SMT. YAMUNA MALOO

v.

ANAND SWARUP

FEBRUARY 28,1990

[RANGANATH MISRA, M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

Delhi Rent Control Act, 1958: Section 21—Limited tenancy—Objection to validity—To be raised before the lease lapses.

The appellant-landlady and the respondent-tenant appeared before the Rent Controller for creation of a tenancy under Section 21 of the Delhi Rent Control Act, 1958. Accordingly, the authority passed an order creating tenancy for a limited period of two years. Since the respondent did not vacate the premises on the expiry of two years, the appellant moved the Rent Controller for issuance of warrant of possession. The Respondent filed his objection. Entertaining the objection the Rent Controller dismissed the petition, holding that the order granting permission for the tenancy under section 21 of the Act was not in accordance with law. The appellant's first appeal before the Rent Control Tribunal, as also her second appeal before the High Court met the same fate.

This appeal, by special leave, is against the High Court's order dismissing the second appeal *in limine*.

On behalf of the appellant, it was contended that the Rent Controller should not have entertained the objection of the respondent as the same has not been filed during the currency of the tenancy. It was also contended that some of the considerations which weighed with the Rent Control Tribunal were not relevant for judging the *bona fides* and genuineness of actions taken at the time of creating the tenancy.

Allowing the appeal, this Court,

HELD: 1. Section 14 of the Delhi Rent Control Act, 1958 deals with a normal tenancy and protects the tenant against unreasonable eviction. Section 21 of the Act, on the other hand, places the tenant outside the purview of s. 14 and provides for an order of eviction at the time of creation of the tenancy. There is a purpose behind enacting s. 21 of the Act. The Legislature considered it appropriate that should a

A landlord not need his residential premises for a period, instead of keeping it vacant the same could be available for a tenant's use on being let out for a limited period conditional upon the tenant's surrendering possession as soon as the tenancy terminates by efflux of time and the need of the landlord revives. [719G-H; 720A]

B 2.1. The rule in *Noronah's* case has to be confined to a particular set of facts and should not be freely extended so as to take away the effect of s. 21. [724F-G]

2.2. In *Vohra's* case and in *Shiv Chander Kapoor's* case, though not arising for determination in either, it has been stated while laying down the rule that proceeding to challenge limited tenancy has to be C taken during the currency of the tenancy, an objection filed by the tenant could be looked into, is indeed an *obiter*. The rule having been stated to the contrary in *Vohra's* case, there was indeed no warrant to indicate the contra situation. Perhaps to meet the eventuality which might arise in a particular case, the exception has also been indicated. If D the tenant has an objection to raise to the validity of the limited tenancy it has to be done prior to the lapse of the lease and not as a defence to the landlord's application for being put into possession. Even if such an exercise is available that must be taken to be very limited and made applicable to exceptional situations. Unless the tenant is able to satisfy the Controller that he had no opportunity at all to know the facts earlier E and had come to be aware of them only then, should such an objection be entertained. [725E-H]

2.3. In the facts and circumstances of the present case the belated objections of the tenant should not have been entertained and prayer for possession made by the landlady after the limited tenancy ran out F should have been granted. [726A]

S.B. Noronah v. *Prem Kumari Khanna,* [1980] 1 S.C.R. 281; *J.R. Vohra* v. *India Export House Pvt. Ltd. & Anr.,* [1985] 2 SCR 899; *Inder Mohan Lal* v. *Ramesh Khanna,* [1987] 4 SCC 1 and *Shiv Chander Kapoor* v. *Amar Bose,* JT 1989 (4) SC 471, referred to.

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[This Court directed that the landlady be put into possession of the premises by 31st March, 1990.]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1319 of 1990.

H

From the Judgment and Order dated 7.9.1987 of Delhi High Court in S.A.O. No. 99/1987. A

Dr. L.M. Singhvi and Dalveer Bhandari for the Appellant.

Dr. Y.S. Chitale and A.K. Sangal for the Respondent.

B

The Judgment of the Court was delivered by

RANGANATH MISRA, J. Special Leave granted.

This is an appeal by the landlady whose application for being put in possession of the premises on the expiry of a limited tenancy of two years under section 21 of the Delhi Rent Control Act (hereinafter referred to as 'the Act') has been dismissed by the Rent Controller, the Rent Control Tribunal and the High Court. C

On 30th September, 1976, the appellant-landlady and the respondent-tenant appeared before Shri M.A. Khan, Additional Rent Controller for creation of a tenancy under s. 21 of the Act. The Additional Rent Controller recorded the statements of both the landlady and the prospective tenant and made the following order: D

> "Having regard to the facts stated in the petition and the statement of the parties made above permission under section 21 of the Delhi Rent Control Act is granted to Smt. Yamuna Maloo applicant to let out ground floor of her premises No. B-2/104, Safdarjung Enclave, New Delhi comprising of drawing cum dining hall, two bed rooms with attached bath room, kitchen, parking place and a small lawn delineated in the enclosed plan Ex. AI, to Mr. Anand Swarup respondent for residential purposes for a limited period of two years with effect from 1.10.76." E F

After the expiry of the two year period, when the respondent did not vacate the premises, the landlady moved the Rent Controller for issuance of warrant of possession to which the tenant filed his objection. The Additional Rent Controller entertained the objection and dismissed the landlady's petition for being put into possession. Thereupon the landlady moved the Rent Control Tribunal in appeal and when she failed before it, a second appeal was filed before the High Court which was dismissed in limine. G

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A The Controller relied upon the judgment of this Court in *S.B. Noronah* v. *Prem Kumari Khanna*, [1980] 1 S.C.R. 281 and came to hold:

> "I have carefully gone through the execution application, the objections, the evidence on record, the original
B file in which the permission was granted and have heard the learned counsel for parties. I am of the view that the order dated 30.9.75 granting permission was not in accordance with law and that the applicant/petitioner is not entitled to obtain possession of the premises in dispute under section 21 of the Delhi Rent Control Act."

C *Noronah's* case had stated:

> "Of course, there will be presumption in favour of the sanction being regular, but it will still be open to a party to make out his case that in fact and in truth the conditions
D which make for a valid sanction were not present."

It is interesting to note that by the time the appellant's appeal came up for hearing before the Tribunal, Shri M.A. Khan who as an Additional Rent Controller had approved the tenancy by his order dated 30th September, 1976, on being judicially satisfied that the
E tenancy under s. 21 of the Act could be created had become the Rent Control Tribunal. He noticed this fact in his appellate order dated 11th April, 1986, by stating:

> "In this appeal, the validity and executability of the order dt. 30.9.76 is disputed which was passed by me as Addl.
F Rent Controller. Since there is no other Rent Control Tribunal, therefore, in exigency of the situation I have no option but to proceed to decide this appeal."

He concluded:

G > "The appellant in the application and in her statement did not give the reason for letting out the premises for two years only. She even did not give the reason in application for recovery of possession. In reply to the objection of the respondent, she states that she was residing in Vasant Vihar at a house which was allotted to her husband by the
H employer. There was no possibility of her vacating the said

house and shifting to the disputed premises. The first floor of the disputed premises was also let out by her to another tenant for a limited period. She did not disclose that she intended to create a limited tenancy in respect of the first floor also. Further the premises were let after an advertisement of 'to let' in Hindustan Times dt. 25.9.76. It is conceded that in the advertisement it was not specified that the premises were available for letting for two years only. All these facts proved that the appellant did not require the premises for occupation after two years and that these premises could have been let out for an indefinite period. She made a wrong statement before the court. She also concealed the material facts from the court. She obtained the permission from the court under section 21 by playing fraud. The order passed under section 21 is therefore invalid and in execution thereof, the respondent cannot be evicted."

We have already said that the second appeal was dismissed in limine.

Lengthy arguments were advanced at the hearing in support of the respective stands.

Counsel for the landlady argued that the Additional Rent Controller should not have entertained the objection of the tenant to the execution of the eviction order as the same had not been filed during the currency of the tenancy; it was further argued that some of the considerations which weighed with the Rent Control Tribunal were not at all relevant for judging the *bona fides* and genuineness of actions taken on 30th of September, 1976, at the time of creation of the tenancy. On the side of the tenant, the contentions which had prevailed with the Additional Rent Controller and the Rent Control Tribunal were reiterated.

Section 14 of the Act deals with a normal tenancy and protects the tenant against unreasonable eviction. Section 21 of the Act, on the other hand, places the tenant outside the purview of s. 14 and provides for an order of eviction at the time of creation of the tenancy. There is a purpose behind enacting s. 21 of the Act. The Legislature considered it appropriate that should a landlord not need his residential premises for a period, instead of keeping the same vacant the same could be available for a tenant's use on being let out for a limited period condi-

A tional upon the tenant's surrendering possession as soon as the tenancy terminates by efflux of time and the need of the landlord revives. The conditions to be fulfilled at the time of creation of such a tenancy are three, namely, (i) the landlord would not require the premises for a particular period, (ii) the Controller must be satisfied about that position, and (iii) the tenant agrees to vacate at the end of the period.

B

In *Noronah's* case, supra, a two-Judge Bench dealt with this question. This Court then said:

> "We must notice that section 21 runs counter to the general scheme and, therefore, must be restricted severely to its narrow sphere. Secondly, we must place accent on every
C condition which attracts the section and if any one of them is absent the section cannot apply and, therefore, cannot arm the landlord with a resistless eviction process. Thirdly, we must realise that the whole effect of section 14 can be subverted by ritualistic enforcement of the conditions of
D sanction under section 21 or mechanical grant of sanction therein. Section 21 overrides section 14 precisely because it is otherwise hedged in with drastic limitations and safeguards itself against landlords' abuses.

It is true that the judgment of this Court which is dated August
E 16, 1979, was not in existence when Shri Khan sanctioned the tenancy but the law then in force was not different. In fact, the orders out of which that appeal arose had also taken the same view. This Court in *Noronah's* case further said:

> "When an application under section 21 is filed by the land-
F lord and/or tenant, the Controller must satisfy himself by such inquiry as he may make, about the compulsive requirements of that provision. If he makes a mindless order, the Court, when challenged at the time of execution, will go into the question as to whether the twin conditions for sanction have really been fulfilled."

G

A three-Judge Bench of this Court in *J.R. Vohra* v. *India Export House Pvt. Ltd. & Anr.*, [1985] 2 SCR 899 was examining the requirement of notice to the tenant when at the expiry of the period of tenancy the landlord had applied for being put in possession. While so examining that question this Court approved the following observa-
H tions in *Noronah's* case:

"Parliament was presumably keen on maximising accommodation available for letting, realising the scarcity crises. One source of such spare accommodation which is usually shy is potentially vacant building or part thereof which the landlord is able to let out for a strictly limited period provided he has some credible assurance that when he needs he will get it back. If an officer is going on other assignment for a particular period, or the owner has official quarters so that he can let out if he is confident that on his retirement he will be able to re-occupy, such accommodation may add to the total lease-worthy houses. The problem is felt most for residential uses. But no one will part with possession because the lessee will become a statutory tenant and, even if *bona fide* requirement is made out, the litigative tiers are so many and the law's delays so tantalising that no realist in his sense will trust the sweet promises of a tenant that he will return the building after the stipulated period. So the law has to make itself credit-worthy. The long distance between institution of recovery proceedings and actual dispossession runs often into a decade or more—a factor of despair which can be obviated only by a special procedure.

Section 21 is the answer. The law seeks to persuade the owner of premises available for letting for a particular or limited period by giving him the special assurance that at the expiry of that period the appointed agency will place the landlord in vacant possession."

Noronah's judgment was approved to this extent. In the three succeeding paragraphs in *Vohra's* decision. *Noronah's* case was also referred to. Dealing with the contentions relied upon in *Noronah's* case, Tulzapurkar, J. who delivered the judgment of the Court, observed:

"At the outset we would like to observe that in *Noronah's* case the question whether a prior notice is required to be served upon the tenant before issuance of warrant of possession in favour of the landlord under section 21 did not arise for consideration. It was a case where upon receipt of landlord's application for recovery of possession under the section the tenant raised pleas that the premises had been let out for non-residential purposes and that the sanction or permission granted for the creation of the limited tenancy was vitiated by fraud and collusion and the question that

A arose for consideration was whether at that stage the Rent Controller could go into and consider such pleas and this court has ruled that the Controller should consider those pleas even when raised at that stage."

A little later Justice Tulzapurkar further observed:

B

"In fact even in *Noronah's* case this Court has observed that there will be a presumption in favour of the sanction or permission being regular and if that be so, we fail to appreciate as to why the Rent Controller should invite such pleas of fraud, collusion etc. at the instance of the tenant by being required to serve a notice upon him before issuing C the warrant of possession in favour of the landlord especially when the scheme of sec. 21 and the connected relevant provisions do not require it."

The three-Judge Bench thereafter went to consider the remedy D available to the tenant in a case where the objections were as in the present case:

"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 E limited tenancy or where such permission was procured by fraud practised 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 he be permitted to protract the delivery F of possession of the leased premises to the landlord on a false plea of fraud or collusion or that there was a mechanical grant of permission and thus defeat the very subject 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 G 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 approach the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to H vitiate *ab initio* the initial grant of permission. Either it is a

mechancial grant of permission or it is procured by fraud practised 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 the diligence. The special procedure provided for the benefit of the landlord in section 21 warrants such immediate approach on the part of the tenant."

What followed thereafter perhaps is more in the nature of an obiter than a part of the decision proper, namely:

"Of course if the tenant alliunde 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."

It may be pointed out that in *Vohra's* case the objections on the ground of fraud and collusion were raised after the claim by the landlord for being put in possession but were rejected as belated. The question that came for consideration before the three-Judge Bench was whether notice was necessary when the landlord applied to be put in possession after the termination of the tenancy. In that context, the observation that tenant's objections could be enquired into if the tenant aliunde came to know of the landlord's move and objected was not relevant for the decision.

There are certain observations in *Inder Mohan Lal* v. *Ramesh Khanna*, [1987] 4 SCC 1 which are relevant:

"An analysis of this judgment (*Noronah's* case) which has been applied in the various cases would indicate that section 21 only gives sanction if the landlord makes a statement to the satisfaction of the court and the tenant accepts that the landlord does not require the premises for a limited period; this statement of the landlord must be *bona fide*. The purpose must be residence. There must not be

A any fraud or collusion. There is a presumption of regularity. But it is open in particular facts and circumstances of the case to prove to the satisfaction of the executing court that there was no collusion or conspiracy between the landlord and the tenant and the landlord did not mean what he said or that it was a fraud or that the tenant agreed because
B the tenant was wholly unequal to the landlord. In the instant case none of these conditions were fulfilled. There is no evidence in this case that when the landlord stated that he did not require the premises in question for a particular period, he did not mean what he stated or that he made a false statement. There was no evidence in this case
C at any stage that the tenant did not understand what the landlord was stating or that he did not accept what the landlord stated. There was no evidence that either the tenant was in collusion or perpetrating any fraud with the landlord or the tenant was unequal to the landlord in bargaining powers. It is manifest that there is no evidence to
D show that the Controller did not apply his mind. If that is so then on the principle enunciated by this Court in *Noronah's* case, this sanction cannot be challenged. It is not necessary to state under section 21 the reasons why the landlord did not require the premises in question for any particular period. Nor is there any presumption that in all cases the
E tenants are the weaker sections. The presumption is, on the contrary, in favour of sanction, it is he who challenges the statement and the admission of the landlord or the tenant who has to establish facts as indicated in *Nagindas* case."

In paragraph 22 of the judgment Mukharji, J. (as he then was)
F speaking for the Court held out a caution that the residue must be understood in its proper perspective. We may point out that the respondent apart from being highly qualified held the position of a Deputy Secretary to Government and, therefore, was not a tenant of the type in *Noronah's* case. As has been stated in *Inder Mohan Lal's* case, the rule in *Noronah's* case has to be confined to a particular set of
G facts and should not be freely extended so as to take away the effect of s. 21. Fraud is an allegation which can easily be made but unless the allegations are clearly pleaded and some evidence, either direct or circumstantial, is available, a charge of fraud would not succeed.

We may refer to another judgment of this Court in the case of
H *Shiv Chander Kapoor.* v. *Amar Bose*, JT (1989) 4 SC 471 where the

validity of the permission under s. 21 of the Act came up for consideration. *Noronah's* case was also referred to. In paragraph 15 of the judgment this Court pointed out that there is nothing in this decision to support the respondent-tenant's contention in that appeal that the scope of enquiry is wider permitting determination of the landlord's *bona fide* need of the premises as if such a ground for eviction specified in s. 14 of the Act was required to be proved. Extending the enquiry to that field would indeed be against the express prohibition enacted in s. 21 of the Act. Referring to *Vohra's* case, the latest judgment indicates:

> "It is obvious from the decision in *J.R. Vohra's* case that the tenant is expected to raise such a plea during currency of the limited tenancy and on such a plea being raised by the tenant enquiry into it is contemplated. Even though it is not expressly said in *Vohra's* case, it is implicit that on such an application being made by the tenant requiring adjudication by the Controller, it is the Controller's obligation to issue notice of the same to the landlord and then to make the adjudication with opportunity to both sides to prove their respective contentions.

Both in *Vohra's* case and in *Shiv Chander Kapoor's* case though not arising for determination in either, it has been stated while laying down the rule that proceeding to challenge limited tenancy has to be taken during the currency of the tenancy, an objection filed by the tenant could be looked into is indeed an *obiter*. We would like to make it clear that the rule having been stated to the contrary in *Vohra's* case, there was indeed no warrant to indicate the contra situation. Perhaps to meet the eventuality which might arise in a particular case, neither of the two Benches of this Court wanted to close the avenue of enquiry totally, and that is why in both the cases decided by coordinate Benches the exception has also been indicated. It must be understood on the authority of the said two decisions and our judgment now that if the tenant has objection to raise to the validity of the limited tenancy it has to be done prior to the lapse of the lease and not as a defence to the landlord's application for being put into possession. We would like to reiterate that even if such an exercise is available that must be taken to be very limited and made applicable to exceptional situations. Unless the tenant is able to satisfy the Controller that he had no opportunity at all to know the facts earlier and had come to be aware of them only then, should such an objection be entertained.

A On the application of those tests to the present facts we must hold that the belated objections of the tenant should not have been entertained and prayer for possession made by the landlady after the limited tenancy ran out should have been granted.

B The appeal is allowed; the decisions of the Controller, Rent Control Tribunal and the High Court are reversed and the landlady is directed to be put into possession of the premises by 31st of March, 1990. The appellant would be entitled to her costs in the proceedings throughout. Hearing fee is assessed at Rs.2,000.

G.N. Appeal allowed.