Madan Lal
v.
The Director of Panchayats, Punjab

Pandit, J.

mentioned that in the writ petition no objection was taken to the constitutionality of section 6(5) (b) or section 102(2) (e) of the Act, under which also action was taken against the petitioner in the present case.

So far as the third contention is concerned, there is no merit in the same as well. According to the return filed by the respondent, sufficient oportunity was given to the petitioner to explain his position as to why action should not be taken against him under section 102(2) and (3) of the Act. The petitioner submitted his representations, as mentioned above, and they were duly considered and scrutinised before his removal was ordered. Section 102(2) clearly lays down that the "Government may, after such enquiry *as it may deem fit,* remove any Panch" on any of the grounds mentioned in that sub-section. The nature and the manner of the enquiry had thus to be determined by the Government. In view of the jugment of the Magistrate and that of the learned Sessions Judge on appeal, there hardly appeared to be any need for a further enquiry.

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

H. U. DEUTLER,—*Appellant.*

versus

MOHINI BALWANT SINGH,—*Respondent.*

S.A.O. No. 211-D of 1964.

1965

February, 2nd.

Delhi Rent Control Act (LIX of 1958)—*S.* 14(1)(*e*)—Bona fide *requirement of the landlord—Landlord acquiring temporary accommodation on rent from a person promising to vacate when that person requires him to do—Whether destructive of the* bona fide *requirement.*

Held, that the need of a landlord does not, by the mere fact of having taken a residential accommodation, even a suitable one on

lease, cease to be bona fide when the landlord has undertaken to vacate the premises whenever required by his landlord. Such acquisition on temporary basis is not destructive of his bona fide requirement of his own house.

Regular Second Appeal, under Section 39 of the Delhi Rent Control Act, 1958 from the Order of Shri Pritam Singh Pattar, Rent Control Tribunal, Delhi dated 29th May, 1964, confirming the order of Shri Asa Singh Gill, Rent Controller, Delhi, dated 3rd December, 1963 and dismissing the appeal with costs, and giving six months' time to the appellant to vacate the premises.

H. L. ANAND, ADVOCATE,—for the Appellant.

N. R. SURI, ADVOCATE,—for the Respondent.

ORDER

Kapur, J.

KAPOOR, J.—This second appeal under section 39 of the Delhi Rent Control Act, 1958, is directed against the judgment of the Rent Control Tribunal, dated 19th May, 1964, affirming the decision of the Rent Controller, Delhi, dated the 3rd December, 1963, and allowing the application of the respondent-landlady for the recovery of possession of the ground floor of 59, Golf Links, New Delhi.

The facts of the case are simple and admit of being stated in a moderate compass. On 20th January, 1954, the ground floor of the house in question belonging to the respondent was let to the appellant for a period of four years. In pursuance of clause 14 of the lease deed the respondent, through her counsel wrote to the appellant on 23rd September, 1957, (Exhibit R. 4), that she did not want to renew the lease. There was no mention in this letter that the house was required by the landlady for her personal use. I have mentioned this fact because the learned counsel for the appellant considerably emphasised this omission on the part of the landlady as being destructive of the case set up by her for eviction of the appellant. On 4th January, 1958, the appellant wrote to the Head Office of his employer company, (Exhibit R. 8), that the landlady had reminded him several times about enhancement of the rent. Letter, dated 18th January, 1958, (Exhibit R. 9), is the employer-company's reply. On 4th March, 1960, the Director of Estates called upon the respondent's husband to vacate the rooms in his occupation in the

H. U. Deutler
v.
Mohini Balwant
Singh
———
Kapur, J.

Constitution House because his wife owned a house in Delhi and that disentitled him from staying in the Constitution House. The respondent's husband wrote back to the Director of Estates that till the loan taken for the construction of the house had been repaid, he was not in a position to occupy the house. There is another letter by the respondent's husband to the Director of Estates, dated the 12th September, 1960, in which he explains that he is not in a position to move in because the house is in the occupation of the tenants.

The next fact on which lot of stress was laid by the learned counsel for the appellant is that the first floor of the house which had been let for Rs. 850 per mensem fell vacant in October, 1960, and it was let to another tenant on a much higher rent, that is Rs. 1,400 per mensem. The application for recovery of possession out of which the present appeal arises was filed on 6th January, 1962. The plea set up by the landlady in support of her claim for eviction was that the house was bona fide required by her for her personal occupation and for the occupation of the members of her family. By letter, dated 12th February, 1962, the respondent's husband again wrote to the Director of Estates pointing out certain reasons why he wanted to occupy the ground floor. He further stated that he had to let out the first floor of the house because of the financial difficulties arising out of considerable expenditure incurred on repairs. All these pleas did not prevail with the authorities and ultimately the respondent's husband was forced to vacate the Constitution House and immediately thereafter respondent's family shifted to a house No. C. 555, Defence Colony, New Delhi, which her husband rented on Rs. 550 per mensem for a period of eleven months. By judgment, dated the 3rd December, 1963, the trial Court allowed the application. It held that the landlady's need was bona fide and she was entitle to a judgment. In the opinion of the Rent Controller her acquisition of a flat in the Defence Colony was temporary arrangement and that did not disentitle her to live comfortably in her own house. According to the Rent Controller the landlady had the choice to either occupy the ground floor or the first floor. The tenant aggrieved by the order of the Rent Controller filed an appeal before the Rent Control Tribunal, which was dismissd on 19th May, 1964. I may also mention that an application was made before the Tribunal by the landlady praying that a notice received from the landlord of the

H. U. Deutler
v.
Mohini Balwant Singh
———
Kapur, J.

house in Defence Colony asking her husband to vacate the same be permitted to be placed on record as evidence in the case. Mr. Anand has made a very serious grievance that though no order was passed on the said application yet the Tribunal has made use of the said notice and based his decision on the same. The learned counsel for the respondent does not dispute the fact that that application was never disposed of, but he submits that the notice was referred to before the Tribunal at the time of arguments and no objection was raised on the part of the appellant and, therefore, the appellant cannot now be permitted to object to the same. I may straightaway say that I do not agree with the learned counsel for the respondent. Unless the notice became part of evidence in the case, it could not have been referred to for any purpose.

Mr. H. L. Anand, the learned counsel, for appellant submits that the two Court below have not correctly appreciated the scope of section 14(1) (e) inasmuch as they have held the need of the landlady to be bona fide mainly on the ground that the house in Defence Colony was occupied by the respondent temporarily. According to the learned counsel the fact that the house was occupied temporarily had no relevance for determining whether the need of the landlady was bona fide or not. He submits that the house had been rented by the landlady for a period of eleven months. The Rent Control legislation provided an immunity to the respondent against eviction from that house, with the result that the need of the respondent could not be bona fide. It was nobody's case that the house in Defence Colony did not provide the respondent with a reasonably suitable residential accommodation so that the second condition laid down by section 14(1) (e) for eviction of a tenant, namely that the landlord has no other reasonably suitable accommodation was not satisfied. Mr. Anand-submits that the landlady's own case was that she could not shift to her house till the loan was paid off and she sought eviction not because she needed the house for herself but because her efforts to increase the rent had failed. Mr. Anand, places reliance on the correspondence between the respondent's husband and the Director of Estates in supoprt of his submission. He further points out that the lady tried to conceal the fact of having rented the house in Defence Colony for eleven months, which came to light only through the evidence of Major Ratti R.W. 7, the

H. U. Deutler
v.
Mohini Balwant
Singh

Kapur, J.

owner of the house in Defence Colony and Jaswant Singh, R. W. 8, the broker with whose assistance the tenancy of Major Ratti's house was procured.

It was next argued by the learned counsel for the appellant (a) that the judgment of the lower appellate Court was vitiated because it was, at least partially based on the notice of Major Ratti, to the respondent's husband calling upon him to vacate the house No. C. 555, Defence Colony, which was not a part of evidence in the case, (b) that respondent's husband not being a member of the family of the respondent dependent upon respondent, his need could not be taken into consideration under section 14(1)(e) of the said Act and (c) that the respondent's choice to occupy the ground floor was a capricious choice and not a bona fide one.

Mr. Suri, the learned counsel for the respondent, submit (a) that whether or not the need of the respondent was bona fide being a pure question of fact, I have no jurisdiction to interfere with the same. In any case, submits Mr. Suri, I must accept the finding of fact arrived at by two Courts that the house in Defence Colony was available to the respondent temporarily and then proceed to determine whether or not the need of the landlady was bona fide. According to Mr. Suri, the respondent's husband was committed to Major Ratti, that he would vacate the house whenever Major Ratti, needed it and in the circumstances the respondent was entitled to ask for the possession of her own house so as to be able to settle down peacefully; (b) that the mere fact that there is a reference to the notice from Major Ratti, to the respondent's husband does not vitiate the findings of lower appelate Court, (c) that whether or not the need of the husband could be taken into consideration is a pure question of fact. The appellant neither took the point in the written statement, nor urged it at the argument stage and he cannot now be permitted to raise this question and lastly that the respondent was justified in selecting the ground floor for her residence and was in fact entitled to do so. In any case, according to Mr. Suri, that is a matter which is relevant only for the purposes of considering the bona-fides of the landlady, which the two Courts have considered and found in her favour. This brings me to the consideration of Mr. Anand's first contention. He draws my attention to section 21 of

H. U. Deutler
v.
Mohini Balwant
Singh

Kapur, J.

the Act and submits that where accommodation is to be provided temporarily, resort could be had to section 21. In this case the said provision was not called in aid with the result that the accommodation with the respondent in Defence Colony could not be termed as temporary arrangement. In any case, submits Mr. Anand, the Delhi Rent Control Act gave complete protection to the respondent and even if there was any assurance extended by her husband to Major Ratti, to vacate the premises when Major Ratti needed it, her husband was not obliged to adhere to the assurance since the protection of section 14 is notwithstanding any law or contract to the contrary. I am not impressed by the argument of Mr. Anand. The two Courts below have on evidence come to the conclusion that the accommodation in Defence Colony was temporarily acquired and the respondent's husband had promised to surrender possession thereof when Major Ratti, required, that accommodation. To this extent the evidence of Major Ratti R.W. 7, Jaswant Singh, R.W. 8 and the respondent has been accepted by both the Courts below and I will proceed to determine the issue assuming that their evidence to this effect is correct If I accept Mr. Anand's arguments I will have to hold that whenever a landlord is displaced from accommodation in his occupation, he should either find a landlord willing to have resort to section 21 of the said Act or not at all rent a premises even if he has to stay on the road. It should be noticed that section 21 of the Act is intended for the benefit of landlords, who do not require any premises for a short period. Is then a person seeking to recover possession of his house from his tenant bound in such circumstances to rent an accommodation from such landlords only otherwise he loses the right to recover possession of his own house ? Again is a landlord wanting to sue for possession deprived of his right and his requirement ceases to be bona fide as soon as he takes another premises on lease. In my opinion the law sought to be laid at the bar goes upon a very narrow ground, namely, construe section 14 as if contractual and moral obligations have no sanctity or place in the field of rent restriction laws at all. No doubt the Act overrides all promises and contracts and in a way destroys the engagements which a person would either by law of nature or even by law of contract bound to fulfil. True that if I promised my landlord that I will vacate his house in a year's time, laws of this country would supply no means and afford no remedy

H. U. Deutler
v.
Mohini Balwant
Singh

Kapur, J.

to compel the performance of such an agreement and it will not be possible to recover possession on the ground that the tenant had promised to vacate, the grounds on which possession can be recovered being those specified in section 14 only. But I will not construe section 14 in such a wooden manner. In my view, the need of a landlord does not, by the mere fact of having taken a residential accommodation, even a suitable one on lease, cease to be *bona fide,* for the reason suggested by Mr. Anand. For the disposal of this case I need not try to formulate a rule to be applicable in all cases, it is enough to say that the respondent's husband had taken the house in Defence Colony on a clear understanding that he would vacate the same when Major Ratti, required it and such acquisition on temporary basis is not destructive of her *bona fide,* requirement of her own house. In this view there would be no error of law in the judgments of the two Courts below, when they say that she needed the house *bona fide.*

In *Nevile* v. *Hardy* (1), the Court was called upon to construe clause (d) of sub-clause (1) of section 5 of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, which enabled an order or judgment for the recovery of possession of any dwelling house to which the Act applied to be made where "the dwelling house is reasonably required by the landlord for occupation as residence for himself . . . . .and the Court is satisfied that alternative accommodation reasonably equivalent as regards rent and suitability in all respects is available". Paterson J., observed "in the present case the plaintiff desired the upper floors as a residence for herself, but finding that she could not get them she has taken other premises for her residence, but I do not think that the fact that she is at present living elsewhere is any reason for holding that the dwelling house is not reasonably required by her as a residence for herself or for persons in her whole-time employment. The evidence is that if she could obtain possession of those upper floors she would use them for the occupation of herself and her staff, and in those circumstances, I cannot say that they are not reasonably required by her." I am of the opinion that the lower appellate Court was quite right in holding that in the circumstances the respondent had no option but to rent a house and this did not defeat her claim.

(1) (1921) 1 Ch. 404.

H. U. Deutler
v.
Mohini Balwant Singh

Kapur, J.

Regarding the question whether respondent's husband could be termed as a member of her family dependent on her, I would not, in the absence of any objection to this effect in the written statement, permit it to be raised at this stage. Not only that, there is no mention of this point even in the judgments of both the Courts below. My attention has been invited to the grounds of appeal in the lower appellate Court, but there is nothing to show that the point was urged. In any case it was necessary to raise such a question in the written statement so that the facts requisite for the determination of the question could be investigated.

So far as the reference to notice of Major Ratti, by the lower appellate Court is concerned, it does not, in my opinion, vitiate the judgment. The reading of the judgment shows that the notice has not been relied upon as evidence. Independently of the notice the Court has discussed the evidence of Major Ratti, R.W. 7, and Jaswant Singh, R.W. 8 and accepted their statement to the effect that it was clearly understood between the lessor and the lessee of House No. C. 555, Defence Colony that the lessee would vacate the same whenever the lessor required it and that the occupation by lessee of the said house was by way of a temporary arrangement. In these circumstances this submission of the learned counsel for the appellant must be rejected. This brings me to the submission of Mr. Anand, that the landlady's choice of the ground floor was capricious, and not a *bona fide* one. The element of choice has relevance in the last resort, only in determining whether the need of the lanlady for the premises in question was *bona fide* or not. The two Courts below have held in her favour and come to the conclusion that she *bona fide* required the premises. In these circumstances I cannot in an appeal under section 39 of the said Act review the finding.

In the result the appeal fails and the same is dismissed. There will, however, be no order as to costs. The appellant will have six month's time from today to vacate the premises.

B.R.T.