

Delhi High Court

Purshottam Lal Anand vs Mariano D'Souza on 21 May, 1993

Equivalent citations: 1993 IIIAD Delhi 37, 54 (1994) DLT 46, 1993 (27) DRJ 45, 1993 RLR 442

Author: U Mehra

Bench: U Mehra

JUDGMENT Usha Mehra, J.

(1) Marina D'Souza, the respondent was inducted as a tenant on the first floor of house No.34/1 1, East Patel Nagar, New Delhi by late Sh. Sat Dev Sawhney who was the owner/landlord of the premises in question. The first floor of this house was let out to the respondent, on 1st march, 1972. The owner/landlord Sat Dev Sawhney died at Delhi on December 12,1987bequeathingthispropertybyvirtueofawilldatedJune21,1974,the ground floor to his adopted daughter and first floor namely the premises in question as well as the second floor to the petitioner. Thus the petitioner Purshottam Lal Anand, became the owner in respect of the premises in question after the death of Sat Dev Sawhney's wife, Smt. Shakuntala Sawhney. The will was executed on April 9, 1990. The respondent/ tenant after the death of Sat Dev Sawhney attorney the petitioner/landlord with effect from 1st May, 1990.

(2) The petitioner on account of his personal bonafide need and requirement, as his family consisted of himself, his wife, four daughters and one son, asked the respondent to vacate the portion in his occupation. The petitioner being a central government employee was going to retire with effect from 31st January, 1991. Since th respondent did not vacate the premises, hence he filed the petition under Section 14C(2) read with Section 25(B) of the Delhi Rent Control Act (hereinafter called the 'Act').

(3) Respondent took the plea that this case does not fall under Section 14C of the Act. The petitioner was not the owner/landlord of the property in question and that the will having not been probated cannot be relied upon as it is bogus. Hence no right, tide or interest flow in favor of the petitioner on account of this bogus will.

(4) The Rent Controller, dismissed the petition of the petitioner on the short ground that as the premises was not "let out by him, therefore, the petition was not maintainable. He became owner of the property by way of transfer after 14th December, 1987 whereas the premises was let out on 1st March, 1972 by Sh. Sat Dev Sawhncy. Hence interpreting the provisions of Section 14C of the amended act and relying on the decision of S.Surjit Singh Kalra Vs. Union of India &Anr. the petition.

(5) It is against this dismissal that the present revision petition has been filed.

(6) A short point has been raised with regard to interpretation of Section 14C as to whether the said ground of eviction could be made available to the owner who had inherited the property after the death of the original owner who let out the premises himself? Section 14C(2) reads as under:- 14C(2) "WHERE the landlord is an employee of the Central Government or of the Delhi Administration and has a period of less than one year preceding the date of his retirement and the premises let out by

him are required by him for his own residence after his retirement, he may, at any time, within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises."

A reading of this section though indicates as if the petition can be filed for eviction only by a person who let out the premises and who required for his own residence. But, this point came up to be settled by the Supreme Court in a case decided by three Hon'ble Judges of the Supreme Court in the case of Smt. Kanta Gael Vs. B.P. Pathak & Others . This new ground of eviction had been introduced in the Delhi Rent Control Act by the amended Act of 1988. Though the Supreme Court in Smt. Kanta Goel's case (supra) was interpreting the provision of Section 14A of the Act. In Section 14A also the word use dare "let out by him". The reading of Section 14A also gives a right to a particular landlord to recover immediate possession of residential accommodation of any premises let out by him. While interpreting the provisions of Section 14A which is para material the same-as Section 14C regarding the use of the word let out by him, the Supreme Court in the aforesaid case laid down that Section 14C is available as a ground, if premises are owned by him as inherited from his propositus, in whose name the property stood. It was laid down that 'In his name ' and 'let out by him ', read in the spirit of the provision-and without violence to the words of the section, clearly convey the idea that the premises must be owned by him directly which is the case where he, as heir, steps into his father's shoes who owned the building in his own name and let it out himself. He represents the former owner and Lesser and squarely falls within Section 14A. The accent on "name" is to pre-empt the common class of benami evasions, not to attach special sanctity to nominalism.

(7) The learned lower court placed reliance on the decision in the case of Surjit Singh Kalra Vs. Union of India & Another . This judgment again is given by three Hon'ble Judges of the Supreme Court. The ground of eviction which came up for consideration by the Supreme Court was Section 14B which gives an immediate right to recover possession of the premises to the members of the armed forces who are to retire. Section 14B also has the words the premises It out by him'. But the interpretation of the word "let out by him " was not for consideration before the Supreme Court in "Surjit Singh Kalra's case (supra) ". The question which arose for decision before the Supreme Court 'was not with regard to interpretation of the said words. The tenant in the said case had challenged the vires of amending Act (57 of 1988) which were brought on the statute book as Section 14B to 14D. The Supreme Court in that case was not dealing with the interpretation of the words let out by him. Therefore, to my mind, the trial court erred in placing reliance on the decision of Surjit Singh Kalra's case (supra) and ignored the decision of the Supreme Court in the case of Smt. Kanta Goel (supra) where these very words let out by him' came up for interpretation and had been interpreted by the Supreme Court.

(8) It appears that the legislature while placing on statute book those special provisions which give rights to certain classified landlords, the amended act did not amend the provisions of section 25B although eviction petitions have to be tried summarily under the provisions of Section 25B. Unfortunately, the summons which are required to be issued have to be in accordance with the provision contained under Section 25B sub section (2) of the Act. These provisions did not pertain to the new grounds of eviction covered by Sections 14B, 14C and 14D. The form of summons are contained in the third schedule which also does not refer to the new provisions as it has not been

modified in accordance with the special provisions contained in the statute book after the amendment of act 1988. It was in this background that the Supreme Court opined that keeping in view the intention of the legislature as expressed in Section 14B to 14D, the court could supply the words which inadvertently were not supplied by the legislature in the relevant Section 25B and the Schedule.

(9) The question which had arisen in the present case as observed by me above, has been squarely answered by the Supreme Court in the case of Smt. Kama Goel (supra). This question also came up before this court in the case of S.R. Bose Vs. S. Gurbax Singh & Ors. . In Civil Revision No.27/93 decided on 17th February, 1993 where P.K. Bahri, J. relying on the decision of Smt. Kanta Goel (supra) held that the Supreme Court in the case of Surjit Singh Kalra (supra) was not on the point arising for decision the word "let out by him" but this was directly subject matter of decision in the case of Mrs. Kanta Goel (supra). Same view has been expressed by another Single Bench of this Court in C.M.(M) 241/91, B, Bajaj Vs. Maj. Gen. S.N. Puri, decided on December 12, 1991. The Division Bench of this court in the case of B.N.Chanana Vs. Union of India etc.. Rajdhani Law Reporter (DB) 6B had also followed Smt. Kanta Goel's case and so also by another Single Bench had given the same interpretation following the case of Smt. Kanta Goel in the case of Mrs. Sarla Luthra Vs. Gadore Tools (P) Ltd. reported in 1993 (25) Drj 52 Rlr 22.

(10) In view of my above discussion I accept the petition and set aside the impugned order and remand the case back to the learned Rent Controller to decide the case on merits. Both the parties are directed to appear before the Rent Controller on 8th July, 1993.