

Delhi High Court

Jagatri Lal Dhawan And Anr. vs Charanji Lal Vaid And Ors. on 26 February, 1973

Equivalent citations: 9 (1973) DLT 446, 1973 RLR 521

Author: B Misra

Bench: B Misra

JUDGMENT B.C. Misra, J.

(1) This order will dispose of two matters (Civil Writ No. 1327 of 1967 and S.A.O. 93 of 1968). The facts of the case are taken from the writ petition where Jagatri Lal Dhawan who is appellant in the second appeal from order, is the petitioner.

(2) On 31st March, (this date is wrongly mentioned in paragraph 2 of the writ petition as 30th February, 1960) the petitioner filed a petition for eviction against tenant Shri Chiranji Lal Vaid (who is now) dead and is represented by his legal representatives 1 (g) to 1(Q) on the ground of non-payment of rent and unlawful subletting, The Controller after passing an order under section 15 of the Act passed another order striking of the defense of the tenant on failure to deposit the rent on 22nd October, 1960 and finally by order dated 1st November, 1960 ordered eviction on the both the grounds. The tenant filed an appeal before the Rent Control Tribunal which succeeded and by order dated 3rd April, 1961 the order of the Controller was revised. On Second appeal, the High Court (Meher Singh.J.) by order dated 13th february, 1964 allowed the appeal and get aside the appellate order of the Tribunal and restored the order of the Controller, finally maintaining the order for eviction.

(3) On 14th September, 1964, the petitioners applied to Competent Authority'(Slums) under section 19 of the Slum) Areas (Improvement and Clearance Act, 1956 for permission to execute the decree. This was allowed by the Competent Authority by order dated 19th April- 1966 only la part and he permitted the petitioners to execute the order for eviction in respect of a portion of the tenanted premises which had been subset by the tenant and which had been occupied by the subtenant and the Competent Authority refused the permission to execute the decree in respect of the remaining portion of the premises.

(4) Aggrieved by this order, the petitioners filed an appeal before the Adiministrator which was heard by Mr. R. K. Biweja. Judicial Secretary. During the pendency of the appeal, Chiranji Lal Vaid, the original tenant, died and his legal representatives were brought on the record. The Judicial Secretary by the impugned order dated 29th May, 1967 (Annexu e ' C ') dismissed the appeal and maintained the order of the Competent Authority. Aggrieved by this order, the petitioners have filed the present writ petition.

(5) Miss Iva Kapur, learned counsel for the petitioners in support of the writ petition, has raised two contentions, namely, firstly the affording of protection against eviction to the legal representatives of the statutory tenant by the Administrator under the Slum Areas Act was illegal and had and secondly the order of the Judicial Secretary affirming the order of the Competent Authority to permit eviction in respect of part of the tenanted premises and refusil g eviction in respect of another part of the tenanted premises in execution of the single decree was illegal, without

jurisdiction and void.

(6) The second appeal from order arises under the circumstances that the petitioner-appellants, armed with the order of the Competent Authority, moved the Controller to execute the order of eviction against the tenant in respect of the part of the tenanted premises permitted by the Competent Authority. This was refused by the Controller by order dated 4th August, 1960 on the ground that the decree could not be executed in respect of a part of the premises and since the petitioners had failed to obtain permission of the Competent Authority under the slum Areas Act in respect of the whole of the premises, the application for execution was not maintainable. The appeal filed against the said order before the Rent Control Tribunal by order dated 8th December, 1957 maintaining the order of the controller dismissed the appeal. The petitioner-appellants have, aggrieved by the said order, filed the second appeal and have contended that the Controller ought to have executed the order for eviction.

(7) I have carefully considered the submissions of Miss Kapur in the writ petition and I find that there is force in them. There is no doubt that Chiranji Lal Vaid was a statutory tenant and he died on 30th December, 1966. His legal representatives did not inherit the personal protection afforded to a statutory tenant and so the Competent Authority and for that matter the Administrator under the Slum Areas Act had no jurisdiction to refuse permission to the petitioners to execute the decree against the legal representatives of the statutory tenant. The question at issue came up directly for consideration before Rangarajan, J. of this Court in Smt. Raj Rani v. Moolan Bai, where his lordship observed that section 19 of the Slum Areas Act does not apply to heirs of a statutory tenant and that in such case the landlord would be entitled to execute the order of eviction without the permission of the Competent Authority language in which the opinion of the Court has been expressed is as follows : "I can see no reason to deny relief to the petitioner when she states that she must be relieved of the consequences of having filed an application for permission to execute against the respondents under section 19 of the Slum Areas Act and of the further appeal that she filed against the order of the Competent authority declining to grant permission to execute the order of eviction obtained against them. If the legal position is, as I apprehend it to be, that permission of the Competent Authority under the Slum Areas Act is not necessary to execute the decree for eviction against the respondents 1 to 4 then they have been found to be persons of not sufficient means is not at all material."

In arriving at the decision, his lordship with respect followed an authority of the Supreme Court in Anand Nivas Private Limited v Anandji Kalyanji's Pethi where it was held that a statutory tenant merely enjoyed the protection of the statute which was personal and was not capable of being transferred or assigned. His lordship also relied upon Calcutta Credit Corporation Limited v. Happy Homes Private Limited, paragraph 15. The matter also came up for consideration in Sham Lal v. Joint Hindu Family Firm Ram Chand Srini Ran*, where a Division Bench of this Court (Tatachari and R. N. Aggarwal, JJ.) held that after the death of a statutory tenant, his legal representatives could not claim any estate or interest in the property which was the subject-matter of tenancy and, therefore, they could not claim the protection of section 19 of the Slum Areas Act and the said protection was available only to the tenant and not to his legal representatives. With great respect I follow the said authority of the Division Bench as well as of Rangarajan, J. I may only add that the Supreme Court has as late as August, 1972, in Jagdish Chander Chatterjee v Shri Kishan", Civil

Appeal No 428(N) of 1971, reiterated the rule of law laid down in Anand Nivas's case (supra) and has added that the protection of a Statutory tenant is personal and is not capable of being transferred or assigned and it devolves on his death only in the manner provided by the statute. On this short ground, this writ petition will have to be allowed and the impugned order set aside.

(8) Mr. Bharat Inder Singh, learned counsel for the respondents tried to support the order of the Judicial Secretary on the ground that even an ex-tenant is entitled to protection and in view of a Pull Bench authority of this Court in *Bardu Ram v Ram Chander**, the word tenant in section 19 of the Slum Areas Act includes a person in occupation of tenanted premises, even though a decree or order for eviction has been obtained against him. In this case, the question for consideration was whether the word "tenant", which is defined in section (2) (e) of the Delhi Rent Control Act as exclusive of a person against whom any order or decree for eviction has been made, has been used in the same sense in section 19 of the Slum Areas Act. The Full Bench answered the question in the negative and held that a tenant against whom an order for eviction had been passed would, though ceasing to be included in the definition of 'tenant' in the Rent Act, still continue to be entitled to the protection of section 19 of the Slum Areas Act. The question raised in the present writ petition about the right to the legal representatives of a statutory tenant to obtain the protection under the Slum Areas Act did not arise for consideration in the said decision, nor has it been discussed, nor are there any observations in the judgment helpful to the respondents. The said judgment was delivered on 12th October, 1970 and the judgment of Kangarajan, J. and of the Division Bench relied upon by me have been delivered subsequently. This only illustrates that the contention of the respondents is not tenable.

(9) Mr. Bharat Inder Singh has made a faint attempt to submit that the petitioners had themselves impleaded the legal representatives of the deceased tenant in proceedings before the Judicial Secretary and, therefore, the Judicial Secretary was entitled to afford protection to the respondents. In my opinion, the mere fact of bringing on record the legal representatives does not alter the substantive rights of the parties which may otherwise be determined according to law. This contention also fails.

(10) In view of my acceptance of the first contention of Miss Kapur, it is really not necessary to discuss her second contention. However, in order to complete the record, it may be observed that in the absence of a statutory provision to this effect, it is not possible to break up the tenancy or the decree and order of eviction in respect of a part of the tenanted premises and refuse eviction in respect of the remaining part.

(11) This question has been finally settled by the Supreme Court in *Miss S. Sanyal v, Gian Chand*, where their lordships disapproved a number of authorities of the High Court of Punjab, including the Circuit Bench of Delhi, and finally observed as follows :- "In the absence of a specific provision incorporated in the statute, the Court has no power to break up the unity of the contract of letting and attribute incidents and obligations to a part of the subject-matter of the contract which are not applicable to the rest."

The said reasoning applies with equal force to the order of the Judicial Secretary which is found to be without jurisdiction. Reference in this connection may also be made to a decision of the High Court of Punjab in *Shri Habib-Ul Huq v Shri Thakur Dass*. In this case the question which came up for consideration was whether or not the Competent Authority could grant conditional permission to execute a decree for eviction. The Court observed that if the Competent Authority in some particular circumstances wanted to base its permission on the fulfillment of some condition, it was incumbent upon it to obtain the fulfillment of the condition before it passed a final order and the final order which must emerge from it, must be categorical either refusing or granting permission. This Authority also supports the view I am taking that the permission to execute the single decree for possession cannot be partially granted and partially refused. The second submission of Miss Kapur, therefore, also prevails.

(12) As a result, the writ petition is allowed and directions are given to the respondents to allow the petitioners to execute the order for eviction in respect of the whole of the tenanted premises without the permission of the Competent Authority under section 19 of the Slum Areas Act. In the circumstances of the case, the parties are left to bear their respective costs. In view of the decision in the writ petition, no orders are necessary on the second appeal from order which stands disposed of accordingly.