sh. Jagdish Chander Yamdagni against another tenant, Smt. Vimla Batra and others.

(2) Two eviction petitions were filed by Sh. Jagdish Chander Yamdagni against his two tenants-one against Sh. Anand Prakash Saxena and the other against Smt. Vimla Batra & others. These two petitions were consolidated by learned Rent Controller and the evidence was recorded in the petition filed by the landlord against Sh. Anand Prakash Saxena.

(3) The learned Rent Controller accepted the petition of the landlord against Sh. Anand prakash Saxena but dismissed the other eviction petition against Smt. Vimla Batra & others.

(4) Therefore, Shri Anand Prakash Saxena has come up in revision against his order of eviction whereas Sh. Jagdish Chander Yamdagni has come up in revision against the dismissal of his petition against Smt. Vimla Batra & others.

(5) As stated earlier I also propose to decide both the revision petitions by common judgment.

(6) Both the said tenants are tenants in respect of three rooms- each. Both had taken the premises for residential purposes. The landlord filed petitions for evictions against both the tenants for occupation as residence for himself and for the family members dependent upon him as he has no other reasonably suitable residential accommodation and the present accommodation in occupation is insufficient. It was also pleaded by the landlord that he and his family members have shifted their residence to Mehrauli on account of his health and he requires the premises in dispute for residence.

(7) The defense of both the tenants were practically the same. They had challenged the bonafide of the claim of the landlord. As according to them, the landlord after getting it vacated would let it out at higher rent and that he has 5 rooms, one kitchen and two stores in his possession, which are lying vacant as the petitioner and his family is settled at Mysore as he is the Managing Director of Mysore Flour Mills and none of the family members is residing at Delhi and he along with his wife comes to Delhi for a few days and stay in the house for the purposes of attending the cases. It was further alleged by the tenants that the landlord got vacated two rooms adjacent to the rooms from Shri J.N Sharma on 15-5-1976 on the ground of bonafide requirement but again let it out to Sh. Brij Kishan Sharma at a higher rent and prior to Shri J.N. Sharma, one Shri S.D. Malhotra was living there from whom also he got the premises vacated on the ground of bonafide requirement. Thus according to the tenants, the landlord is in the habit of evicting the tenants by claiming their evictions on the

ground of bona fide requirement and then re-letting out them to other tenants.

(8) In the replication the landlord admitted that he was the Chairman-cum-Managing Director of Mysore Flour Mills (P) Ltd. It was pleaded that he has already resigned from there and also settled in his own house here. It was denied that the entire family of the landlord is settled in Mysore. It was pleaded that only one son of the landlord is residing at Mysore. The landlord also denied that he visits Mehrauli only for a few days that he has got any of his own house in Mysore. It was also pointed out that one of the sons of the landlord was married from this very house and he and his wife was also living with the landlord. It was denied that he got two rooms of the building vacated from Shri J.N. Sharma for bona fide requirement and then rented them out to Shri Brij Kishan Sharma at higher rent. It was pleaded that Shri Brij Kishan Sharma is his brother-in-law and he was occupying the premises now in occupation of the landlord. He has been shifted to the two rooms vacated by Shri J.N. Sharma and he is residing there more-or-less as a member of the family to look after the petitioner who is generally ill and the family as and when the landlord has to go out Delhi. It was denied that the premises were got vacated by the landlord from Shri S.D. Malhotra and were let out to another person. It was pleaded that the house was got vacated in nineteen fifties by the father of the landlord and he started residing therein and Smt. Vidya Vati Sharma is a sister of the landlord and she was residing with her father. It was also denied that the landlord got any premises vacated from Shri Jaimal Singh. Father of the landlord had got the house vacated from Jaimal Singh and occupied the same himself. The premises in dispute were let out to the tenant after the death of landlord's father. Except for the two rooms vacated by Shri J.N. Sharma, no premises were ever got vacated after 1964 or were let out at that time. At that time the landlord had no idea of staying in Delhi. The house of Greater Kailash had also sold long ago while the landlord was living in Bangalore. It was denied that the landlord wants to sell the house. It was pleaded by the landlord that he is Chartered Engineer (London), Fellow of the Institution of Production Engineers in London and Fellow of the Institution of Mechanical Engineers, India. He has been the Chief Engineer of Krishan Industries (P) Limited for over twenty years and has been occupying residential accommodation comprising four bed-rooms, one drawing hall, kitchen, dining room etc. with vast open space. He shifted to Mysore in 1973 as Managing Director of the Mysore Flour Mills (P) Ltd. and occupied big accommodation as well, comprising at least four big rooms, drawing rooms, guest room and other rooms necessary for kitchen etc. He now requires at least four bed rooms and one drawing room with kitchen, pantry and store. The entire house is required only for personal residence with members of his family dependent on him.

(9) It was also pleaded that the landlord has got only one room 18'x16', one bath room with dressing room attached thereto, one small bed room 10'x12' one kitchen and pantry besides open verandahs.

(10) There was some dispute as to the sizes of the rooms.

(11) The landlord examined himself as his own witness besides the other witnesses and tenants examined themselves as their own witnesses. After considering the entire evidence, the Controller found:

(1) That the accommodation in occupation of the landlord consists of five rooms whereas his family consists of himself, his wife, his son and his wife and son's two children.

(2) The tenants have given the number of rooms in occupation of the landlord whereas the landlord has given the description of the rooms as they are being used. He has stated that he is using the room marked 'C' as bed room, drawing room and dining room and he has no separate bed room, drawing and dining room.

(3) Though the tenants have given the number of rooms as 5 with the landlord but there is no separate kitchen, dining or store room with the landlord.

(4) If one of the rooms, is taken as dining room, another is drawing room and one as store there remains only one living room which obviously is not reasonably suitable for a family mentioned above.

(5) The status of the landlord has also to be taken into consideration. He is a Chairman of a Mill and was getting Rs. 4,000.00 per month as salary when he was working there and had four bed rooms accommodation.

(6) The accommodation which is in the occupation of the landlord and his widow daughter is on the ground floor.

(7) The tenant Anand Prakash Saxena is living on the ground floor and is having two rooms on the ground floor and one room on the first floor.

(8) The other tenant Smt. Vimla Batra is having entire accommodation on the first floor.

(9) The more suitable accommodation to the landlord is obviously the accommodation on the ground floor.

(10) The landlord has only one living room in the entire house and his family consists of himself, his wife and his married son and his family consisted of 2 children.

(11) That the accommodation in occupation of Shri Anand Prakash Saxena seems to be more suitable and reasonable to the petitioner.

(12) With these findings the Controller passed the order for eviction against Shri Anand Prakash Saxena from the premises in dispute and dismissed the petition against Smt. Vimla Batra and other on the ground that the eviction of tenant, Anand Parkash Saxena would meet the requirement of the landlord.

(13) Mr. R.K. Makhija, who appears on behalf of the petitioner Shri Anand Prakash Saxena, made the following submissions:-

(A) That the petitioner is a permanent resident of Mysore, where he is settled for the last 23 years along with rest of the members of the family and has not shifted to Delhi.

(B) Even if the landlord says that he now wants to shift to Delhi, that is also not correct because even inspite of filing applications in December 1979, he has always remained in Mysore and would visits Delhi only on dates fixed in the courts.

(C) The landlord has not visited Delhi since 8.1.1981 and the petitioner has been sending rent to him at Mysore.

(D) The application for eviction is malafide because even if the landlord shifts to Delhi, he has still in his possession 5 big rooms, kitchen and two big verandahas and compound. These five rooms are besides the accommodation he has given to his widow daughter Smt. Gian Wati after evicting Sh. J.N. Sharma in May, 1976 and then letting it out to Sh. Brij Kishan Shaima and thereafter in 1978 given it to his daughter, Smt. Gian Wati.

(E) No mention was made in the petition as to who are the members of landlord's family. Nor did he specify the actual accommodation available to him.

(F) That on 9th April, 1977 a notice was issued in "Deccan Herald", Bangalore Edition, where landlord has shown himself as Managing Director of Mysore Flour Mills (P) Ltd. and by this notice he notified the word that his son Rajesh Chandra has no concern with him and that he is separate and has no right or claim in whatsoever manner over his moveable or immovable properties.

(G) That the landlord withdrew the petition against Malaria Institute and the petition against Smt. Batra was dismissed by the impugned order.

(H) The landlord now says that he had since resigned from Managing Directorship and therefore he has shifted to Delhi and has also resides in Delhi but he did not produce any documentary evidence.

(I) All rents were received at Mysore.

(J) That M.R. Timayya, I.A.S. who deposed about the accommodation in occupation of the landlord while he was in the Service at Bangalore should not have been believed.

(14) It will be notified that the present revision petitions have been filed under the proviso to sub-section (8) of Section 25-B of the Delhi Rent Control Act, 1958 which reads as under: "(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section: Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."

This provision for revision by this Court is similar to provision which conferred revisional powers on the High Court by Section 35 of the Delhi & Ajmer Rent Control Act, 1952 (38 of 1952). Section 35(1) of the Delhi & Ajmer Rent Control Act, 1952 reads as under:- "35(1).The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit."

(15) This provision of Section 35(1) of the Delhi & Ajmer Rent Control Act, 1952 came up for consideration by the Supreme Court in the case of Bari Shanker and others v. Rai Girdhari Lal Chowdhury, P.L.R. 1962 page 1097 and there Lordships of the Supreme Court held as under:- "HELD,that, section 35 of the Delhi and Ajmer Rent Control Act is undoubtedly worded in general terms, but it does not create a right to have the case reheard. The High Court in the exercise of its revisional power is not entitled to re-assess the value of evidence and to substitute its own conclusions of fact in place of those reached by the Courts below. Held, also, that the phrase "according to law" refers to the decision as a whole, and is not to be equated to errors of law or of fact simpliciter. It refers to the overall decisions which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. Section 35 is framed to confer larger powers than the power to correct error of jurisdiction."

(16) It will be noticed that this being the scope of revision, one has to find mis-carriage of justice due to errors of law. There can be no reappraisal or appreciation of evidence. The learned Rent Controller took into account the entire pleadings between the parties as well as the whole evidence of the parties. The learned Rent Controller also took note of the notice published in 'Deccan Herald'. The learned Rent Controller also took note of the fact that the premises were got vacated from Sh. J.N. Sharma in May, 1976 and the fact that thereafter the widow daughter of the landlord is residing there. The Controller also accepted the explanation of the landlord that Sh. Brij Kishan Sharma was not a tenant but was a family member of the landlord, who in the absence of the landlord is looking after the property by living in the premises in occupation of the landlord. The learned Rent Controller after examining the evidence has accepted the case of the landlord that he has since resigned from the Managing Directorship of Mysore Flour Mills (P) Ltd. and that he is residing at Delhi and occasionally he visits Mysore as Chairman of the Mysore Flour Mills (P) Ltd. The Controller has given the findings after examining all the material on records.

(17) The submissions which have been made by learned counsel for the petitioner merely invites this Court to reappraise the evidence. At the instance of learned counsel for the tenant, I was taken through the entire records But on the question of facts found by the Controller I do not find sufficient reasons to differ. Even if, I accept the sizes of the rooms in occupation of the landlord, as suggested by learned counsel for Mr. Anand Prakash Saxena, I do not find that the demand or the requirement of the landlord is in any case unreasonable. By no standard can the demand be termed as exaggerated or exorbitant or unreasonable. Once it is found that the landlord is living in Delhi it cannot be said that the accommodation in possession is sufficient for himself and or family members dependent upon him. It is true that Smt. Gian Wati started occupying the portion of the building which had been got vacated earlier from Mr. Sharma but she is a widow daughter of the landlord and her occupation of the property cannot for any reason be termed as malafide act on the

part of the landlord. The fact that she is widowed daughter has never been disputed. Thus the accommodation now available to the landlord, his wife, his married son and his two children is as under:- (A) one room-cum-hall- 20' X 20' (marked 'C') (b) one room -20' X 15' (marked 'P') (e) one room -12' X 15' (marked 'L') (d) one room -12' X 15' (marked-kitchen) (e) two rooms -12' X 12' (each); and (f) two verandahs ' (18) Looking at the accommodation which the landlord was having, both at Bangalore and Mysore this accommodation for landlord, his wife and his married sons and his family is not adequate. Out of the aforesaid accommodation the landlord necessarily needs a bath room a kitchen, a store and a bath room. If provision is made for these needs the landlord is left with only one bed room which is wholly insufficient for himself, his wife, married son and his two children. In fact both the landlord and his son require separate bath rooms and separate bed rooms. There is no provision at all for a dining room or drawing room.

(19) Regarding the plea that even the rent were being sent to Mysore, it will be noticed from the statement made in the written statement that it was not as if the rent was being sent month by month to Mysore. The rent was being sent after couple of months and it appears that whenever landlord was not in Delhi the tenant would choose to send the consolidated rents to the landlord when he was in Mysore and, therefore, it cannot be said that the landlord was not living in Delhi.

(20) I, therefore, do not find any ground to interfere with the order of learned trial court.

(21) Before I dispose the matter I may also look at the application filed by the landlord under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure. In this application the landlord wants this Court to take into account, subsequent events which have happened during the pendency of the revision petition, namely the retirement of his son-in-law, Shri Hari Shankar Nagar. It is pleaded that the son-in-law has retired since 31st January, 1980 and has got two sons and that the said daughter and her husband and children has no accommodation in Delhi and they have been . y residing with the landlord in the house in dispute.

(22) It will be noticed that this plea is not the case set up in the trial court nor was any evidence led in this behalf. The case in the trial court was only for the requirement of the landlord, his wife, his married son and his family. It is a matter or moot point whether a married daughter, in the circumstances of the case, and her husband can be said to be dependent on the landlord.

(23) There is controversy between the parties as to the fact whether they are at all residing in the premises in occupation of the landlord or they are at all dependent on the landlord.

(24) I do not find it a fit case to consider the subsequent events at the present stage in revision petition. If the landlord has any cause of action in this regard he can always file a separate petition. I accordingly dismiss this application.

(25) There is thus no merit in the revision petition filed by Mr. Anand Prakash Saxena and the same is dismissed.

(26) Looking at all circumstances of the case Shri Anand Prakash Saxena is, however, allowed one year time to vacate the premises.

(27) Coming to the revision petition filed by the landlord against Smt. Vimla Batra & ors. I find that by ordering ejectment of Mr. Anaiid Prakash Saxena from part of the premises in dispute the need of the landlord as mentioned in the eviction application is satisfied since Mr. Saxena will be vacating three rooms.

(28) The decision of the Controller in this behalf does not call for interference. The result is that both the levision petitions are dismissed subject to time granted to Sh. Anand Prakash Saxena for vacating the premises.

(29) The parties are, however, left to bear their own costs.

(30) Though the judgments in these matters are reserved by me as far back as 22nd July, 1981 but the orders could not be pronounced in view of my pre-occupation in the Gwalior (1980) Commission of Inquiry.