Supreme Court of India
Subhash Kumar Lata vs R.C. Chhiba & Anr on 23 September, 1988
Equivalent citations: 1989 AIR 458, 1988 SCR Supl. (3) 241
Author: S Natrajan
Bench: Natrajan, S. (J)

PETITIONER:
SUBHASH KUMAR LATA

Vs.

RESPONDENT:
R.C. CHHIBA & ANR.

DATE OF JUDGMENT23/09/1988

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
PATHAK, R.S. (CJ)

CITATION:
1989 AIR 458 1988 SCR Supl. (3) 241
1988 SCC (4) 709 JT 1988 (4) 65
1988 SCALE (2)790
CITATOR INFO :
R 1990 SC 325 (18)
E 1991 SC1233 (10,11,14)
RF 1992 SC1555 (2)

ACT:
Delhi Rent Control Act, 19S: Section 21--Rent Controller--Duty of--To apply his mind before grant of sanction-Landlord obtaining sanction by withholding information that premises already let out--Sanction--Held vitiated by fraud and therefore a nullity.

HEADNOTE:
Execution applications were filed by the Appellant under section 21of the Delhi Rent Control Act, 1958 for obtaining possession of the portions in the occupation of the respondents--Tenants. The appellant's case was that she obtained s motion of the Additional Rent Controller on 26/27th February, 1976 and thereafter leased out specified portions in her property to the respondents under separate leases for a limited period of two years commencing from March 1, 1976. The rear portion in the ground floor was leased out to one tenant and the first and second floor were leased out to another tenant. Each tenant was to pay a sum

of Rs.850 per month. The execution applications were filed by the appellant against the two respondents as they failed to vacate the portion leased out to them at the end of the two year period.

The two respondents put up a common defence contending, that there was a single tenancy and not two tenancies, they were jointly inducted into possession of the entire leased portion in the month of December, 1975, under an oral lease and the tenancy was therefore not referable to the sanction given by the Additional Rent Controller on 26/27th February, 1976. They placed reliance on the payment of Rs.1,700 on 10th December, 1975 as security deposit, and three months advance payment of rent of Rs.5,100 by means of cheque on 29th December, 1975.

The Rent Controller after inquiry and consideration of the accepted the case of the respondents, and held that an oral having been granted in favour of the respondents even in the month of December, 1975 their tenancy rights were not governed by the sanction given by the Additional Rent Controller under section 2l, and that sanction of the Rent Controller was vitiated by fraud in that it was by supressing the true facts from the notice of the Rent Controller. The execution applications were accordingly dismissed.

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In the appeals preferred to the Rent Control Tribunal, it was held that even if the respondents had been inducted into possession in December 1975 under an oral tenancy they must be deemed to have impliedly surrendered their earlier tenancy the sanction granted by the Rent Controller on 2h/27th February, 1976. It was further held that the respondents ought to have brought to the notice of the Rent Controller without delay the fraud practised by the appellant and since they have failed to act promptly they were not entitled to seek nullification of the sanction of the Rent Controller. The Tribunal allowed the appeals, held the execution applications were maintainable, and directed respondents to deliver possession to the appellant in a month's time.

Second appeals were filed by respondents to the High Court, which were allowed. It was held that as the respondents were already given tenancy rights they would not be governed by the sanction given by the Rent Controller on 26/27th February, 1976, that the sanction order itself was unenforceable as it was vitiated by fraud, and that no question of implied surrender of the earlier tenancy would arise, when the Rent Controller gave sanction for limited tenancy rights. The High Court restored the order of the Rent Controller dismissing the execution appeals.

Dismissing the appeals by the landlord, the Court,

HELD: 1. What section 21 envisages is the creation of tenancy rights after getting the sanction of the Rent

Controller. Such being the case, the landlord should make known to the Rent Controller, if there is already a tenant in occupation of the premises, the factum of his possession and the terms of the tenancy and satisfy the Rent Controller that notwithstanding a tenant being in occupation of the premises under an earlier tenancy he should be granted sanction under section 21 to confer limited tenancy rights in favour of the existing tenant himself or in favour of new tenant. [249D-E]

2. Section 21 was not intended to obtain 'post-facto' sanction of a tenancy that had already been created by supressing relevant information from the Rent Controller so as to enable the landlord to straight away recover possession of the leased property by filing an application under section 21 after the expiry of the period for which permission to lease had been granted by the Rent Controller. [249E-F]

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3. Besides what the parties say, the Rent Controller has to apply his mind before granting sanction under s. 21 because the order passed by him has legal consequences and will govern the rights of the parties to the tenancy that is to follow in terms of the sanction. [251C]

S.B. Noronah v. Prem Kumari, [1980] I SCR 281; J.R. Vohra v. Indian Export House Pvt. Ltd., [1985] 1 SCC 712 at 723; Inder Mohan Lal v. Ramesh Khanna, [1987] IV SCC 1 at page 9; and Joginder Kumar Butan v. R.P. Oberai, [1987] (IV) SCC page 20 at 29 referred to.

4. A statement made in contravention of facts, whether made by one or both the contracting parties, cannot alter the truth of the situation or cure the lacuna of withholding of relevant information. [249H]

In the instant case, it is inconceivable that irrespective of the differences in the size and nature of the two portions, the respondents would have consented to pay the same rate of rent to the appellant for the portions alleged to have been leased out to them. The tenancies Granted to the two respondents are for the same period i.e. from March 1, 1976 to 28 February. 1978. If all these factors are taken note of the only conclusion that can be reached is that only a single tenancy in favour of both the respondents should have been created for the entire leased portion and not two tenancies, one for the ground floor, and the other for the first and second floor. The story of two tenancies put forward by the appellant is a make-believe affair. [248B-D]

In the instant case, when the appellant had already put the re-spondent in possession of the property in December, 1975, she could not have bona fide made a statement before the Rent Controller that she would not be requiring the premises for her own occupation from 1st March 1976 onward for a period of two years. The fact that respondent 910 appeared before the Rent Controller and gave statements in

tune with the statement made by the appellant cannot improve the situation in any manner. [249G-H]

5. The sanction obtained from the Rent Controller under Section 21 was vitiated by fraud and therefore a nullity. It could therefore not be said that by reason of the respondents having agreed to take limited ten tenancy rights under the order of Rent Controller for a period of two years commencing from March 1, 1976 they must be deemed to have impliedly surrendered their earlier tenancy rights as envisaged under clause (f) of section 111 of the Transfer of Property Act.[252C-E]

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Doe d. Earl of Egrement v. Courtenay, [1843-60] All E.R.Rep. 685, referred.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1594- 1595 of 1986.

From the Judgment and Order dated 23.8.1985 of the Delhi High Court in S.A.O. No. 185 and I84 of 1983.

Avadh Behari Rohtagi, M.S. Maan and B.S. Maan for the Appellant.

Harish N. Salve, S.K. Mehta, Vijay Makhija, R. Jaganath Goulay, S.A. Sarin and Aman Vachhar, for the Respondents.

The Judgment of the Court was delivered by NATARAJAN, J. Both the appeals by special leave have been filed by the same appellant and are directed against a common judgment delivered by the High Court of Delhi in two connected second appeals dismissing the Execution Applications filed by the appellant against the respondents in the two appeals under Section 21 of the Delhi Rent Control Act (for sho-rt 'the Act' hereinafter). The Execution Applications were dismissed by the Rent Controller but on appeal by the appellant herein they were allowed and the tenant/respondent in each of the applications was directed to surrender possession in a month's time. The High Court, however, reversed the order of the Rent Control Tribunal in the Second Appeals preferred by the respondents a dismissed the Execution Applications. The aggrieved appellant has preferred these appeals.

It was the appellant's case that she had obtained the sanction of the Additional Rent Controller, New Delhi on 26/27.2.76 and there-after leased out specified portions in her property bearing no. N-57, Panchseel Park, New Delhi to the respondents under separate leases of a limited period of two years commencing from 1.3.76. According to here the rear portion in the ground floor consisting of a drawing-cum- dining hall a bed room, a bath room and other facilities were leased out to the tenant Maj. R.C. Chhiba (respondent in CA No. 1594 of 1986)and the first and second floors comprising of four bed rooms with attached bath rooms and other facilities were leased out to the tenant Tewari (respondent in CA 1595 of 1986) and each of the tenants was to pay a sum of Rs.50 per month for

the respective portion PG NO 245 leased out to them. On the ground the two respondents failed to vacate the portions leased out to them at the end of the two years period, the appellant filed Execution Applications under Section 21 of the Act to seek an order from- the Rent Controller for delivery of possession of the leased portions:

The common defence put forth by the two respondents was that there was a single tenancy and not two tenancies and they were jointly inducted into possession of the entire leased portion even in the month of December 1975 under an oral lease and as such, their tenancy was not referable to the sanction given by the Rent Controller on 26/27.2.76. To substantiate their contentions, the respondents placed reliance on the payment of a sum of Rs.1,700 by them on 1;0.12.1975 as security deposit and the payment of a sum of Rs.5,100 by means of cheque on 29.12.1975 towards advance payment of rent for three months. They alleged that inspite of their having been inducted into possession in December 1975 itself, the respondent mislead them by saying that the oral tenancy required formal sanction by the Rent Controller and hence they should appear before the Rent Controller and have their statements recorded by him. It ws only after giving their statements before the Rent Controller they suspected the motives of the appellant and hence they refused to execute lease deeds in the month of March 1976 as desired by the appellant.

The Rent Controller. After a detailed consideration of the evidence adduced by the parties accepted the case of the respondents and held that an oral tenancy had been created in favour of the respondents even in the month of December 1975 and as such their tenancy rights were not governed by the sanction given by the Rent Controller under Section 21 of the Act and further more the sanction of the Rent Controller was vitiated by fraud in that it was obtained by suppressing the true facts from the notice of the Rent Controller. It was further held that the order of sanction of the Rent Controller suffered from an infirmity due to the appellant failing to glove the reasons for her wanting to let out the property for a limited period. We need not however concern ourselves about that aspect of the matter.

The Rent Control Tribunal, in the appeals preferred to it, however differed from the Rent Controller and held that even if he respondents had been inducted into possession in December 1975 under an oral tenancy, they must be deemed to have impliedly surrendered their earlier tenancy and consented to acquire fresh tenancy under the sanction granted by the Rent Controller on 26/27.2.76. On the PG NO 246 question whether the sanction of the Rent Controller was vitiated by fraud, the Appellate Tribunal held that the respondents ought to have brought to the notice of the Rent Controller without delay the fraud practised by the appellant and since they had failed to act promptly they were not entitled to seek nullification of the sanction of the Rent Controller on the ground of fraud. In accordance with its conclusions, the Tribunal allowed the appeals preferred by the appellant and held that the Execution Applications were maintainable and directed the respondents to deliver possession to the appellant of the leased portions in a month's time.

It was then the turn of the respondents file second appeals to the High Court against the order of the Rent Control Tribunal. The High Court allowed the appeals holding that since the respondents were already given tenancy rights they would not be governed by the sanction given by the Rent Controller on 26/27.2.76 and furthermore the sanction order itself was unenforceable as it was

vitiated by fraud. The High Court also held that no question of implied surrender of the earlier tenancy would arise when the Rent Controller gave sanction for limited tenancy rights being given to the respondents in as much as the purported new lease was void in law and incapable of affording scope for any surrender of a pre-existing lease. Consequently the High Court allowed the second appeals and restored the order of the Rent Controller dismissing the Execution Applications.

Mr. Rohtagi, learned counsel for the appellant formulated his propositions as under to contend that the High Court had erred in allowing the appeals and dismissing the Execution Applications:

1. The sanction given by the Rent Controller on 26/27.2.76 to the appellant permitting her to grant limited tenancy rights to the respondents was fully in accordance with Section 21 of the Act and it did not suffer from any defect or infirmity.

(2) The order of sanction was not vitiated by fraud as the respondents were fully in the know of things and were aware of the nature and purpose of the application made before the Rent Controller and had willingly appeared before the Rent Controller and solemnly declared before him that they were willing to take the premises on lease for a limited period of two years commencing from 1.3.1976.

(3) In any event the respondents are dis-entitled under law to set up a plea of fraud to seek nullification of the PG NO 247 sanction granted by the Rent Controller because the respondents had not only failed to bring forthwith to the notice of the Rent Controller the fraud committed by the appellant but on the other hand they had availed of the benefit of the permission given by the Rent Controller for the full period of two years and thereby they had lost their power of avoidance of the transaction.

(4) Even if the order of sanction was vitiated by fraud, the tenancy created thereunder was only a voidable transaction and not a void one and, as such, by reason of the respondents having failed to avoid the contract and instead having availed the benefit of it for the full period of two years, they were not entitled to refute the validity or the binding nature of the sanction granted by the Rent Controller for creation of limited tenancy rights in their favour.

(5) Even if it were to be held that the respondents had already been inducted into possession of the leased premises on an oral tenancy in the month of December 1975 itself, they must be deemed to have impliedly surrendered their tenancy rights under the oral lease when they agreed to accept the limited tenancy rights given to them in pursuance of the sanction of the Rent Controller.

Before we examine the contentions of Mr. Rohtagi, we may appositely advert to certain facts emerging from the evidence and the inferences resulting therefrom. The relevant factors requiring mention are as follows.

The two respondents are not stranger but are brothers and they have been inducted into possession on one and the same day, i.e. on 10th December 1975. Though the appellant would say that different portions of the house were leased out to them under separate tenancies, the fact remains that a sum

of Rs.1,700 had been paid by them towards security deposit on 10.12.1975. The appellant has no doubt acknowledged the payment under two receipts but both the receipts have been typed on the same paper. The receipts would read as if a sum of Rs.850 had been received separately from each one of them but the recital is of no consequence because the respondents have paid the appellant a sum of Rs.5,100 by means of a single cheque towards advance rent for a period of three months at the rate of Rs.1,7)0 per month. The appellant has tried to explain away the payment by saying that the payment represented a sum of PG NO 248 Rs.2,550 given by each of the respondents for meeting the expenses of white-washing, colour washing and for effecting repairs to the premises. It has, how-ever, been found that no such works were carried out. There is the further fact that while the ground floor portion leased out consisted of only a drawing-cum-dining hall, one bed room and one bathroom, the first and second floors consisted of four bed rooms together with bathrooms etc. It is inconceivable that irrespective of the difference in the size and nature of the two portions the respondents would have consented to pay the same rate of rent to the appellant for the portions alleged to have been leased out to them. It is also worthy of note that the tenancies said to have been granted to the two respondents are for the same period, i.e. from 1.3.76 to 28.2.78. If all these factors are taken note of, the only conclusion that can be reached is that only a single tenancy in favour of both the respondents should have been created for the entire portion leased out and not two tenancies, viz. one for the ground floor and the other for the first and second floors and that the story of two tenancies put forward by the appellant is a make-believe affair It is in this background the appellant's contentions have to be examined.

It is true that the appellant as well as the respondents appeared before the Rent Controller on 26/27.2.76 and gave statements to the effect that the appellant did not require the use of the leased premises for a period of two years commencing from 1.3.76 and that the respondents were willing to take the respective portions marked in the plan Ex. A- I produced by the appellant for a limited period but even so the question would arise whether the order passed by the Rent Controller can be deemed a valid and legal sanction given under Section 21. The answer has to be clearly in the negative because the appellant had already let out the premises to the respondents and as such there was no question of the appellant not being in need of the leased portion for a period of two years from 1.3.76. It has been held in Inder Mohan Lal v. Ramesh Khanna, l l987] IV SCC 1 at page 9 that in order to attract Section 21 four conditions must be fulfilled. The relevant portion reads as follows:

"Therefore the first condition must be that the landlord must not require the premises either in whole or part of any premises for a particular period. Secondly, the landlord must obtain the permission of the Controller in the prescribed manner. Thirdly, letting of the whole or part of the premises must be for residence. Fourthly, such letting out must be for such period as may be agreed in writing."

PG NO 249 Applying the above tests, it may be seen that in this case the very first condition has not been fulfilled. When the appellant had already parted with her possession of the leased portions by inducting the respondents into possession in December 1975 itself, the statement of the appellant before the Rent Controller on 26/27.2.76 made as if she was in possession of the house and she would not be needing the house for her occupation for a period of two years from 1.3.]976) was a meaningless statement besides being a subversive statement as well. As pointed out in S.B. Noronah

v. Prem Kumari, [1980] l SCR 281 Section 2 I has been provided in the Act to offer a pragmatic compromise formula to satisfy the ever increasing demand of rental accommodation by non- owners of houses on the one hand and the reluctance of the owners of houses due to genuine apprehension entertained by them on the other in letting out their houses in whole or in part even when they were not in need of the house or portion of it lest the tenants should set up statutory tenancy rights and refuse to vacate the premises at the end of the lease period. What the Section envisages is the creation of tenancy rights after getting the sanction of the Rent Controller. Such being the case the landlord should make known to the Rent Controller, if there is already a tenant in occupation of the premises, the factum of his possession and the terms of the tenancy and satisfy the Rent Controller, that notwithstanding a tenant being in occupation of the premises under an earlier tenancy he should be granted sanction under section I to confer limited tenancy rights in favour of the existing tenant himself or in favour of .I new tenant. Section ' I was not intended to obtain post-facto sanction of a tenancy that had already been created by suppressing relevant information from the Rent Controller so as to enable the landlord to straightaway recover possession of the leased property by filling an application under Section 2l of the Act after the expiry of the period for which permission to lease had been granted by the Rent Controller. Such being the case when the appellant had already put the respondents in possession of the property in December 1975 she could not have bona fide made a statement before the Rent Controller that she would not be requiring the premises for her own occupation from l.3.1976) onwards for a period of two years. he fact that the respondents also appeared before the Rent Controller and gave statements in tune with the statement made by the appellant cannot improve the situation in any manner because a statement made in contravention of facts. whether made by one or both the contracting parties, cannot alter the truth of the situation or cure the lacuna of withholding of relevant information from the Rent PG NO 250 Controller. We cannot therefore accept the contention of the appellant's counsel that the order passed by the Rent Controller on 26/27.2.76 granting sanction to the appellant to confer limited tenancy rights on the respondents did not suffer from any defect or infirmity.

As regards the next contention of Mr. Rohtagi that the appellant had not committed any fraud when she sought for and obtained sanction from the Rent Controller to grant limited tenancy rights to the respondents and that in any event the respondents were fully in the know of things and were therefore estopped from raising a plea of fraud to resist the Execution Applications, the argument is based on a misconception of the real perspective from which the matter Should be viewed. What is of relevance is not whether the appellant had committed any fraud upon the respondents but whether the appellant had fraudulently suppressed relevant materials from the notice of the Rent Controller and had thereby obtained an order of sanction from the Rent Controller to lease out the property for a period of two years from 1.3.1976. There is no denying the fact that the appellant had failed to disclose to the Rent Controller that she had already inducted the respondents into possession and inspite of it she was seeking permission under Section 21 in order to restrict the tenancy rights of the respondents to a period of two years with effect from 1.3.1976. Had she disclosed the real state of affairs it is doubtful whether the Rent Controller would have given his approval to the appellant to restrict the tenancy rights of the respondents, who were already in possession, to a period of two years in substitution of the rights available to them as statutory tenants under the Act. We do not however rule out the possibility of a Rent Controller granting sanction under Section 21 to a landlord to let out his premises in whole or in part for a limited

period to a tenant even if the tenant had already been inducted into possession but such sanction has to be obtained after a full an-i frank disclosure of all factors including the circumstances under which the tenant had been put in possession even before the Rent Controller's sanction was obtained and before an agreement in writing was entered into between the parties in terms of the sanction. It could be that the tenant may have been in urgent need of the premises and could not afford to wait to take possession of the house till the legal and procedural formalities were gone through on account of some exigency such as immediate requirement of the house to celebrate a wedding or for a family member to undergo treatment or for the confinement of a daughter or daughter-in-law etc. but in all such cases the parties must place all the materials before the Rent Controller while PG NO 251 seeking his sanction under Section 21. The fact that the respondents had also appeared before the Rent Controller and agreed to take the property on lease for a limited period of two years without demur cannot obliterate or nullify the fraud committed on the statute. This position has been succinctly pointed out in S.B. Noronah v. Prema Kumari, (supra) at page 287 in the following words:

The fact that a landlord and a potential tenant together apply, setting out the formal ingredients of Section 21, does not relieve the Controller from being vigilant to inquire and satisfy himself about the requisites of the landlord's non-requirement "for a particular period" and the letting itself being "as a residence"

Therefore, besides what the parties say, the Rent Controller has to apply his mind before granting sanction under Section 21 because the order passed by him has legal consequences and will govern the rights of the parties to the tenancy that is to follow in terms of the sanction. This is the proper perspective from which the matter should be viewed. Forgetting this position, Mr. Rohtagi based his arguments on the footing that what has been held against the appellant was her perpetration of a fraud on the respondents and the respondents being the sufferers thereby. It was proceeding on those lines Mr. Rohtagi argued that the respondents were not illiterate but highly educated persons, that they were fully aware of the nature of the transaction and that they had willingly consented to the creation of limited tenancy rights in their favour and it was only after deriving full benefit under the tenancy rights given to them for two years, they were brazenly setting forth a plea of fraud and refusing to deliver possession of the leased premises. The argument does not merit consideration because we have already pointed out that the relevant factor for consideration is not whether the respondent were victims of a fraud but whether the appellant by herself or in collusion with the respondents had fraudulently suppressed the truth from the Rent Controller and induced him to give his sanction under Section 21 so as to restrict the tenancy rights already conferred upon the respondents to a period of two years and to enable the appellant to initiate execution proceedings straightaway against the respondents at the expiry of the lease period and have them evicted through process of court from the leased premises. What is now left is the further contention of the appellant's counsel regarding the failure of the respondents to have speedily brought to the notice of the Rent Controller the fraud committed by the appellant and to have PG NO 252 sought for an annulment of the permission granted under Section 21. The appellant's counsel placed reliance on the observations of this Court in three cases viz. J.R. Vohra v. Indian export House Pvt. Ltd., [1985] I SCC 712 at 723, Inder Mohan Lal's,case (supra) para 28 page 17 and Joginder Kumar Butani v. R.P. Oberai, [1987] IV SCC 20 at 29 which are all to the effect that the delay on the part of the tenant to

impugn the permission granted under Section 21 by the Rent Controller on the ground of fraud is a relevant factor to be taken into consideration by the Court while determining the question whether a tenant should not be summarily evicted under Section 21. The observations in those cases cannot be of any assistance to the appellant for in none of those cases was it found that the sanction granted by the Rent Controller under Section 21 was vitiated by fraud and was therefore a nullity. None of the decisions lay down that where a sanction granted by the Rent Controller under Section 21 is rendered void by reason of a fraud practised upon the statute, the delay on the part of the tenant in seeking annulment of the order of sanction will cure the order of its voidness.

Turning now to the last of the contentions of the appellant's counsel viz. that by reason of the respondents having agreed to take limited tenancy rights under the order of the Rent Controller for a period of two years commencing from 1.3.1976 they must be deemed to have impliedly surrendered their earlier tenancy rights as envisaged under Clause (f) of Section 111 of the Transfer of Property Act, it has no merit in it because, the High Court has rightly pointed out after referring to Does d. Earl of Egrement v. Courtenay, [1843-60 All. E.R. Rep. 685] and some decisions of the High Courts, that when a new lease does not pass are interest according to the contract the acceptance of it will not operate as a surrender of the former lease; that, in the case of a surrender implied by law from the acceptance of a new lease,the condition ought also to be understood as implied by law, making void the surrender in case the new lease should be made void."

For all the aforesaid reasons,the appeals have to fail and will accordingly stand dismissed but there will to no order as to costs.

N.V.K. Appeals dismissed.