

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 19th February, 2021.**

+ **W.P.(C) 12544/2019 & CM No.51249/2019 (for interim directions)**

SUNIL KUMAR JAIN & ORS Petitioners

Through: Mr. Uday Gupta, Ms. Shivani M. Lal, Mr. Ram Bhakt Aggarwal, Mr. Hiren Dasan, Mr. Kripa Shankar and Mr. M.K. Tripathi, Advs.

Versus

**REGISTRAR GENERAL, DELHI HIGH COURT
& ANR Respondents**

Through: Mr. Ankit Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The five petitioners, have filed this petition impugning the communication dated 1st October, 2019 of this Court, rejecting the representation dated 2nd May, 2018 made by the petitioners on the Administrative side of this Court. It is the case of the petitioners, that (i) they are tenants in different shops in the city of Delhi; (ii) different Rent Control legislations, viz. New Delhi House Rent Control Order 1939, Delhi Rent Control Ordinance 1944, Delhi and Ajmer-Marwara Rent Control Act 1947, Delhi and Ajmer Rent Control Act 1952 and Delhi Rent Control Act, 1958 (the Act) have been applicable to Delhi from time to time; (iii) Section 14(1)(e) of the Act afforded to the landlords a right to evict the

tenant on the ground of requirement of the premises for the residence of himself/herself and their dependant family members; (iv) vide amendment of the year 1976 to the Act, Section 25B was incorporated in the Act, prescribing summary procedure for decision of the petitions for eviction on the ground under Section 14(1)(e) of the Act; (v) in the debate in the Parliament preceding the aforesaid amendment of the year 1976, the then Minister of State in the Ministry of Works and Housing allayed the apprehension that commercial tenants would also be evicted through summary procedure, by stating that the said procedure was confined to residential premises and did not apply to commercial premises; (vi) challenge made in CWP No.1092-1093/1999, by one Satyawati Sharma, before this Court, to the vires of Section 14(1)(e) of the Act, was negated vide judgment dated 27th August, 2002; (vii) however the Supreme Court, in appeal preferred by Satyawati Sharma, vide judgment *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287, made the eviction of tenants under Section 14(1)(e) of the Act applicable qua commercial premises also; (viii) pursuant to the aforesaid judgment, the Rent Controllers and Additional Rent Controllers in Delhi, vis-à-vis petitions filed by landlords under Section 14(1)(e) of the Act qua premises let out for commercial purposes, started following the summary procedure under Section 25B of the Act, for the said petitions also, failing to appreciate that Section 25B of the Act had no applicability to the premises let out for commercial purposes; (ix) aggrieved by the application of summary procedure to petitions for eviction under Section 14(1)(e) of the Act with respect to commercial premises, the petitioners preferred CM(M) No.385/2018 under Article 227 of the Constitution of India, before this Court, seeking issuance of an order or

direction in the nature of a Practice Direction to the Rent Controllers/Additional Rent Controllers in Delhi regarding non-applicability of Section 25B of the Act to eviction petitions filed qua premises let out for commercial purposes/non-residential use, under Section 14(1)(e) of the Act; (x) the aforesaid CM(M) 385/2018 was disposed of by a Single Judge of this court vide order dated 6th April, 2018 as under:-

“After some hearing, the learned counsel for the petitioner submitted that he does not press the petition for consideration on the judicial side and instead reserves the right to make an appropriate petition to the High Court on the administrative side for exercise of its jurisdiction in terms of Article 227(2)(b) of the Constitution of India for considering the framing and issuance of practice directions and/or rules on the lines suggested in the petition.

The petition and the accompanying application are disposed of accordingly.”;

(xi) “in compliance of the order dated 6th April, 2018, the petitioners through counsel filed a representation dated 2nd May, 2018 before this Court”; (xii) when nothing was heard on the status of the representation, for 7-8 months, a reminder dated 8th January, 2019 was issued by the petitioners through counsel; (xiii) finally, on 4th February, 2019, a communication was received from the Joint Registrar (Judicial) (Rules), stating that the matter was under consideration of the Rules Committee; (xiv) while the said representation was pending, Supreme Court pronounced the judgment in **Vinod Kumar Vs. Ashok Kumar Gandhi** (2019) 17 SCC 237; (xv) since the representation made by the petitioners was not decided, the Rent Controllers and the Additional Rent Controllers continued to follow the harsh summary procedure, though not applicable to premises let

for commercial purposes; and, (xvi) the petitioners filed a writ petition seeking to have the representation dated 2nd May, 2018 decided expeditiously; while the said writ petition was under scrutiny, the counsel for the petitioner received communication/order dated 1st October, 2019 from this Court, rejecting the representation dated 2nd May, 2018, without affording any opportunity of hearing to the counsel for the petitioners before the Full Court and without assigning any reasons whatsoever; accordingly, the writ petition filed, though not listed, became infructuous and was withdrawn.

2. Contending, that (i) as per the statement of the Minister during the debates in Parliament preceding the 1976 amendment to the Act, introducing the summary procedure, the said procedure is not to be used with respect to premises let for commercial purposes; (ii) Section 14(1)(e) of the Act, with respect to applications whereunder summary procedure in Section 25B applies, prior to ***Satyawati Sharma*** supra, was a ground for eviction from premises let for residential purposes only and only as per the dicta of ***Satyawati Sharma*** supra has been permitted to be used for eviction from premises let for commercial purposes as well; (iii) there is a material distinction between premises let for residential purposes and premises let for commercial purposes; (iv) use of summary procedure for eviction from premises let for commercial purposes becomes very harsh because the bread and butter of the tenant and his family are dependent from the said premises and because there is always a goodwill attached to the place of business; (v) Rent Control Acts prevalent in other States of India do not follow the summary procedure for eviction petitions filed on the ground of *bona fide* need; (vi) *bona fide* need for commercial purpose can never be

subject matter of a *prima facie* view which the Rent Controller/Additional Rent Controller while applying the summary procedure, can take, based on affidavits filed by the parties; (vii) the Act itself distinguishes between a residential tenancy and a non-residential tenancy; (viii) the Supreme Court, in ***Vinod Kumar*** supra, was concerned only with the question whether ***Satyawati Sharma*** supra required reconsideration; and, (ix) the representation dated 2nd May, 2018 of the petitioners had been rejected without giving any reasons and in violation of the principles of natural justice, this petition has been preferred seeking quashing of the communication dated 1st October, 2019 of this Court, to the counsel for the petitioners rejecting the representation dated 2nd May, 2018. Axiomatically issuance of a Practice Direction by this Court, directing the Rent Controllers and Additional Rent Controllers to, in petitions for eviction under Section 14(1)(e) of the Act, not follow the summary procedure under Section 25B of the Act, is sought.

3. The petition came up first before this Court on 29th November, 2019 and was thereafter adjourned from time to time, to 5th December, 2019, 7th February, 2020, 5th October, 2020, 12th October, 2020, 18th December, 2020, 22nd January, 2021 and has come up today before us for admission.

4. The petitioners, in their representation dated 2nd May, 2018, having sought framing of appropriate procedure/guidelines in exercise of powers under Article 227(2)(b) of the Constitution of India, for the Rent Controllers/Additional Rent Controllers to not follow the summary procedure in Section 25B of the Act, with respect to eviction petitions under Section 14(1)(e) of the Act qua premises let out for commercial/non-

residential purposes, we have at the outset only enquired from the counsel for the petitioners, whether in exercise of powers under Article 227(2)(b), any Rules regulating practice and proceedings in Courts in contravention of law can be framed. Section 14(1) of the Act, notwithstanding anything to the contrary contained in any other law or contract, provides that no order or decree for recovery of possession of any premises shall be made by any Court or Rent Controller, in favour of a landlord and against a tenant. Proviso thereto provides that the Rent Controller may, on an application made to him in the prescribed manner, make an order for recovery of possession of the premises on any or more of the grounds prescribed thereunder. Clause (e) thereunder provides that the Controller may, on an application made to him in the prescribed manner, make an order for recovery of possession of the premises on the ground that the premises let for residential purposes are required *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 other person for whose benefit the premises are held and that the landlord or such other person has no other reasonably suitable residential accommodation. Explanation thereto clarifies that “premises let for residential purposes” would include any premises which having been let for use as a residence, are without the consent of the landlord, used incidentally for commercial or other purposes. Section 14(6) of the Act provides that where the landlord has acquired any premises by transfer, no application for recovery of possession of such premises shall lie under Section 14(1)(e) of the Act, unless a period of five years has elapsed from the date of acquisition. Section 14(7) of the Act provides that where an order for recovery of

possession of any premises is made on the ground specified in Section 14(1)(e) of the Act, the landlord shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of the order. Section 19 of the Act provides that where a landlord recovers possession of any premises on the ground provided under Section 14(1)(e) of the Act, the landlord shall not, except with the permission of the Rent Controller, re-let the whole or any part of the premises within three years from the date of obtaining such possession and if is found to have so re-let or transfered the premises without obtaining the permission of the Controller, the Rent Controller, on the application of the evicted tenant, shall put back the evicted tenant into possession of the premises.

5. Chapter IIIA of the Act titled “Summary Trial of Certain Applications” whereunder Section 25B is placed, provides that every application by a landlord for recovery of possession on the grounds specified in Section 14(1)(e) of the Act shall be dealt with in accordance with the procedure prescribed thereunder. The said procedure requires the tenant to, within, 15 days of service of summons of the petition for eviction, file an application for leave to defend disclosing on affidavit the grounds on which he seeks to contest the application for eviction. The same further provides that if the tenant does not so apply for leave to defend within 15 days and/or if the Controller finds the affidavit accompanying the leave to defend application to be not disclosing such facts as would disentitle the landlord from obtaining an order of recovery of possession under Section 14(1)(e) of the Act, the Controller shall pass an order of eviction. If the affidavit accompanying the leave to defend application is found to disclose facts which would disentitle the landlord from an order of eviction under

Section 14(1)(e), then leave to defend is to be granted and the petition for eviction under Section 14(1)(e) to be decided after giving opportunity of leading evidence, to the landlord as well as the tenant. The remedy of a petition before the High Court, in the nature of revision, against the order on the application for leave to defend as well as after trial, is provided under Section 25B(8) of the Act.

6. Section 56 of the Act empowers the Central Government to, by notification in the Official Gazette, make Rules to carry out the purposes of the Act and requires every Rule to be laid before each House of the Parliament.

7. In exercise of powers under Section 56 of the Act, the Central Government has framed the Delhi Rent Control Rules, 1959 and also prescribed forms for making various applications under the Act.

8. In *Satyawati Sharma* supra, the validity of Section 14(1)(e) of the Act was challenged on the ground that the same was ultra vires the doctrine of equality enshrined in Article 14 of the Constitution of India in, while permitting eviction of tenant for *bona fide* requirement of the landlord of residential premises, not permitting so for eviction of tenant in premises let for commercial purposes. It was held that, (i) in the Rent Control legislations made applicable to Delhi from time to time, residential and non-residential premises were treated at par for all purposes; (ii) the Act also did not make any substantial distinction between residential and non-residential premises; (iii) the reasons which prompted this Court to negate the challenge made by *Satyawati Sharma*, with passage of time, were no longer available; (iv) discrimination which was latent in Section 14(1)(e) at

the time of enactment of the Act in the year 1958, with the passage of time (almost 50 years) had become so pronounced that Section 14(1)(e) could not be treated intra vires Article 14 of the Constitution; (v) Section 14(1)(e) of the Act was violative of the doctrine of equality embodied in Article 14 of the Constitution insofar as it discriminates between premises let for residential and non-residential purposes when the same are required *bona fide* by the landlord for occupation for himself or for any member of his family dependent on him and restricts the landlord's right to seek eviction of the tenant from the premises let for residential purposes only; (vi) however since there was no prayer for striking down of Section 14(1)(e) in entirety, as unconstitutional, ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) and Section 14(1)(e) shall now be read as follows:

“that the premises are required bona fide by the landlord 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 accommodation”

and the explanation thereto shall stand deleted.

9. The position which thus emerges is, that vide **Satyawati Sharma** supra, which is law within the meaning of Article 141 of the Constitution of India and binding on all Courts, petition under Section 14(1)(e) lies for eviction of tenant from premises let out not only for residential purposes but also qua premises let out for commercial purposes, if the requirement of the landlord therefor, whether for residential use or for commercial use, is *bona fide*. Section 25B provides for a petition under Section 14(1)(e) to be dealt

with in accordance the summary procedure prescribed thereunder and does not permit any latitude in the matter; the language of Section 25B does not vest any discretion in the Controller, whether to try an application for eviction of tenant under Section 14(1)(e) under summary procedure or otherwise. The mandate of the law as enacted by the legislature is that a petition for eviction of tenant under Section 14(1)(e) shall be tried following the procedure prescribed under Section 25B of the Act. Thus as per the statutory provisions, an application for eviction under Section 14(1)(e), has to be mandatorily dealt with as per procedure under Section 25B and any Practice Direction issued by this Court as sought, for an application under Section 14(1)(e) with respect to commercial premises to be not dealt with in terms of Section 25B, would be contrary to the Statute. Article 227(2)(b) does not empower the High Court to issue directions or to make Rules regulating practice and proceedings in the Courts subordinate to it, in negation of law enacted by the legislature.

10. The Act also vests the Rule making power thereunder not in this Court, as found in some other Statutes viz. Commercial Courts Act, 2015 but in the Central Government and that too by following the procedure prescribed therefor. We are thus at a loss as to in exercise of what jurisdiction, the counsel for the petitioner wants this Court to do so. The counsel wants Practice Directions contradicting the statutory provisions to be issued.

11. The representation on behalf of the petitioners, though drafted by their counsel, is found to have been made without considering the law or all

the aforesaid aspects and the counsel for the petitioners has no answer before us as well.

12. Rather, the emphasis of the counsel for the petitioners is on the order dated 6th April, 2018 supra in CM(M) No.385/2018 earlier preferred by the petitioners, with the counsel for the petitioners arguing that it was on the suggestion and advice of the Single Judge of this Court that he withdrew the petition. However neither is it disclosed on what basis such advice was given or suggestion made and/or on what basis, in the said CM(M) No.385/2018, relief was sought. Moreover, the version of the counsel for the petitioners, of the Single Judge having advised/suggested him so, cannot be believed inasmuch as the order passed does not indicate so and on the contrary shows the counsel for the petitioners to have, after himself filing the petition, on the basis of his own opinion, withdrawn that petition, to approach this Court on the Administrative Side. However the counsel for the petitioners, treating the same as a direction of this Court, while making representation and in this petition also, has stated/pleaded that the representation was in compliance of the said order, when the order does not direct so. If the counsel, in law had any ground or basis for seeking issuance of any Practice Direction, the counsel should not have withdrawn CM(M) No.385/2018. Rather, if there is any basis in law for Section 25B to be not followed with respect to a petition for eviction under Section 14(1)(e) with respect to commercial premises, there is no reason why such a plea cannot be taken before the Controller and/or if not accepted by the Controller, before this Court under Section 25B(8) petition against the order of the Controller/Additional Rent Controller. What can be sought on the

Administrative side, can certainly be pressed during the judicial proceedings.

13. The same is the position of the argument of the counsel for the petitioners qua the statement of the Minister during the debate in Parliament preceding the 1976 Amendment to the Act. Such debates, though an aid to interpretation of Statutes, but are to be resorted to only when the language of the Statute is ambiguous and equivocal and which is not so in the case of Section 25B of the Act. Once the discriminatory part of Section 14(1)(e) has been struck down in *Satyawati Sharma* supra, the Courts cannot defeat the same in the manner sought by the petitioners. What the petitioners aver i.e. that there is a distinction between residential premises and commercial premises, has not been accepted in *Satyawati Sharma*, as noticed above. The petitioners are again seeking to create the discrimination between commercial premises and residential premises.

14. The argument of the counsel for the petitioners that adoption of summary procedure to petitions for eviction under Section 14(1)(e) with respect to commercial premises results in immediate eviction, is also a product of the mindset of years, that petitions for eviction of tenant should drag on in the Courts for decades. No litigant has a right to delay adjudication or to complain that adjudication process is not long enough. Rather, this argument also overlooks Section 14(7) of the Act noticed above, requiring the Controller to grant six months time to the tenant to vacate the premises.

15. The petition even otherwise is totally misconceived. One of the arguments made and as recorded in *Vinod Kumar* supra, for seeking

reconsideration of *Satywati Sharma* supra was, that Section 25B had been incorporated in the Act only for eviction from premises let for residential purposes; reliance was placed on the statement supra of the Minister in Parliament during the debate preceding the 1976 Amendment of the Act vide which Section 25B was brought on the Statute book. Supreme Court however unequivocally held:

“There cannot be any dispute to the submission of the appellant that provision of Section 25-B when it was inserted, the procedure was confined to residential premises as has been stated by the Hon’ble Minister on the Floor of the House. There being no ground available to landlord for eviction of a tenant of commercial premises on bona fide need, there was no contemplation for applying the procedure under Section 25-B.

The question is as to whether non consideration of Section 25B by Satyawati Sharma renders judgment of Satyawati Sharma per incuriam. Satyawati Sharma was considering the challenge to provisions of Section 14(1)(e) in so far as the ground of bona fide need of the landlord is also available for commercial premises. Section 25-B being related to only procedure for considering the application under Section 14(1)(e) has no bearing on the issue which had propped up before this Court in Satyawati Sharma. Nothing in Section 25-B can be read which runs counter to what has been laid down by Satyawati Sharma. Whether a procedure giving more flexibility to tenants of commercial premises should be provided for, is another subject but non-reference of Section 25-B by Satyawati Sharma does not render the judgment per incuriam.

Much emphasis has been given by the learned counsel for the appellant on the fact that various tenants are tenants of small shops which are their source of livelihood when application under Section 14(1)(e) filed by the landlord

on bona fide need, they are not even entitled to contest the application by filing written statement. They are obliged to obtain leave to defend as per Section 25-B which leave to defend is rejected in most of the cases which causes great hardship on the tenants. It is submitted that insofar as the applicability of the procedure under Section 25-B is concerned, the issue needs to be revisited to save the tenants from hardship. In our view this cannot be a ground for referring the judgment of Satyawati Sharma to larger Bench for reconsideration of judgment of Satyawati Sharma. Satyawati Sharma having not said about the procedure, there is nothing in the judgment which needs to be revisited on the above aspect. It is for the legislature to take stock of the situation and if it so decides it can make necessary changes in the procedure for considering the application under Section 14(1)(e) with regard to eviction of commercial tenants on the ground of bona fide need of the landlord. We need to add nothing more on the subject. Insofar as submission of the learned counsel for the appellant is that under Section 14(1)(e) in respect of commercial tenancy leave to defend is generally rejected, it is suffice to say that rejection of leave for a particular case is matter to be examined in each case and no general observation can be made in this regard”

(Emphasis added)

16. As is obvious from above, the Supreme Court also when faced with the argument as urged before this Court, unequivocally held that “it is for the legislature to take stock of situation and if it so decides it can make necessary changes in the procedure...”. In spite thereof, the petitioners have indulged in this misadventure, of first making a misconceived representation to this Court on the Administrative side and then preferring this petition.

17. Notwithstanding the aforesaid, the counsel for the petitioners has vehemently contended that he was not given audience by the Full Court, to satisfy the Full Court of the need for issuing practice directions as sought. When the petitioners, earlier in the CM(M) No.385/2018 and now in this petition have not been able to make out a case in law, for issuance of Practice Direction and when the counsel for the petitioners, during the hearing has not been able to meet our aforesaid reasons for calling the petition to be misconceived, it is not known what else could he have submitted before the Full Court. We need say no more.

18. There is no merit in the petition and the same is dismissed. Though in the Court we had dismissed the petition with costs of Rs.50,000/- but while finalizing the judgment have opted not to impose costs, hoping that the petitioners/their counsel, in future will not take up judicial time on such issues.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

FEBRUARY 19, 2021

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