

SAVITRI SAHAY
v.
SACHIDANAND PRASAD

OCTOBER 31, 2002

[S.N. VARIAVA AND ARUN KUMAR, JJ.]

Rent Control & Eviction :

Bihar Buildings (Lease, Rent and Eviction) Act, 1982:

Sections 11(1)(c)—Eviction suit on ground of bona fide requirement—Tenant taking plea that other flats falling vacant after the filing of suit which owner letting out at higher rent—Trial Court accepting the reasons of bonafide requirement and passing eviction decree—High Court setting aside the decree since owner not occupying other flats falling vacant—Justification of— Held, order of High Court not justified since Explanation to Section 11(1)(c) permits landlord to ignore other premises and prefer a particular premise.

Section 14(8)—Revision power—Scope of—Discussed.

Appellant is the owner of premises where respondent was a tenant in one of the flats. Appellant filed eviction suit against respondent-tenant on the ground of bona fide requirement. Respondent contended that appellant wanted to evict the respondent and then let out the flat at higher rent. It was also contended that there were other flats in the building which became vacant after filing of the suit and appellant had let out those flats at higher rent. Appellant contended that she wanted the said flat as it was on the ground floor, contiguous to the ancestral building where she was presently residing and also that the said flat faced a open piece of land which belonged to her husband. It was also contended that being an old lady she could not climb to the first floor where other flats were located while the other ground floor flat faced a crowded road and was noisy. Trial Court accepted the reasons and passed decree for eviction. Respondent-tenant filed a revision. High Court set aside the decree and dismissed the eviction suit as the appellant did not occupy other flats which became available in the same-building. Hence the present appeal.

Appellant contended that under Section 14(8) of the Act High Court

A had revisional powers which were limited to satisfying itself that the order passed by trial court was in accordance with law, thus High Court erred in appreciating the entire evidence and arriving at a different conclusion.

Respondent contended that appellant was merely evicting him in order to let out the premises at higher rent.

B Allowing the appeal, the Court

C HELD: 1.1. Explanation II to Section 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Act, 1982 permits the landlord to ignore other premises and to prefer a particular premise. In the instant case, appellant indicated a preference for the flat occupied by respondent. She gave reasons as to why she preferred this flat. Trial Court accepted these reasons. High Court merely set aside the decree on the ground that appellant had chosen not to occupy the three other flats which became available in the same building. [7-B-E]

D 1.2. Appellant having made a preference cannot be forced to occupy other premises which may become available. Further the appellant was not required to keep those premises vacant because her eviction suit was pending, nor was there any duty cast on appellant, under any provision of law, to offer those other premises to respondent. If respondent had so desired, he could have offered to vacate the flat preferred by landlady and move into one of those other premises. If appellant had refused to accept such an offer, it possibly could have been said that the landlady was merely seeking to get vacant possession in order to get higher rents. In that case it could have been inferred that the need of the appellant was not genuine and/or in good faith. No such case has been made out and in view of the specific provision in the Act the reasoning of High Court cannot be sustained. In case appellant does not shift into the said premises, it will be open to respondent to apply under Section 17 of the Act, for restoration of possession and for compensation. [7-E, F, H; 8-A]

G 2. High Court did not re-appreciate evidence to arrive at a different conclusion. It merely set out the admitted facts and/or facts proved during the course of trial. On the admitted or proved facts High Court felt that the conclusion arrived at by trial court was unreasonable and perverse. Therefore, High Court recorded its own finding. This the High Court was entitled to do once it concluded that the findings of trial court were

H perverse. [6-G]

Hiralal Kapur v. Probhu Choudhury, [1988] 2 SCC 172 and *Sarla Ahuja v. United Indian Insurance Company Ltd.*, [1998] 8 SCC 119, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1472 of 1999. B

From the Judgment and Order dated 24.9.1998 of the Patna High Court in C.R. No. 1738 of 1996.

S.B. Sanyal, Akhilesh Kr. Pandey and Ashok Kr. Pandey, for the Appellant. C

Prabhash K. Yadav and Dr. K.S. Chauhan, for the Respondent.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. The Appeal is against a Judgment dated 24th September, 1998. D

Briefly stated the facts are as follows :

The Appellant is the owner of premises bearing No. 29A, Police Line Road Ward No. 10, Bhagalpur Kutchery Road, Bhagalpur, U.P. The Respondent is a tenant in one of the flats in the said building. The Appellant filed Title Eviction Suit No. 15 of 1991 against the Respondent on the ground that the said flat was required by her for her own occupation. The Appellant claimed that she was staying in premises belonging to her son and that her son had asked her to vacate the premises. The Appellant claimed that she wanted the flat occupied by the Respondent as it was on the ground floor and on the northern side of the building and contiguous to the ancestral building where she was presently residing, i.e. Shiva Bhawan. The Appellant also claimed that the said flat faced an open piece of land which belonged to her husband. The Appellant claimed that she being old could not climb to the first floor and the ground floor flat on the south side of the building was not suitable as it faced a crowded road and was noisy. E
F
G

In the written statement filed by the Respondent, the Respondent claimed that there were three other flats in the same building, that after the filing of the Suit those flats had fallen vacant and the Appellant had let out those flats at higher rents. The Respondent also claimed that Shiva Bhawan, in which the Appellant presently resides, is a palatial bungalow and that the Appellant H

A comes from a very affluent and dignified family and would not reside in the small flat. The Respondent claimed that the Appellant was claiming possession merely to get the Respondent out and then to let it out at a higher rent.

B At this stage it would be convenient to set out the relevant provisions of the Bihar Buildings (Lease, Rent and Eviction) Act, 1982 (hereinafter referred to as the said Act). Sections 11(1) (c), 14(8) and 17 of the said Act read as follows:

C **11. Eviction of tenants.-** (1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:-

D	XXX	XXX	XXX
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(c) where the building is reasonable and in good faith required by landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord:

E Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall henceforth constitute the building within the meaning of clause (b) of section 2 and the rent so fixed shall be deemed to be the fair rent fixed under section 5:

F *Explanation I.-* In this clause the word "landlord" shall not include an agent referred to in clause (f) of section 2.

G *Explanation II.-* Where there are two or more premises let out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference.

H **14. Special procedure for disposal of cases for eviction on ground**

of bonafide requirement- (1) Every suit by a landlord for the recovery of possession of any premises on the ground specified in clause (c) or (e) of sub-section (1) of section 11 shall be dealt with in accordance with the procedure specified in this section. A

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 XXX XXX XXX B

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with procedure specified in this section:

Provided that on an application being made within sixty days of the date of the order of eviction the High court may for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit. C

XXX XXX XXX D
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17. When a tenant is entitled to restoration of possession and compensation.- Where the landlord recovers possession of any buildings from the tenant by virtue of a decree secured because of clauses (c) and (e) of sub-section (1) of section 11 and the building is not occupied by the landlord, or by the person for whose benefit the building is held, within one month of the date of vacation of the building by such tenant or the building, having been so occupied, is re-let within six months of the date of such occupation to any person other than such tenant with the permission of the Controller, the Court may, on the application of such tenant, made within one month of his vacating the building, and giving the landlord an opportunity of being heard by order direct the landlord to put such tenant in possession of the building or to pay him such compensation as may be fixed by the Court or both." E F G

Thus it is to be seen that, under the said Act, if there are two or more premises the landlord could choose which one would be preferable to him or her and the tenant cannot question such preference.

The Trial Court held that Explanation II to Section 11(1) (c) permitted H

A the Appellant to prefer which premise she wanted. It was held that the Appellant had proved that the same was required reasonably and in good faith for her own occupation. The Trial Court Therefore, passed a decree for eviction.

B As Section 14(8) barred an Appeal, the Respondent-tenant filed Revision in the High Court. The High Court after considering all the facts came to the Appeal, conclusion that need of the Appellant cannot be said to be reasonable and in good faith as she had let out, during the pendency of the proceedings, three other flats in the same building even though they had fallen vacant and she could have occupied those flats. The High Court, therefore, set aside the decree passed by the trial court and, by the impugned Judgment, dismissed the Suit of the Appellant. Hence this Appeal.

C Mr. Sanyal submitted that under Section 14(8) the High Court only had revisional powers which were limited to satisfying itself that the order passed by the Trial Court was in accordance with law. In support of this submission, D he relied upon the case of *Hiralal Kapur v. Probhu Choudhury* reported in [1988] 2 SCC 172, wherein it has been held, in the context of Section 25(B) (8) of the Delhi Rent Control Act, 1958, that even though the powers were somewhat wider than similar powers under Section 115, yet the High Court was not entitled to enter into merits of factual controversy between the parties. E Mr. Sanyal also relied upon the authority in the case of *Sarla Ahuja v. Untied Indian Insurance Company Ltd.*, reported in [1998] 8 SCC 119, wherein again, in the context of Section 25(B) (8) of the Delhi Rent control Act, 1958, it has been held that even though the word "revision" is not used the powers of the Court under this Section are revisional in nature and a reappraisal of evidence can be made only for the limited purpose of ascertaining whether F the conclusion arrived at by the fact-finding Court is wholly unreasonable. Relying on these authorities, Mr. Sanyal submitted that the High Court erred in re-appreciating the entire evidence and arriving at a different conclusion.

G We are unable to agree with the submission of Mr. Sanyal. We have perused the impugned Judgment. The High Court did not re-appreciate evidence to arrive at a different conclusion. The High Court has merely set out the admitted facts and/or facts which have been proved during the course of trial. On the admitted or proved facts the High Court felt that the conclusion arrived at by the Trial Court was unreasonable and perverse. Therefore, the High Court recorded its own finding. The High Court was entitled to do once H it concluded that the findings of the Trial Court were perverse.

The next question which, however, arises is whether the conclusion of the High Court that the findings of the Trial Court were perverse can be said to be correct. Under normal circumstances if a landlord during the trial gets vacant possession of some other premises which are equally suitable and chooses to let them out on higher rent then it may be arguable that the need of the landlord, made out in the Eviction Petition, was not reasonable or in good faith. However, as seen above, the said Act provides specifically, in Explanation II, that even though a landlord may have two or more premises which have been let out, it is for the landlord to choose which one would be preferable to him or her and the tenant could not question such preference. In this case, the Appellant had indicated a preference for the flat occupied by the Respondent. She had given a reason why she preferred this flat. She was an old lady. She therefore could not climb to the first floor and thus the two flats on the first floor were not suitable to her. The other flat on the Southern side of this building faced a road which was a very busy road and would therefore be noisy. This particular flat faced the Bungalow in which she has been residing for so many years and also faced an open piece of land belonging to her husband. The Trial Court accepts these reasons. The High Court has merely set aside the decree on the ground that the Appellant had chosen not to occupy the three other flats which became available in the same building. In our view, Explanation II to Section 11(1) (c) permitted the landlord to ignore other premises and to prefer a particular premise. The Appellant having made a preference cannot be forced to occupy other premises which may become available. Further the Appellant was not required to keep those premises vacant because her Eviction Suit was pending, nor was there any duty cast on the Appellant, under any provision of law, to offer those other premises to the Respondent. If the Respondent had so desired, he could have offered to vacate the flat preferred by the landlady and move into one of those other premises. If the Appellant had refused to accept such an offer, it possibly could have been said that the landlady was merely seeking to get vacant possession in order to get higher rents. In that case it could have been inferred that the need of the Appellant was not genuine and/or in good faith. No such case has been made out. In view of the specific provision in the said Act the reasoning of the High Court cannot be sustained.

It was next urged that the Appellant was merely evicting the Respondent in order to let out the premises at higher rent. It was urged that the Appellant came from a very affluent and well known family in Bhagalpur and was therefore not likely to shift into the said premises. In our view, Section 17 of the said Act, which has been set out hereinabove, is a complete answer to

A this submission. In case the Appellant does not shift into the said premises, it will be open to the Respondent to apply, under Section 17 of the said Act, for restoration of possession and for compensation.

In this view of the matter, we allow the appeal, set aside the impugned Judgment and restore the decree passed by the Trial Court. There will be no order as to costs.

B

Mr. Yadav requests that time be granted to the Respondent to vacate the said flat. We grant to the Respondent time till 30th April, 2003 to vacate the said flat on his filing in this Court, within six weeks from today, the usual undertaking.

C

N.J.

Appeal allowed.