Supreme Court of India
Dr. K Madan vs Smt. Krishnawati & Anr on 6 November, 1996
Author: Kirpal
Bench: Sujata V. Manohar, B.N. Kirpal

PETITIONER:
DR. K MADAN

Vs.

RESPONDENT:
SMT. KRISHNAWATI & ANR.

DATE OF JUDGMENT: 06/11/1996

BENCH:
SUJATA V. MANOHAR, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL, J.

Leave granted.

This is an appeal by the appellant-tenant in which the challenge is to an order which had been passed under Section 14 (1)(k) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act').

The appellant is a lady Doctor and in the year 1963, she took the ground floor of House No. l-II/9l, Lajpat Nagar, New Delhi from one Gyan Chand Shingari at a monthly rent of Rs. 175/- p.m. According to the appellant, this rent was first raised to Rs. 265/- p.m. in the year 1968 and then to Rs. 300/- p.m. in the year l970.

In August, 1974 the aforesaid Gyan Chand Shingari died and his widow, the respondent herein, became the owner of the property and the appellant attorned to her. According to the appellant, the premises were taken on rent by her for residential-cum-commercial purposes. She was residing in the said premises and was also running a clinic. According to the respondent, however, the premises were given on rent only for residence.

In the year 1974, the appellant constructed her own residential house in East of Kailash, New Delhi and, soon thereafter she shifted her residence to the new house but continued to retain the premises in dispute where she maintained her clinic. It appears that possession of some of the portion of the ground floor, which had been in the occupation of the appellant, was taken back by the respondent but the appellant continued to be the tenant of two rooms with a common use of latrine and front varandah on the ground floor of the aforesaid house.

On 17.5.1978 the respondent filed an eviction petition against the appellant before the Rent Controller being Suit No. 134 of 1978 under section 14(1)(k) and (h) of the Act. By judgment dated 13.9.1985, the Additional Rent Controller, Delhi came to the conclusion that the eviction of ground floor under Section 14(1)(c) of the Act had not been made out. Eviction orders were, however, passed on the ground under Section 14(1)(h) namely that the appellant had acquired vacant possession of a residence inasmuch as she had constructed her own house in East of Kailash. The Additional Rent Controller further held that the ground under Section 14(1)(k) of the Act had been made out inasmuch as the appellant was using the premises as a clinic which was contrary to the terms and conditions imposed by the Land and Development Office on the respondent land-lady. The case of the respondent was that the premises in question were residential and according to the terms of the lease given by the government the said premises could not he used for any other purposes. A Doctor was allowed to use the premises upto 500 square feet as his clinic provided the Doctor resided in the said premises. Inasmuch as the appellant had shifted from the Lajpat Nagar House to her own house in East of Kailash, therefore, the submission was that her continued user of the premise, in question only as a clinic was against the terms of the lease. The Additional Rent Controller vide his judgment dated 13.9.1985, while disposing of the petition on the above two grounds under Sections 14(1)(h) and 14(1)(k) of the Act, issued notice under Section 14(11) of the Act to the Land and Development Office.

At this stage, it is appropriate to refer to the relevant portion of the Act namely, Sections 14(1)(k) and 14(11) of the Act which read as under:

> "Clause (k) of the proviso to sub- section (1) provides that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on the ground that the tenant has, notwithstanding previous notice, used or dealt with the premises in to manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi giving him a lease of the land on which the premises are constructed. The requirements cf clause (k) may be analysed as follows:
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> (1) The user of the premises by the tenant should be contrary to a condition imposed on the landlord by the Government, etc. (2) Such user must continue even after a notice to discontinue the same is given by the landlord. (3) The condition which is contravened by the user of the tenant should be one which is imposed on the landlord by the Government "while giving him a lease of the land on which premises are situate".

> 14(11) This sub-section provides that no order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of Section 14(1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by say of compensation as the Controller may direct."

Pursuant to the issuance of the aforesaid notice by the Additional Rent controller under Section 14(11) of the Act, the Deputy Land and Development Officer filed a written statement before the Additional Rent Controller, Delhi. After stating that the property was originally leased to Gayan Chand and, after his death, the name of the respondent had been substituted, with regard to alleged mis-use and regularisation, it was stated as follows:

"That the question of regularisation/condoning the breaches permanently does no.

arise. However, the lessor may consider, if proper application is made by the lessee with an undertaking to remove the breaches, within the specified period, and with readiness to pay the misuse/additional charges leviable for such misuser, that may be fixed for the period of the breach to postpone the right of re-entry till such time the breaches are finally removed.

That the misuse in the nature of running a doctor clinic cannot be allowed, but the area extending to 500 sq. feet is permitted in case the doctor is residing in the premises. Terms for the temperarly regularisation of misuse charges upto 14.1.1981 were communicated to the lessee vide this office letter No. L & DO/PS. II/1830 dt.

3.12.1980 but the terms have not so far been complied with. In the present case benefit of 500 sq. feet was not given because lady doctor Madan who is a tenant of the lessee, was not residing in the premises as noticed during inspections from time to time."

After filing the aforesaid written statement, the statement of mis-use charges was also filed before the Additional Rent Controller, Delhi.

The parties then led evidence and, by judgment dated 19.4.1594, the Additional Rent Controller, Delhi came at the conclusion that the appellant had been misusing the premises by running her clinic and the misuser/breach of the conditions of the lease could not be condoned permanently by the office of Land and Development Office and as such, by the impugned order, she was directed to stop the mis-user within two months from the date of the order in order to avoid eviction against her. The Additional Rent Controller, Delhi also estimated the damages for mis-user which were levied by the Land and Development Office and the appellant was directed to pay the same within two months from the date of the order including damages for mis-user for the period subsequent to 1.4.1989 till its stoppage.

The appellant, thereupon filed an appeal before the Rent Control Tribunal, inter alia contending that there had been no mis-user of the premises on her part inasmuch as since the inception of the

tenancy, she had been using the same as her residence as well as clinic. This contention, was not accepted and it was held by the Tribunal that there was misuse of suit premises. It had also been contended on behalf of the appellant before the Tribunal that the property in question had become free-hold and, therefore, the appellant was not liable to pay misuse charges. Relying upon the evidence of an officer of the Land and Development Office, the Tribunal came to the conclusion that the property in question had not become free-hold. While dismissing the appeal, the appellant was granted two months time by the Tribunal to comply with the directions contained in the order dated 19.4.1994 passed by the Additional Rent Controller, Delhi.

The appellant then filed an appeal to the High Court of Delhi raising the contentions that order under Section 14(1)(k) of the Act should not have been passed and secondly, the Government had permitted the conversion of the property from lease-hold to free-hold. By order dated 28.10.1995, the High Court held that with regard to the plea pertaining to applicability of Section 14(1)(k) of the Act, the finding of the Additional Rent Controller, Delhi and of the Tribunal was a question of fact and no question of law arose. With regard to the policy of the Government permitting conversion of the property, it was held that the property in dispute was admittedly a lease-hold property and the owner/landlord was not bound to seek conversion under the alleged policy. Hence, this appeal.

In this appeal the only contention raised was that an order under Section 14(1)(k) read with Section 14(11) of the Act ought not to have been passed. It was further submitted while relying upon the decision in the case of PUNJAB NATIONAL BANK VS. ARJUN DEV ARORA AND OTHERS, (1986) 4 SCC 660 that no order could be passed requiring the closure of the clinic as long as penalty for wrongful user is continued to be paid by the tenant.

After taking into consideration the evidence on record and, in particular, the written statement of the Land and Development Officer as well as the statement of the witnesses before the Additional Rent Controller, the Tribunal has found as fact that the appellant was using the premises in question in a mananer which was contrary to the terms of lease between the land-lady and the Land and Development Office. It cannot be said that this conclusion was not warranted. It is contended by Mr. Jain, learned counsel for the appellant, that as long as the order for payment of compensation to the Land and Development Office remained, the order for eviction or for closure of the clinic need not be passed.

It is no doubt true that the observations in Punjab National case (supra) are to the effect that as long as the penalty was paid the deviation of user could be permitted, but the attention of the two Judge Bench was not drawn to the earlier decision of three Judges Bench in the case of FAQIR CHAND VS. SHRI RAM RATTAN BHANOT, (1973) 1 SCC 572. In that case, property had been given on lease by the Delhi Development Authority but the landlords had permitted tenants to use portion of the building for commercial purposes. The Development Authority issued notice to the landlords calling upon them to discontinue the use of land for commercial purposes, failing which cause should be shown as to why the lease should not be determined and the property re-entered. Thereupon the land-lords sought eviction of the tenants under Section 14(1)(k) of the Act. One of the contentions which were raised to behalf of the tenants was that the land-lords were estopped or otherwise prohibited from getting possession of the property because the land-lords themselves had let-out the

property for commercial purposes. While analysing the provisions of clause (k) and subsection (ll) of Section 14 of the Act, it was observed in FAKIR CHAND CASE (supra) at page 557 as under:

> "The Legislature has clearly taken note of the fact that enormous extents of land have been leased by the three authorities mentioned in that clause, and has expressed by means of this clause its anxiety to see that these lands are used for the purpose for which they were leased. The policy of the Legislature seems to be to put an end to unauthorised use of the leased lands rather than merely to enable the authorities to get back possession of the leased lands.
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> This conclusion is further fortified by a reference to subsection (ll) of Section 14. The lease is not forfeited merely because the building put upon the leased land is put to an unauthorised use. The tenant is given an opportunity to comply with the conditions imposed on the landlord by any of the authorities referred to in clause (k) of the proviso to sub-section (1). As long as the condition imposed is complied with there is no forfeiture. It even enables the Controller to direct compensation to be paid to the authority except in the presence of the authority. The authority may not be prepared to accept compensation but might insist upon cessation of the unauthorized use. The subsection does not also say who is to pay the compensation, whether it is the landlord or the tenant. Apparently in awarding compensation the Controller will have to apportion the responsibility for the breach between the lessor and the tenant."

Dealing with the contention that the land-lords were estopped from filing or getting any relief under clause (k), lt was held that:

> "The anxiety of the Legislature is to prevent unauthorized user rather than protection of the tenant or strengthening the hands of Development Authority in effecting forfeiture. The Development Authority can always resort to the terms of the lease. There is no estoppel here because both the landlord and the tenant knew that the tenancy was not one permitted under the terms of the lease of the land. In any case there can be no estoppel against the statute. It would not benefit the tenant even if it is held that the landlord cannot, under the circumstances, evict him. The landlord will lose his property and the tenant also will lose. He cannot, after the Development Authority takes over the building use it for a commercial purpose."

Section 14(1)(k) of the Act again came up for Consideration before this Court in CUREWELL (INDIA) LTED. VS. SAHIB SINGH, 1993 Supp.(1) SCC 507. While construing sub-section 11 of Section 14 of the Act. it was observed as follows:

> "This sub-section prevents eviction if the tenant has complied with the condition imposed on the landlord by the government. The subsection also requires the person in possession, namely, the sub-lessee to pay to the authority such amount by way of compensation as the Controller may direct. It is not in dispute that the original lessee, upon receipt of notice, from the government, had in turn issued notice to the

> sub-lessee, namely, the appellant calling upon him to stop misuser or vacate the Premises. If the appellant has, as contended by him stopped misuser, he is of course not liable to be evicted by reason of the protection given to him uer sub-section (11). Nevertheless, for the past misuser, the appellant is liable to pay such charges as are payable in terms of the sub-section. The charges under the subsection are such charges as are determined by the Controller. The Controller must, therefore, after hearing the parties determine the amount payable by the person responsible for the misuser, namely, the appellant who is the tenant of the original lessee and determine the correct amount. We are of the view that the appellant is liable to be evicted unless he has already stopped or stops immediately the misuser of the premises and pays the misuse charges for the period of misuse. Whether the misuser has stopped and if so when, are questions of facts which do not appear to be clear from the pleadings or the impugned judgment and the orders of the statutory authorities.

In the light of the observations of this Court in the cases of Fakir Chand (supra) and Curewell (supra) the relevant provisions may be examined.

Section 14(1) of the Act gives protection to the tenants from being evicted from the permises let out to them. Clauses (a) to (l) of the proviso to Section 14(1) of the 14(1) of the Act contain the grounds on which recovery of possession of the premises can be ordered by the Controller. Where the premises are used in a manner contrary to any condition imposed on the land-lord by the Government or the Delhi Development Authority or Municipal corporation of Delhi, then the landlord would be entitled to recovery of possession under Section 14(1)(k) of the Act. Sub-section (11) of Section 14, however gives an option to the controller to pass an order whereby recovery of possession may not be directed. The alternative to an order for recovery of possession under Section 14 (1)(k) is to pass an order under sub-section (11) of Section 14 of the Act whereby the tenant is directed to comply with the conditions imposed on the landlord by the authorities referred to in clause (k) namely to stop the misuser of the premises in question. Sub-section (11) of Section 14 also uses the words "pays to that authority such amount by way of compensation as the Controller may direct". Keeping in view the fact that clause (k) of the proviso to sub-section (1) has been inserted in order that the unauthorised use of the leased premises should come to an end, and also bearing in mind that the continued unauthorised use would give the principal lessor the right of re-entry after cancellation of the deed, the aforesaid words occurring in sub-section (11) of Section 14 cannot be regarded as giving an option to the Controller to direct payment of compensation and to permit the tenant to continue to use the premises in an unauthorised manner. The principal lessor may, in a given case be satisfied, in cases of breach of lease to get compensation only and may waive its right of re-entry or cancellation of lease. In such a case the Controller may, instead of ordering eviction under Section 14(1)(k) of the Act, direct payment of compensation as demanded by the authorities mentioned in clause (k). Where, however, as in the present case compensation is demanded in respect of condoning/removal the earlier breach, but the authority insists that the misuser must cease then the Controller has no authority to pass an order under Section 14 (11) or Section 14 (1)(k) of the Act giving a license or liberty of continued misuser. In other words, sub-section 11 of Section 14 enables the Controller to give an another opportunity to the tenant to avoid an order of eviction. Where the authority concerned requires stoppage or misuser then an order to that effect has to be

passed, but where the authority merely demands compensation for misuser and does not require the stoppage of misuser then only in such a case would the Controller be justified in passing an order for payment of compensation alone.

The observations of this Court in Punjab National Bank's case (supra) to the effect that as long as the penalty continued to be paid, deviation to user could be permitted, do not appear to be in consonance with the decision of the larger Bench in Fakir Chand's case (supra). Continued wrongful user cannot be permitted by levying penalty but if the authorities do not require the stoppage of misuser, but merely ask for payment of penalty or compensation, then in such a case, an order of eviction or for stoppage of premises need not he passed and it will be sufficient if compensation is required to be paid.

Coming so the facts of the present case, the Additional Rent Controller in order dated 13.9.1985, while issuing notice under Section 14(11) has observed that the landlord has placed on record a notice sent only the Land and Development Office regarding misuser. In the written statement filed on behalf of the Land and Development Office in response to the notice issued under Section 14(11), it was stated that the question of regularisation/condoning the breach permanently did not arise. The said reply contemplates an undertaking being given by the Landlord for removal of breach otherwise there is a threat of re-entry. The payment of misuse charges would only amount to temporary regularisation of the earlier misuser and the Land and Development Office clearly insisted on the stoppage of the misuser. This being so, the question of the Controller requiring payment of penalty or compensation and permitting continued misuser would not be in accordance with law.

For the aforesaid reasons, while upholding the orders of the court below, we grant the appellant two months time to comply with the order dated 19.4.1994 of the Additional Rent Controller, Delhi. There will be no order as to costs.