

Rekha Sharma v. Shankar Devi and others (R. N. Mittal, J.)

No. 1 could not make any grievance against the order of the State Government annulling the resolution of the Municipal Committee without affording him an opportunity of being heard. Consequently, he challenged the order of the Executive Officer relieving him. The Executive Officer while relieving him from service was carrying out the order of the Government and, therefore, it was not necessary for him to give an opportunity to respondent No. 1 of being heard. He had also no power to review the order of the Government. Therefore, even if an opportunity had been given by him to respondent No. 1, that would have been without any purpose. Consequently, I accept the submission of the learned counsel for the appellants and reject that of respondent No. 1.

(7) For the aforesaid reasons, I accept the appeal, set aside the judgment and decree of the Courts below and dismiss the suit of the plaintiff. No order as to costs.

R.N.R.

Before R. N. Mittal, J.

REKHA SHARMA,—Petitioner.

versus

SHANKAR DEVI AND OTHERS,—Respondents.

Civil Revision No. 1928 of 1983.

November 24, 1987.

East Punjab Urban Rent Restriction Act (III of 1949)—Gift deed—Validity of—Motive behind gift—Such questions—Authorities under the Act—Whether have jurisdiction to decide.

Held, that the Supreme Court of India was of the view that in rent cases the question of the validity of the sale of property in favour of the landlord could be gone into by the Rent Controller. In view of the law laid down by their Lordships of the Supreme Court, the authorities under the East Punjab Urban Rent Restriction Act, 1949 have jurisdiction to determine the question whether the gift deed is a valid or a sham transaction. (Para 7).

Petition for Civil Revision under Section 15(V) of the East Punjab Urban Rent Restriction Act, 1949, against the order of the

Court of Shri M. L. Singal, Appellate Authority, Hoshiarpur under the East Punjab Urban Rent Restriction Act, 1949, dated 20th May, 1983 affirming that of Shri Hardial Singh, PCS, Rent Controller, Hoshiarpur, dated 25th November, 1982, dismissing the application.

S. C. Sibal, Advocate, for the Petitioner.

G. S. Gandhi, Advocate, for the Respondents.

JUDGMENT

R. N. Mittal, J.

This is a revision Petition by the landlady against the order of the Appellate Authority, Hoshiarpur, dated May 30, 1983.

(2) An application for ejectment was filed by her on the ground that she required the premises in dispute for her own use and occupation, as her husband was working as Captain in Merchant Navy with its registered office at Hong Kong and he had to stay for major part of the year outside the country; she had a son named Ripin Sharma aged about 3½ years whom she had to get admitted in Saint Joseph Convent School, Hoshiarpur; she or her husband did not own any property in the urban area of Hoshiarpur since the commencement of East Punjab Urban Rent Restriction Act, 1949 and she had not vacated any residential premises in Hoshiarpur. It is further alleged that the house had been gifted to her by her father Shri Dina Nath,—vide Gift Deed, dated March 30, 1979. Since then she had become the Landlady and respondents 1 and 2 are tenants under her. In addition to the above, the landlady also claimed ejectment of respondents 1 and 2 on the ground that they were in arrears of rent with effect from January 1, 1980 to March 31, 1981. This ground was later given up, as the rent was paid to her in the Court.

(3) The application was contested by respondents 1 and 2, who pleaded that the alleged Gift was fictitious and the transaction had been entered into with the ulterior motive to eject the said respondents. It was further pleaded that even if the Gift was held to be genuine, the landlady did not require the property for her own use and occupation, as Shri Dina Nath was in occupation of a huge house having more than twelve rooms, three kitchens and four bath-rooms. The landlady was at that time living with her father and she could stay with him. On the pleadings of the parties, the

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following Issues were framed:

- (1) Whether respondent No. 3 made valid gift deed, dated 30th March, 1979 in favour of the applicant in respect of the premises in dispute ? O.P.A.
- (2) Whether the gift deed executed by respondent No. 3, in favour of the applicant is fictitious, sham and *mala fide* transaction brought about with a view to secure the ejection ? O.P.R.—1 & 2.
- (3) Whether the applicant requires the premises in dispute for her own use and occupation in a *bona fide* manner ? O.P.A.
- (4) Relief.

(4) The Rent Controller held that the Gift Deed, dated March 30, 1979 was a sham transaction and was effected with a view to create a ground for ejection of the respondents. It was further held that the landlady did not require the demised premises for her own use and occupation *bona fide*. Consequently, he dismissed the application for ejection. In appeal, the learned Appellate Authority held that the Gift was executed with an oblique motive, but it was a validly executed document. Consequently, it reversed the finding of the Rent Controller on Issues Nos. 1 and 2. Regarding Issue No. 3, it held that the landlady did not require the premises for her own use and occupation *bona fide*. Hence, the appeal was dismissed by it. The landlady has come up in Revision to this Court.

(5) The first question that requires determination is, whether the gift, dated March 30, 1979 was a valid or a sham transaction. The counsel for the petitioner contends that the Supreme Court while remanding the case, observed that the Authorities under the Act could not go into the question of validity of a Gift Deed. Consequently, this Court cannot go into this matter. He further contends that the respondents also could not challenge the validity of the Gift Deed and, therefore, the Authorities under the Rent Control Act cannot go into that question. In support of his contention, he places reliance on *Sardarni Kirpal Kaur v. Bhagwant Rai* (1).

(1) 1962 Curr. L.J. (Pb.) 314.

(6) I have duly considered the argument. In order to determine the question, it is necessary to mention that this Revision Petition was dismissed by this Court *in limini*. The petitioner went up in appeal before the Supreme Court. While disposing of the appeal (Civil Appeal No. 297 of 1984-decided on March 26, 1987), that Court observed that the case was pre-eminently fit for admission. About the jurisdiction of the Rent Controller or the Appellate Authority to go into the question of the validity of Gift Deed, the Court observed as follows:

“We have considerable doubt whether the Rent Controller and the Appellate Authority had jurisdiction to go into the question as to whether the gift deed executed by the father was either sham or one executed with an oblique motive. We refrain from expressing any definite opinion on this question. It is left to the High Court to come to a decision after hearing the parties on merit.”

From the above observations, it is evident that the question whether the Authorities under the Act could determine the validity of the Gift Deed, was not decided by the Supreme Court and the same was required to be determined by this Court.

(7) The contention of Mr. Sibal that this Court cannot go into the validity of the Gift Deed in view of the observations in *Sardarni Kirpal Kaur's case* (supra) has also no substance. It is true that in that case, it was observed by Grover, J. (as he then was) that the question of validity of the gift cannot be raised in proceedings under the East Punjab Urban Rent Restriction Act, as such question is outside the jurisdiction of the Rent Controller. However, the Supreme Court in *Devi Das v. Mohan Lal* (2), observed to the contrary. In that case, the validity of the sale in favour of the landlord who filed an application for ejection against his tenant was challenged, before the Rent Controller. The Appellate Authority rejected the tenant's contention observing that he could not challenge the validity of the Sale Deed executed in favour of the landlord, as the tenant was not a party to that. The High Court did not advert to that point. The Supreme Court accepted the appeal and remanded the case to the trial Court to record a finding on the question whether the sale of the building was a *bona fide* transaction, or not. From the above case, it is obvious that that Court was of the view that in the

(2) A.I.R. 1982 S.C. 1213.

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Rent Cases the question of validity of the sale of the property in favour of the landlord could be gone into by the Rent Controller. The above judgment is binding on this Court. Therefore, I am of the view that the Authorities under the Act can determine the question whether the Gift, dated March 30, 1979 is a valid or a sham transaction.

(8) The petitioner in order to prove the Gift Deed, produced Smt. Surinder Kaur (A.W. 2) and Jagat Ram Sharma (A.W. 3) besides appearing herself in the witness-box. Shri Dina Nath donor also appeared as his own witness as R. W. 1. Smt. Surinder Kaur is the scribe of the Deed. She stated that it was executed at the instance of Shri Dina Nath, who signed the same after it was read over and explained to him. The witness signed the Deed in her presence. Jagat Ram Sharma is the attesting witness of the Deed. He supported the aforesaid statement. Shri Dina Nath in his statement, said that the petitioner was his daughter, that she had been serving him and he in lieu of her services and out of love and affection, gifted the property in her favour. He bore all the expenses regarding execution of the Deed and also paid the gift tax on the transaction. She was living at that time with him. In the Gift Deed, there is a recital that the property had been gifted on account of love and affection and in lieu of services rendered by the donee. Similar is the statement of the petitioner. The Deed is a registered document.

(9) From the aforesaid statements, the execution of the Deed by Shri Dina Nath in favour of the petitioner is fully established. The learned counsel for the respondents has argued that the petitioner did not say that the Gift Deed was executed in lieu of services rendered by her and that the kitchen is at some distance from the portion of the house which has been gifted to her. He further contends that the house in possession of Shri Dina Nath was a huge house and she could live with him. That shows that the Gift had been made by him *mala fide* in order to eject the respondents. I have duly considered the argument, but regret my inability to accept the same. The petitioner is the youngest daughter of her father and is married to an Officer in Merchant Navy. Her husband mostly remains on sea. He comes for a short while to live with the family and thereafter again joins the service. The petitioner when she is not with her husband on the sea, stays with her father at Hoshiarpur. She has a son of the age of 3½ years. She made the statement on July 31, 1981. Now, the child must be about 9 years of

age. It is not possible for the wife and child of the Merchant Navy Officer to accompany him on the high-seas all the time. The child of the petitioner has been admitted in Saint Joseph Convent School at Hoshiarpur. It is also not possible for her to live with her father for a long time. The father-in-law of the petitioner is living in a village near Una, where there might be no facility for educating the child. Shri Dina Nath appears to be a prosperous person. In such circumstances if he gifted a small portion of his house to his daughter for her residence out of love and affection, it cannot be said that the Gift had been made *mala fide*. Consequently, I am of the view that the Gift is not a sham transaction.

(10) The second submission of Mr. Sibal is that the petitioner wants the house *bona fide* for her own use and occupation. I also agree with this submission. I have already mentioned above the circumstances in which the petitioner has to live separately from her husband. It is she on whom the burden of educating her son has fallen. She or her husband has got no other house either in Hoshiarpur or anywhere in the urban area. In the absence of her husband, she requires assistance from some relation. Her father is living in the adjacent portion of the house and can render all assistance to her. No doubt, the house of her father is a big house, but she cannot stay with her father for an un-limited period of time. The life of an Officer who is serving in Merchant Navy is very tough and it is not possible for him to look after his family, as most of the time either he is at a far-off place or on the high sea. If he takes his family in the ship, he cannot educate his children. In the circumstances, he has no other alternative but to keep his family at some place where the education of the children does not suffer and they can be looked after by someone. A similar question arose in *Kirpal Singh v. Raghbir Singh* (3) and *Captain Sanjiv Passi v. Santokh Singh* (4). In both the cases, the landlords were serving in the Military and they wanted to get the houses vacated for the purpose of educating their children. The Appellate Authority in those cases came to the conclusion that they did not require the property *bona fide* for their use and occupation. Those findings were set aside by this Court in Revision Petitions. In *Kirpal Singh's case* (supra), it was observed that the landlord who was posted as a Havaldar in the Military Service, was entitled to seek ejectment of his tenant if he wanted his family to be settled at Chandigarh in

(3) 1986 (Sup.) R.C.R. 2.

(4) 1986 (2) R.C.R. 336.

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order to get his children educated, as his desire to get the house vacated could not be considered as a mere wish. Similar observations were made in *Captain Sanjiv Passi's case* (supra). I am in respectful agreement with the above observations. The case of an Officer in the Merchant Navy is better than that of an Officer serving in the Army. Consequently, I am of the opinion that the petitioner wants the house bona fide for her own use and occupation.

(11) Faced with this situation, Mr. Gandhi sought to argue that the Rent Controller and the Appellate Authority concurrently held that the petitioner did not want the house *bona fide* and that finding should not be disturbed in Revision. In support of his contention, he places reliance on *Surjit Kaur v. Narinder Singh* (5) and *Vishwa Mittar Sanan v. Amrik Singh* (6). I have given my thoughtful consideration to the argument of the learned counsel. The propositions of law as enunciated in the aforesaid judgments are unexceptionable. Normally, the finding of fact arrived at by the Appellate Authority is not interfered with in a Revision Petition. However, this Court in Revision Petitions under section 15 (5) of the Act can go into the legality or propriety of the order of the Appellate Authority. Thus, the scope of this Court under the said section is wider than that under section 115 of the Code of Civil Procedure. In the above view, I am fortified by the observations of Supreme Court in *Nanak Chand v. Inderjit and others* (7). Ramaswami, J. speaking for the Court, observed thus:

“.....The revisional power conferred on the High Court under section 15 (5) of the Act is wider than that conferred by section 115 of the Civil Procedure Code. Under section 15 (5) of the Act the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the finding by the Authorities about the requirement of the landlord under section 13 (3) (a) (i). Reference was made on behalf of the appellant to the decision of this Court in *Hari Shankar v. Rao Girdhari Lal Chowdhury* 1962, 1 Supp. S.C.R. 933 wherein it was held that the High Court in exercise of its revisional power was not entitled to re-assess the value of the evidence and to substitute its own

(5) 1985 (1) R.L.R. 668 Pb. & Hry.

(6) 1985 (1) R.L.R. 161 (Pb. & Hry.).

(7) 1969 R.C.J. 881 S.C.

conclusions of fact in place of these reached by the Courts below. But the revisional power of the High Court in that case was exercised under section 35 (1) of the Delhi and Ajmer Rent Control Act, 1952 (Act No. 38 of 1952) which is different in language from section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 with which we are concerned in the present case."

In that case too, the application for ejection was filed on the ground of personal necessity. The Rent Controller dismissed the application of the landlord and that judgment was affirmed by the Appellate Authority. In Revision Petition, the High Court set aside the judgments of the Courts below and ordered ejection. The Supreme Court did not interfere with the order of the High Court. Similar view was taken by this Court in *Ram Dass Mahajan v. Brahm Bhushan* (8). It was observed therein by the learned Judge that the order of an Appellate Authority can be interfered with by the High Court on the ground of impropriety under section 15(5) of the Act. In that case, the learned Judge interfered with the finding of fact arrived at by the Appellate Authority that the landlord required the property *bona fide* for his own use. The authorities cited by Mr. Gandhi are distinguishable on facts. In *Surjit Kaur's case* (supra), the top floor had been vacated earlier, but the landlady did not occupy and rented out the same. Later, she filed an application for vacation of another portion. In *Vishwa Mittar Sanan's case* (supra), the wife of the landlord was already dead and he was residing with his sons. In the circumstances, his application for ejection had been dismissed. Thus, the ratio in those cases will not be applicable to the facts of the present case.

(12) For the aforesaid reasons, I accept the Revision Petition with costs, set aside the judgment of the Appellate Authority and order ejection of the respondents. I, however, grant them three months time to vacate the premises.

Counsel's fee : Rupees Four Hundred.

R.N.R.

(8) 1984 P.L.R. 475.