V.W. Bagga vs Janak Raj Sharma on 25 November, 1986

Equivalent citations: 1987(12)DRJ1

JUDGMENT

G.C. Jain, J.

(1) This second appeal under Section 39 of the Delhi Rent Control Act, 1958 (for short 'the Act'), by the landlady, is directed against the order of the Rent Control Tribunal dated 4/5/1985.

(2) The dispute is in respect of ground floor of property No. 145, Block M, Greater Kailash Part Ii New Delhi. Ms. V.W. Bagga, the appellant, is owner of the said premises. Janak Raj Sharma, the respondent approached her for letting out the same to him for residential purposes for a period of two years on a monthly rent of Rs. 1,450.00. Ms. Bagga accepted the offer. On 3/1/1977 they moved a joint application under Section 21 of 'the -Act' for permitting the appellant to let out the said accommodation to the respondent for a period of two years. The reason indicated in the application was that because of family circumstances she did not require the said premises presently and she had accepted the offer of the respondent for letting out the same to him for two years from the date of the permission. Learned Controller recorded the statement of the parties. In her statement before the Controller no special reason for making the premises available for letting was disclosed. She simply stated that she did not require the premises for a period of two years from that date. By order dated 5/1/1977 learned Controller allowed the appellant to create mited tenancy favor of respondent under Section 21 of 'the Act' for a period of two years from the date of the order for resident (3) The period for which the limited tenancy was created expired on 4/1/1979. The tenant did not vacate. The landlady, on 19/4/1979, moved, an application for delivery of possession of the premises in dispute in execution of the order made on 5/1/1977 under Section 21 of 'the Act'. On 20/4/1979 learned Additional Controller issued notice of the application to the tenant for 6/7/1979. On 3/8/1979, holding that the defendant had not appeared in spite of service by publication, the learned Additional Controller, issued warrants for possession.

(4) On 1/8/1979 the tenant moved an application under Section 151, Code of Civil Procedure. He prayed that warrants for possession be withdrawn, the exparte order made on 3/8/1979 be set aside and he may be given an opportunity to file objections to the application filed by the landlady. It was alleged that no notice of the execution application was ever issued or served on him. The court had directed service of notice by ordinary manner as well as by registered post. No notice by registered post was ever sent. The landlady manipulated false reports, played a fraud on the court and obtained order for substituted service by filing false affidavit. It was also averred that before the expiry of the period of two years a new tenancy had been created.

(5) On 31/8/1979 the tenant filed objections to the application moved by the landlady seeking possession of the premises in dispute. Besides the plea regarding fresh tenancy it was pleaded that the order dated 5/1/1979 was illegal, invalid and unenforceable. It had been obtained by playing

fraud on the court. The order had been made by the learned . Controller without satisfying himself and without.applying his mind arid that the conditions necessary for granting permission to create limited tenancy were not present. It was also averred that the landlady did not require the premises for herself and the only intention was to get it vacated after two years and re-let the same on enhanced rent. She had let out the first floor of the said premises some time in the month of March, 1979.

(6) The landlady resisted both these applications. In her reply to the application under Section 151, C.P C. it was alleged that as the warrants for possession had been issued under Section 21 of the Act on account of expiry of the limited tenancy the application for withdrawal of warrants or for setting aside the exparte order was not maintainable. Order under Section 21 of 'the Act' had become final and executable after the expiry of period of limited tenancy. She denied any fresh tenancy. Allegations regarding service of notice were also denied.

(7) In her reply to the objections filed on 31/8/1979 it was averred that the objection petition was not maintainable because (i) no law under which it bad been made bad been referred; (ii) the tenant had made an application under Section 151. Civil Procedure Code . It incorporated the entire case of the tenant and it was still pending; (iii) the tenant had been duly served through process of law and due to his non-appearance warrants for possession had been issued and the tenant was not entitled to file objections at this stage of the proceedings of the execution case; (iv) Warrants for possession had been issued on account of expiry of the period for which the limited tenancy was created; and (v) the order under Section 21 of 'the Act' having become final was executable after the expiry of the period of limited tenancy She denied the creation of any fresh tenancy. She also denied that the order was illegal, invalid or unenforceable or was a mindless order. It was averred that the tenant who himself was a party to the order dated 5/1/1977 was not-entitled to challenge the legality of that order in the execution proceedings and the executing court Could not go behind the decree.

(8) Mr. J.D. Kapur, Controller, vide his order dated 10/9/1979 held that the tenant had failed to prove any fresh tenancy; the plea that the order dated 5/1/1977 was a result of fraud or non-application 'of mind etc. was not available and in any case in the absence of any particulars the tenant could not be allowed to challenge the legality and validity of the said order. On these findings he dismissed the application under Section 151, C.P.C. and the objections made by the tenant. This order was made without affording any opportunity to the parties to lead evidence.

(9) The tenant appealed to the Rent Control Tribunal. The learned Tribunal by his order dated 17/7/1980 holding that the objections could not be decided without giving the parties an opportunity to lead evidence, accepted 'the appeal, set aside the order of the Controller and remanded the case to the Controller for deciding the objections after affording the parties an opportunity to lead evidence.

(10) After the remand, the parties produced evidence. On examining the said evidence Mr. D.K.. Saini, Additional Controller held that the tenant had failed to prove any fraud or collusion and also the factum of the creation of a new tenancy. He further found that the landlady was living with her brother where she had no right to stay and it was the reason for creating the limited tenancy. With

these findings he dismissed the objections on 24/11/1984.

(11) Tenant again appealed to the Rent Control Tribunal. Learned Tribunal affirmed the finding of the learned Additional Controller regarding the creation of a new tenancy. He, however, further held that the decision of the Supreme Court in J. R. Vohra v. India Export House, 27 (1985) Delhi Law Times 211 did not bar the filing of the objections after the expiry of the period of limited tenancy and the tenant could challenge the legality of the order dated 5/1/1977 in spite of the fact that he was a party to it and had made a statement that he shall vacate the premises after the expiry of two years and that the Controller could go behind that order. He further found that the impugned order was granted by the Controller in a mechanical way without applying his mind, and that the reason given for creating the limited tenancy in the execution proceedings, namely, that the parents of the landlady bad died within a span of four months, she was in a state of shock and was asked to stay with her brother for two years, the mourning period after which she wished to live in her own house, was a make-belief and not genuine reason and the premises were available for letting for an indefinite period as distinguished from specific particular limited period of two years. With these findings, he allowed the appeal, set aside the order of the learned Additional Controller and dismissed the application of the landlady for recovery of the possession of premises.

(12) Feeling aggrieved, the landlady has filed this second appeal.

(13) 'THE Act' was enacted to provide for the control of rents and evictions and of rates of hotels and lodging houses, and for the lease of vacant premises to Government in certain areas in the Union Territory of Delhi. Section 14 of the Act drastically controls the statutory right of the landlord to claim eviction in accordance with the terms of the lease contract. Eviction now can be allowed only if the Controller is satisfied about the existence of one or more grounds given in clauses (a) to (1) of the proviso to sub Section (1) of Section 14 of 'the Act'. However, Realizing the scarcity of the accommodation available for letting and the feelings of the owners that once they let out their properties, getting back the possession was a remote possibility, if not impossibility, and with a view to persuade such owners to make available accommodation, which cld be spared for a limited period, the legislature enacted Section 21. It reads : "21.Recovery of possession in case of tenancies for limited period. Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and tenant and the tenant does not, on the expiry of the said period, vacate such premises, then notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises."

(14) Section 21 postulates two distinctive proceedings. First, the proceedings for obtaining permission of the Controller, in the prescribed manner, for letting the whole of the premises or part thereof, as residence, for such particular period, as may be agreed to in writing between the landlord and tenant; second, the proceedings on an application made before the Controller by the landlord

for placing him in vacant possession of the said premises. These are in the nature of execution proceedings. When an application seeking permission to create limited tenancy under Section 21 of 'the Act' is made the landlord must indicate the particular period for which he can spare the accommodation. "The Controller must be satisfied that the landlord means what he says and it is not a case of his not requiring the property indefinitely as distinguished from a specific or particular limited period of say one year, two years or five years. If a man has a house available for letting for an indefinite period and he so lets it. even if he specifies as a pretence, a period or term in the lease. Section 21 cannot be attracted. On the other hand, if he gives a special reason why he can let out only for a limited period and requires the building at the end of that period, such as that he expects to retire by then or that he is going on a short assignment or on deputation and needs the house when he returns home it is good compliance." (See S.B. Noronah v. Prem Kumari Khanna,) (15) In the second proceedings the Controller is concerned with the delivery of the possession at the expiry of the period for which limited tenancy was created.

(16) The contention of the learned counsel for the landlady that the tenant being party to the impugned order could not challenge its validity and the executing court cannot go behind the impugned order, cannot be accepted in presence of the decision in Noronah's case (supra). In this case it was held: "It is altogether wrong to import the idea that the tenant having taken advantage of induction into the premises pursuant to the permission, he cannot challenge the legality of the permission. As between unequals the law steps in and as against statutes there is no estoppel, especially where collusion and fraud are made out and high purpose is involved."

The edoctrine of estoppel cannot be invoked to render valid a proceeding which the legislature has, on grounds of public policy, subjected to mandatory conditions which are shown to be absent.

> "Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers. A petitioner in a divorce suit cannot obtain relief sy because the respondent is estopped from denying the charges, as the court has a statutory duty to inquire into the truth of a petition."
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> "The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion."
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> "We have said enough to make the point that it is open to the tenant in the present case to plead and prove that the sanction under Section 21 is invalid, and if it is void the executing court is not debarred from holding so."

(17) Same view was taken by the Supreme Court in V.S. Rahi and another v. Smt. Ram Chambeli, . It is thus clear that the fact that the tenant was a party to the impugned order is of no consequence and the Controller executing the impugned order could examine whether the sanction under Section 21 was a make-believe, vitiated by fraud and collusion.

(18) Learned counsel appearing on behalf of the landlady contended that the objections to the validity of the initial order made under Section 21 cannot, in any case be raised after the expiry of the limited period for which the tenancy was created. Reliance was placed on the decision of the Supreme Court in J. R. Vohra's case (supra). This decision, in my view, does not support the contention of the learned counsel. It was no where held that at the second stage validity of the order granting permission to create limited tenancy cannot be challenged. All what was held was that notice of the application made by the landlord for putting him in possession under Section. 21 was not essential. It was observed :-

> "What then is the remedy available to the tenant in a case where there was in fact a mere ritualistic observance of the procedure while granting permission for the creation of a limited tenancy or where such permission was procured by fraud practiced by the landlord or was a result of collusion between the strong and the weak ? Must the tenant in such cases be unceremoniously evicted without his plea being inquired into ? The answer is obviously in the negative. At the same time must be permitted to protract the delivery of possession of the leased premises to the landlord on a false plea of fraud and collusion or that there was a mechanical grant of permission and thus defeat the very object of the special procedure provided for the benefit of the landlord in Section 21. The answer must again be in the negative. In our view these two competing claims must be harmonised and the solution lies not in insisting upon service of a prior notice on the tenant before the issuance of the warrant of possession to evict him but by insisting upon his approaching the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner be discovers facts and circumstances that tend to vitiate ab initio 7 the initial grant of permission. Either it is mechanical grant of permission or it is procured by fraud practiced by the landlord or it is the result of collusion between two unequals but in each case there is no reason for the tenant to wait till the landlord makes his application for recovery of possession after the expiry of the fixed period under Section 21 but there is every reason why the tenant should make an immediate approach to the Rent Controller to have his pleas adjudicated by him as soon as facts and circumstances giving rise to such pleas come to his knowledge or are discovered by him with due diligence. The special procedure provided for the benefit of the landlord in Section 21 warrants such immediate approach on the part of the tenant. Of course if the tenant aliunde comes to know about landlord's application for recovery of possession and puts forth his plea of fraud or collusion etc. at that stage the Rent Controller would inquire into such plea but he may run the risk of getting it rejected as an afterthought. There is however no need to imply any obligation on the part of the Rent Controller to serve a notice on the tenant inviting him to file his objections before issuing the warrant of possession in favor of the landlord."

(19) It is, thus. clear that the objections could be made to the validity of the sanction order even after the expiry of the limited period for which the tenancy was created subject of course to the risk of getting it rejected as an after thought. The objections were, therefore, competent.

(20) Reliance was also placed on the decision in V.D. Modi v. R.A. Rehman, . It was a case under the Bombay Rents Hotel & Lodging House Rates (Control) Act. This decision is of no assistance in presence of Supreme Court's decision in Noronah's case (supra) which is directly on Section 21 of 'the Act'.

(21) Was the order dated 5/1/1977 a mindless order? Was in fact there was a mere ritualistic observance of the procedure and the conditions which attracted Section 21 did not exist? To attract Section 21 of 'the Act' two conditions must exist. One of these conditions was that letting must be made for a residential purpose. This condition admittedly was present. The other requirement was that the landlady did not require the demised premises for a particular period i.e. two years in this case. There is a serious dispute between the parties about the existence of this condition. Learned Tribunal has recorded a finding in favor of the tenant. , He has held that this second condition was not present.

(22) Learned counsel appearing for the landlady strenuously assailed this finding of the learned Tribunal. It was contended that this condition was also present. Reference was made to the averments in the application where it was stated that because of the family circumstances, landlady was presently not requiring the accommodation in dispute and accepted the offer of the tenant for letting out the same to him for residential purpose for a period of two years. Reference was also made to the statement of the landlady made before the Controller on 5/1/1977 in which she stated that she did not require the premises for a period of two years from the date of her statement. The averment in the application and the evidence contained in the statement of the landlady, argued the learned counsel, was a sufficient compliance.

(23) Landlady, no doubt, had indicated in her application that she did not require the premises for two years for family reasons. This, however, was not sufficient. The family circumstances for which she could spare the accommodation for two years were not disclosed. The special reasons for which she did not require the premises for two years had not been indicated. Thus no reason was given as to why she could let out the premises only for a limited period of two years. On such material, the Controller could not be satisfied that it was not a case of her not requiring the property indefinitely as distinguished from a particular period of two years. Before permission could be granted landlady was bound to disclose and prove the family circumstances for which she could spare the accommodation for two years. In the absence of reasons/justification for qreuiring the premises after two years, indication of a period of two years was just a pretence. Thus, this necessary condition was not present. Learned Tribunal was right in holding that the order made on 5/1/1977 was a mechanical grant and a mindless order.

(24) In Vijay Kumar Bajaj v. Inder Sain Minocha, 1981 Delhi Law Times 518, a Division Bench of this Court (of which I was a member) had held that the special reason for which a landlord could make available the premises for a particular period only, if not indicated in the proceedings at the first stage, could be proved in the proceedings at the second stage, i.e. the execution proceedings. In the present case, the tenant in his objections dated 31/8/1979 had pleaded that the order dated 5/1/1977 was illegal, invalid and unenforceable, was obtained by playing fraud on the court, had been made by the Controller without satisfying himself and without any inquiry about the

compulsory, requirements of Section 21 and without applying his mind and that the conditions which were required to obtain the sanction before creating tenancy under Section 21 were not present. In her reply, landlady averred that the tenant was not competent to challenge the order in question in these proceedings. He himself was a party to those proceedings and now it did not lie in his mouth - to challenge that order. It was further averred that the plea regarding fraud was vague. The requisite inquiry had been made by the Controller and he had applied his judicial mind and the conditions required for obtaining the permission were present. However even in this reply landlady did not indicate the special reasons for which she did not require the premises for two years.

(25) Learned counsel for the landlady submitted that the reason had been disclosed in the evidence. Reference was made to the statement of the landlady where she had stated that her father had died in July 1976, her mother had died on 1/12/1976. She created the limited tenancy as her brother asked her not to go to her house during the mourning period of two years i.e. 1977 to 1979. The landlady in her statement had admitted that she was residing with her brother since 1969. Admittedly she was a spinster. She was LL.M (London) and practicing as a Social Legal lawyer for the last 25 years. In this background learned Tribunal did not accept the reason, disclosed in her statement, for creating limited tenancy as genuine. I find no reason to differ with the view taken by the learned Tribunal. That the genuineness of the reasons could be examined in these proceedings cannot be disputed in the presence of the decision of the Supreme Court in V.S. Rahi's case (supra).

(26) The learned counsel for the landlady' had cited several judgments but in all these cases special reasons for creating tenancy had been given and the reasons were not found invalid. I consequently affirm the finding of the learned Tribunal that the order dated 5/1/1977 was a mindless, mechanical order and a mere ritualistic observance of the procedure prescribed by Section 21.

(27) Learned counsel for the landlady next contended that the landlady was residing with her brother. She had no legal right to stay there and bonafide required these premises for occupation) and consequently was entitled to an order for delivery of possession of these premises in these proceedings. Reliance was placed on a decision of this court in Vinod Bedi v. Maha Prabhu P. Singhania, . In Para 8 of the decision S.B. Wad, J. observed :- "If the actual need arises at the time of the execution, which was not expressly stated at the time of the creation of the tenancy, the execution court will have to take into consideration the new development. In the present case, although a specific period was stated in the original application made in 1978, special reasons were not stated. At the time of the execution application, however, the petitioner is transferred to Delhi, his wife has taken up a job in Delhi and his sons are admitted to Delhi School. Bonafides of the landlords' claim have been established. The Rent Controller failed to take into consideration these new developments. In Vijay Kumar v. Inder Sain, Xx (1981) Dlt 515 (DB), the Division Bench of this Court, has elaborated , ratio of the Supreme Court decision in Noronah. It has further held that even if specific reasons for a short term tenancy are not stated in the original application, landlord can, by leading evidence prove it at the trial."

(28) I have carefully examined this decision. If the observations quoted above mean that in execution of an order granting permission to create limited tenancy, which order is a nullity, the possession can be delivered on the ground that long after the making of that order actual need has

arisen, then most respectfully, I cannot subscribe to this view. Special reason, in my judgment for creating the limited tenancy, though can be proved in the proceedings at the second stage i.e. the execution proceedings, but must relate back to the date of initial order. The execution proceedings cannot be converted into an application for recovery of possession under clause (e) of the proviso to sub-Section (1) of Section 14 (bonafide requirement). However, in Vinod Bedi's case, there was no finding by the learned Judge that the initial order was a nullity as is the case here. This judgment, therefore, is of no help.

(29) Decision of the Supreme Court in Smt. Dhanwanti v. D.D. Gupta, is also of no, assistance. In this case it was held that the evidence did not make out that any fraud was practiced on the Rent Controller when permission was granted under section 21 and there was nothing to show that permission could be regarded as a nullity, or that material facts were concealed. In the present case, as held above, the order granting permission under Section 21 was a mindless and mechanical order and a nullity.

(30) I may add here that there is a serious contest about the alleged bonafide requirement of the landlady. The tenant has raised the plea that the landlady was residing with her brother since 1969 and there was no reason why that accommodation had become unsuitable. It was also urged that the first floor of this very house had been let out to a tenant in 1979. Learned Tribunal had not accepted the plea of the landlady that it belonged to her brother. For these reasons also this question cannot be gone into in these proceedings.

(31) Lastly, it was contended that pursuant to the application filed by the landlady for executing the order dated 5/1/1977 under Section 21 a notice to show cause "why the said order be not executed was .issued to the tenant. He was served but did not appear. The Controller made an order on 3/8/1979 directing the issuance of warrants of possession. This order was in terms of the provisions contained in Order 22 Rule 23 of the Code of Civil Procedure. No appeal was filed against the said order and it had, therefore, become final. This .order operated as constructive res judicata and the tenant could not challenge the validity of that order. His objections were not competent. Reliance was placed on the decision in Vinod Bedi's case (supra).

(32) Before I examine the merits, it may be noticed that the landlady in her reply to the objections filed by the tenant had raised the plea that an order issuing warrants of possession had already been made due to non-appearance of the tenant in spite of service of notice of her execution application and therefore, the objections were not maintainable. However, it is clear that this plea was never pressed. It is so for the reason that no decision on this plea was invited from the Additional Controller who decided the objections or the Rent Control Tribunal who decided the appeal. No such objection has even been raised in the memorandum of this appeal.

(33) There is another impediment in the way of the landlady. As noticed above, the objections of the tenant had earlier been dismissed by Mr. J.D. Kapur, Controller by order dated 10/9/1979. The tenant appealed before the Rent Control Tribunal. The Tribunal by order dated 17/7/1980 accepted the appeal, set aside the order of the learned Controller and remanded the case with directions to the Controller to decide the objections after affording the parties an opportunity to lead evidence.

This decision of the learned Tribunal, in my judgment, would operate as constructive res judicata so far as the plea of the landlady regarding the maintainability of the objections is concerned. She cannot now challenge the competence of the objections.

(34) Even on merits this contention had no substance. In order to apply the doctorine of constructive res judicata, it must be proved that a tenant had a clear notice of landlady's execution application and had an opportunity to contest her claim. In the absence of due service of notice, question of applying the doctorine of constructive res judicata or estopple would not arise.

(35) In the present case the facts regarding service of notice are peculiar... As seen earlier landlady filed the execution application on 19/4/1979. On 20/4/1979 learned Controller issued notice of the application to the tenant for 6/7/1979 by 'both ways'. It was not disputed that the term 'both ways' meant by ordinary process as well as by registered A.D. post. Admittedly, no notice in compliance of that order for 16/7/1979 was ever issued either by ordinary process or by registered A.D. post. What happened was this. Before any notice could be issued the landlady moved another application on 30/4/1979 under Section 151 of the Code of Civil Procedure read with Section 42 of 'the Act', for directing the tenant to pay up todate arrears of rent. This application came for hearing on 1/5/1979 and notice of this application was directed to be issued to the tenant for 18/5/1979. It was sent at the office address of the tenant. It came back with the report that the tenant was out of station. A fresh notice was issued for 1/6/1979. Process was issued for this date again at the office address of the tenant. The process server reported that the tenant was on leave and would be back on 4/6/1979. On 1/6/1979, the date which was fixed for hearing of the second application of the landlady relating to the payment of rent, the landlady made an application for substituted service under Order 5 Rule 20 read with Section 151 of the Code of Civil Procedure. It was averred that the case was pending for hearing on 1/6/1979. Efforts were made to serve the tenant by ordinary manner but he was avoiding service and was not accepting the service intentionally. The landlady was convinced that the tenant would not be served in ordinary manner and could only be served by substituted service by affixation of summons/notice on the door. It was prayed that the landlady be allowed to serve the tenant by way of substituted service.. This application was considered by the learned Controller on 1/6/1979 itself and holding that he was satisfied that the tenant could not be served in ordinary manner, he directed substituted service by publication in 'Savera' and by affixation for 3/8/1979. On 3/8/1979 holding that the tenant had not appeared in spite of service he ordered issuance of warrants of possession.

(36) As is clear from the perusal of the provisions contained in Rule 20 of Order 5 of the Code of Civil Procedure substituted service can be ordered where the Court is satisfied that there is reason to believe that the defendant was keeping out of the way for the purpose of avoiding service. The satisfaction of the Court must be a judicial satisfaction. There must be sufficient material to arrive at the conclusion that the defendant was keeping out of the way to avoid service. No such material existed in the present case. The report of the process server, as mentioned above, was that the tenant was on leave and would be back on 4/6/1979. Temporary absence from the office would not amount to evasion of service. Therefore, there was absolutely no justification for ordering substituted service.

(37) Second, substituted service under Order 5 Rule 20 has to be effected by affixing a copy of the summons in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in. which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit. The first mode was not adopted by the learned Controller. He adopted the second mode. The second mode was service by publication in 'Savera' & by affixation but admittedly there was no affixation. Thus, there was no compliance even of the mode of substituted service directed by the learned Controller.

(38) Third, this substituted service was in respect of the application made on 30/4/1979 regarding payment of rent. The application for substituted service says that the case was pending for hearing on 1/6/1979. On that date only this second application was pending. The first application, as mentioned above, was fixed for hearing on 6/7/1979. Thus, there was no service at all of the execution application on the tenant.

(39) Fourth, the notice published in paper 'Savera' is in Urdu. Translated into English, it reads:-

> Notice For The Appearance Of The Defendant .
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> (U/0.5R. 20 of CPC) In the Court of Sh. J.D. Kapoor, Additional Rent Controller, Room No. 4, Eastern Wing, Tis Hazari Courts, Delhi x x x x x x x x S.No. 8/77 & Miscellaneous No. 7/79 MISSV.W. Bagga, daughter of Attar Chand Bagga, resident of 34 Shaheed Bhagat Singh Marg, New Delhi.
>
> V. Janakraj Sharma son of M.L. Sharma. Regional Manager, Meteor Private Ltd., 121-122, Ansal Bhawan, New Delhi.
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> To the defendant above named :
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> Where as you are intentionally evading service of summons, you are hereby informed by way of publication to appear in the Court on 3-8-79 (the 3/8/1979), the date fixed for final decision in order to defend your case, failing which the suit will be heard and decided ex parte.
>
> Given under my hand and the seal of the Court on this 9/7/1979. sd/- Seal of the Court Additional Rent Controller Delhi.
>
> (40) This notice does not in any way indicate that it related to the execution of the order dated 5/1/1979 made under Section 21. The tenant, therefore, had no notice of the execution application. He had no opportunity to contest the claim of the landlady for his eviction and consequently the question of applying the doctorine of constructive res judicata or estopple does not arise. Decision in Vinod Bedi's case (supra) does not apply because of absence of notice.

(41) Learned counsel for the landlady then contended that the validity of the order dated 3/8/1979 whereby warrants for possession were issued could not be assailed in these proceedings and the remedy for the tenant was only by way of a separate appeal against that order. I do not agree. The said order, as seen above, was a nullity and could be set aside in exercise of the inherent powers of the Court. A prayer in this behalf had been specifically made by the tenant in his application dated 16/8/1979.

(42) In the result, the appeal fails and is dismissed. The parties are, however, left to bear their own costs.