MADAN LAL PURI

v.

SAIN DAS BERRY

July 27, 1971

[C. A. VAIDIALINGAM, A. N. RAY AND D. G. PALEKAR, JJ.]

Delhi Rent Control Act, 1958, *ss.* 14(1)(*e*) *and* 39(2)—*Jurisdiction of High Court.*

The respondent, who was the landlord of certain premises, filed an application under s. 14(1)(e) of the Delhi Rent Control Act, 1958, for the eviction of the appellant, who was the lessee, on the ground *inter alia*, that the respondent required the premises bonafide for his occupation as a residence for himself and his family members. The Rent Controller found that the requirement of the landlord was not bonafide and dismissed the application. The order was confirmed in appeal by the Rent Control Tribunal. The respondent filed an appeal to the High Court under s. 39(2) of the Act. Before the High Court both parties agreed that the case should be remanded to the Tribunal for a finding on the question whether the premises available with the respondent could be considered to be 'reasonably suitable residential accommodation' as contemplated by s. 14(1)(e). On remand, the Tribunal reported that the premises in the occupation of the respondent were not reasonably sufficient for the respondent and his family. The appellant however contended before the High Court, ignoring this finding of the Tribunal, that on the concurrent findings of the two subordinate authorities that the landlord's requirement was not bonafide, there was no question of law involved and so the High Court had no jurisdiction under s. 39(2) to consider the correctness of those findings. The High Court rejected the contention and held, that, in view of the finding on remand the decision of the subordinate authorities dismissing the respondent's application was erroneous.

In appeal to this Court,

HELD: This Court in *Kamla Soni* v. *Rup Lal Mehra*, C.A. No. 2150 of 1966 dated 26-9-1969 held that a finding on the issue whether the requirement of a landlord is bonafide is a finding on mixed questions of law and fact and not on facts only. Therefore, it was open to the High Court, when exercising jurisdiction under s. 39(2), to consider in proper cases the correctness of such a finding. [939E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 848 of 1971.

Appeal by special leave from the judgment and order dated December 7, 1970 of the Delhi High Court in S.A.O. No. 110-D of 1966.

Hardev Singh, K. P. Kapur and *H. L. Kapur*, for the appellant.

S. K. Mehta, K. L. Mehta and *K. R. Nagaraja*, for the respondent.

A The Judgment of the Court was delivered by

Vaidialingam, J.—In this appeal, Mr. Hardev Singh, learned counsel on behalf of the tenant-appellant, challenges the judgment and order dated December 7, 1970 of the Delhi High Court in S.A.O. No. 110-D of 1966. Special leave has been granted by this Court limited to the question whether the High Court was B justified, in view of s. 39(2) of the Delhi Rent Control Act, 1958 (hereinafter called the Act) in setting aside the decisions of the two subordinate authorities, dismissing the application filed by the respondent-landlord for evicting the appellant.

The facts leading up to this appeal may be briefly stated. C The appellant took on lease, the first floor of the premises in question from the respondent on January 22, 1964 on a monthly rent of Rs. 250. The respondent who was the owner of the entire premises was then occupying the ground floor. The landlord filed an application, before the Rent Controller on November 26, 1964 for eviction of the appellant from the portion in his occupation as lessee, on two grounds; (a) that the tenant has sub-let a D part of the premises, and (b) that he required the premises bona fide for his occupation as a residence himself and his family members. The latter claim was based under cl. (e) of the proviso to sub-section (1) of s. 14 of the Act, which is as follows:—

> "that the premises let for residential purposes are re- E quired bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;"

F The tenant opposed the claim of the landlord on both the grounds. He denied the allegation of sub-letting. He also contended that the landlord's requirement for his occupation was not bonafide. The tenant's plea was that the portion of the premises in his occupation was sufficient for his purpose. The Rent Controller accepted the plea of the tenant that there was no sub- G letting. He also accepted his plea that the requirement of the landlord for his occupation was not bona fide. On these findings, the landlord's application was dismissed. These two findings were also confirmed in the appeal filed by the landlord before the Rent Control Tribunal. The question, regarding sub-letting, having been decided against the landlord by both the Tribunals, H no longer survives and it was also not agitated before the High Court. It may be stated at this stage that the findings of both the tribunals on the question of bonafide requirement were recorded against the landlord, on the sole ground that the landlord must

have foreseen his requirement for additional accommodation even at the time when he let out a part of the premises on January 22, 1964 to the appellant and therefore he was not entitled to ask for eviction under cl. (e) of the proviso to sub-section (1) of s. 14 of the Act. It is the view of both the Tribunals that when eviction is asked for within about 11 months of the letting, the claim of the landlord cannot be considered to be bonafide.

The landlord carried the matter in appeal before the High Court under s. 39 of the Act. That section runs as follows :—

> "39(1) Subject to the provisions of sub-section (2), an appeal shall lie to the High Court from an order made by the Tribunal within sixty days from the date of such order;
>
> Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
>
> (2) No appeal shall lie under sub-section (1), unless the appeal involves some substantial question of law."

Before the High Court, counsel for both parties made a representation that the Rent Control Tribunal has not recorded a finding on the question whether the premises avaiable with the landlord can be considered to be "reasonably suitable residential accommodation" as contemplated by cl. (e) of the proviso to s. 14 (1). Hence they made a joint request to remand the case to the Tribunal for a finding on the said question on the basis of the evidence already on record. Accepting this joint request, the learned Judge remanded the case to the Tribunal. The latter, after a consideration of the materials on record as well as the extent of the premises in the occupation of the landlord and also having due regard to the number of family members living with the latter, held, in his report dated May 4, 1970, that the portion of the premises in the occupation of the landlord was not reasonably sufficient for a family consisting of the landlord, his wife, his son, son's wife and their children. On this basis, he recorded a finding that the premises in the occupation of the respondent were not reasonably suitable for his residence.

So far as we could see, the correctness of these findings recorded by the Rent Control Tribunal, in favour of the landlord, do not appear to have been challenged by the tenant before the High Court when the appeal came up for final hearing. On the other hand, we find that the same contentions that were raised regarding the bonafide requirement of the landlord and which found

A acceptance at the hands of the Rent Controller and the Tribunal before remand were again raised by the tenant-appellant before the High Court. That is, in short, the appellant herein was contesting before the High Court, the appeal of the landlord, ignoring the findings of the Tribunal dated May 4, 1970. The main point that was urged by the appellant before the High Court was
B that as the two subordinate Tribunals have recorded concurrent findings negativing the claim of the landlord regarding his bona-fide requirement of the premises, the appeal filed by the landlord did not involve any substantial question of law. On this basis the appellant pressed for the dismissal of the landlord's appeal. On the other hand, the respondent urged that both the subordinate Tribunals have not properly considered the question of the land-
C lord's requirement; and that the findings recorded against him were on irrelevant consideration. According to the landlord the various material factors which have to be taken into account for adjudicating upon such a claim, have not been properly borne in mind by both the Tribunals. Quite naturally the landlord placed considerable reliance on the findings recorded on May 4,
D 1970 in his favour by the Tribunal.

The High Court rejected the contention of the appellant that it has no jurisdiction to consider the correctness of the findings recorded by the two subordinate authorities especially when the relevant matters to be taken into account for deciding such a question have not been borne in mind by those authorities. The
E High Court is of the view that the rejection by the Rent Controller and the Tribunal of the claim of the landlord on the sole ground that he should have anticipated his requirement for the next 10 or 11 months when he let out the premises on lease on January 22, 1964, was erroneous. The High Court has further observed that none of the subordinate authorities have held that
F after letting out the premises on January 22, 1964 and before filing the application for eviction on November 26, 1964, the landlord has made any demand from the tenant for payment of higher rent. Finally, the High Court having due regard to the above circumstances and the size of the family of the landlord and the findings recorded by the Tribunal on May 4, 1970 held that the
G decision of the two subordinate authorities dismissing the landlord's application was erroneous. On the other hand, the learned Judge held that the landlord has made out his claim under cl. (e) of the proviso to s. 14(1) of the Act. On this reasoning the learned Judge reversed the decision of the Rent Controller and the Tribunal and allowed the application of the landlord for eviction of the appellant. The appellant was given six months' time for
H vacating the premises.

Mr. Hardev Singh, learned counsel for the appellant, has very strenously urged that in view of the concurrent findings

recorded by the two subordinate tribunals, there was no question of law, much less a substantial question of law arising for consideration before the High Court in the appeal filed by the landlord. Hence he urged that the interference by the High Court with the concurrent findings so recorded was not justified. Learned counsel further pointed out that the landlord has not made out his claim under cl. (e) of the proviso to s. 14(1) of the Act. Mr. Hardev Singh referred us to certain decisions of this Court dealing with the question, under what circumstances it can be considered that a substantial question of law arises. We do not think it necessary, in the circumstances of this case, to refer to those decisions, as in our opinion they have no bearing on the short question that arises for consideration before us, namely, the power of the High Court under s. 39, to consider the correctness of a finding regarding bonafide requirement under cl. (e) of the proviso to s. 14(1) of the Act.

As we have already pointed out, the sole question that has to be decided by us is whether the High Court in reversing the decisions of the Rent Controller and the Tribunal, in the circumstances of this case, can be considered to have exceeded its jurisdiction under s. 39(2). We are satisfied that the High Court has not exceeded its jurisdiction in any manner.

The argument of Mr. Hardev Singh that the High Court has exceeded its jurisdiction under s. 39(2) of the Act when it reversed the finding of the two subordinate authorities on the question of bonafide requirement has, in our opinion, no substance. In *Smt. Kamla Soni* v. *Rup Lal Mehra*(1), this Court observed as follows:

> ".....Whether on the facts proved the requirement of the landlord is *bona fide*, within the meaning of s. 14(1)(e) is a finding on a mixed question of law and fact....."

From the above observations it is clear that an inference drawn by the subordinate authorities that the requirement of the respondent was not bonafide, could not be regarded as conclusive. The High Court, in proper cases, has ample jurisdiction to interfere with that finding and record its own conclusions on the basis of the materials on record.

We may also point out that in the case before us the position is made worse for the appellant in view of the finding recorded by the Tribunal in favour of the landlord on May 4, 1970. We have already pointed out the circumstances under which a finding was called for by the High Court. The High Court has accepted those findings and held in favour of the landlord that he has

(1) C. A. No. 2150 of 1966 decided on 26-9-1969.

made out a case under cl. (e) of the proviso to s. 14(1) of the Act.

Mr. Hardev Singh referred us to the decision of this Court reported in *Bhagwan Dass and another* v. *S. Rajdev Singh and another*(1), wherein it has been observed :

> "A second appeal lies to the High Court against the decision of the Rent Control Tribunal under Section 39(2) of the Delhi Rent Control Act, 1958, only if the appeal involves some substantial question of law. The Rent Controller and the Rent Control Tribunal, on a consideration of the relevant terms of the agreement and oral evidence and the circumstances found that a clear case of sub-letting was established. On that finding no question of law, much less a substantial question of law, arose."

The first part of the above extract lays down the nature of the jurisdiction exercised by the High Court under s. 39(2) of the Act. In that decision, on facts, it was found both by the Rent Controller and the Tribunal, on a relevant consideration of the materials on record, that a case of sub-letting was established. On such a finding concurrently arrived at by both the authorities, it was held by this Court that no question of law, much less a substantial question of law arose for consideration before the High Court.

But the facts in the case before us are entirely different. We have already pointed out that the question that fell to be considered by the High Court was whether the claim made by the landlord under cl. (e) of the proviso to s. 14(1) of the Act was bonafide. As already pointed out, this Court, in *Smt. Kamla Soni* v. *Rup Lal Mehra*(2), has held that a finding on such an issue is not one of fact alone but is a finding of mixed question of law and fact, and that it was open to the High Court when exercising its jurisdiction under s. 39(2) of the Act, to consider the correctness or otherwise of such a finding. The findings recorded on such an issue by the subordinate tribunals are not conclusive.

From the above discussion, it follows that the High Court has not exceeded its jurisdiction under s. 39(2) of the Act. In consequence, the appeal fails and is dismissed. In the circumstances of the case, parties will bear their own costs.

V.P.S. *Appeal dismissed.*

(1) A. I. R. 1970 S. C. 986.

(2) C. A. No. 2150 of 1966 decided on 26-9-1969.