Tikka Balbir Singh Bedi and others *v.* Bakhshi Salig Ram and others

Falshaw, C.J.

The main argument was that the words should be so interpreted as to implement the object of the Act as a whole and in particular section 28 read with section 27, but I am not at all convinced on this point. Section 55 provides for the settlement of disputes by arbitration, and dispute would certainly include such question as whether the petitioners are entitled to remain in possession of the lands now occupied by them, and the decision on such a dispute would include provision for payment of damages or mesne profits in case their occupation is found to be wrongful.

Section 28 is a drastic section and is obviously meant for quick action in an emergency to prevent loss or destruction or damage to the property of the society, and on this point it does not even provide for the issue of notice to any person before a warrant is issued under sub-section (2). I cannot believe that it was intended by the Legislature to empower the police to expel people from the land in their occupation without notice or any judicial determination of their right.

The matter obviously is largely one of first impression and I can only repeat what I have already said that the words used in connection with property in sub-section (2) clearly are applicable only to movable property and no argument, however elaborate or ingenious can persuade me that they can possibly be applied to immovable property which, in any ordinary sense of the words, is incapable of being misappropriated or misapplied and cannot be 'kept or believed to be kept' at a particular place and finally cannot be 'seized and handed over'. The result is that I would accept these appeals and accept the writ petitions to the extent of quashing the order of the Magistrate so far as it applies to immovable property. I do not think it is necessary to pass any order regarding the costs.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Mehar Singh, J.

SULTAN SINGH JAIN,—*Appellant*

versus

JAI CHAND AND ANOTHER,—*Respondents*

S.A.O. 55-D of 1963.

Delhi Rent Control Act (LIX of 1958)—S. 39—Bonafide requirement of landlord—Whether a finding of fact—Court fees Act (VII of

1870)—*Schedule* 1, *Art.* 7—*Order of Rent Controller—Whether an order having the force of decree and liable to be stamped as such.*

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Held, that normally the finding whether landlord's requirement of permises for personal occupation is *bona fide* or not is a finding of fact.

Held, that merely because the order is executable as a decree of a civil Court, it does not become an order having the force of a decree. It still remains an order even in the terms of section 42 of the Act but, remaining an order, the manner of its execution is the manner of the execution of a decree. If an order is executable in the same manner as a decree is executable, that does not make the order one having the force of a decree. So that article 7 in Schedule I of the Court Fees Act is not attracted in the case of an order of the Rent Controller which is not an order having the force of a decree, though executable as a decree of a civil Court.

Second appeal from Order of Shri P. S. Pattar, Rent Control Tribunal, Delhi, dated the 11*th December,* 1962, *reversing that of Shri Sudershan Aggarwal, Additional Rent Controller, Delhi, dated the* 11*th June,* 1962, *dismissing the cross-objections of the respondent-landlord and accepting the appeal of the appellant, and dismissing the ejectment application of the landlord with costs throughout.*

S. N. SHANKER, ADVOCATE, for the Appellant.

TARA CHAND, ADVOCATE, for the Respondents.

ORDER

Mehar Singh, J.

MEHAR SINGH, J.—This is a landlord's second appeal, his application for eviction of the tenant having been dismissed by the Rent Control Tribunal reversing the finding of the Rent Controller, who was of the opinion that he had made out a case of personal *bona fide* requirement by him of the accommodation with the tenant.

A second appeal lies only on a substantial question of law according to sub-section (2) of section 39 of the Delhi Rent Control Act, 1958. The learned counsel for the tenant urges that the finding of the Rent Control Tribunal whether the requirement of the premises for personal occupation claimed by the landlord is *bona fide* or not, is a finding of fact which cannot be interfered with in this second appeal. Normally this is so. The learned counsel for the landlord points out first that the Rent Control

Tribunal has erred in basing its finding that on the first-floor of the house in which practically half of the ground-floor is with the tenant, there are three rooms in front of the room in the occupation of the landlord which are also with him, but it is the statement of the tenant himself that those three rooms, marked by red pencil as A-B-C in the plan A. 1, are in fact with the family of Jagmindar Lal, a son of the landlord, who is employed in Bombay. The learned counsel presses that this is a mistake of fact made by the Rent Control Tribunal, and justified interference in this second appeal. His second ground is that the landlord has a third son named Prem Chand, who at the time the matter was before the Rent Control Tribunal, was under training in the Agra Agricultural College as a Research Scholar, having been sent there by the Indian Council of Agricultural Research, and he was there only for training and was not permanently employed there. An affidavit to this effect had been filed by the landlord, but the learned counsel says that the negative in the application was not read because the word has come partly under a seal, which is true. The affidavit of the landlord shows that his third son Prem Chand, was not permanently employed in the Agra Agricultural College, but was there only temporarily as a Research Scholar. These two mistakes of fact, the learned counsel urges, are sufficient to justify interference with the order of the Rent Control Tribunal.

The house has two storeys and on top of the second storey there are three Barsatis with a latrine and open roof. That part of the house is obviously used as sleeping accommodation mostly during summer. So that what has to be considered is the accommodation on the ground-floor and on the first-floor. On the ground-floor, there is portion marked red which is with the tenant, there is portion marked green which is with another son, named Tarlok Chand, of the landlord, and there is a room, marked yellow with letter 'C', with dimension of 13′ × 7′, which is in the possession of the landlord. On the first-floor, as already stated, portion marked by red pencil A-B-C and also with a blue lining is in the possession of the family of Jagminder Lal, son of the landlord. The remaining portion is in the possession of the landlord which consists of a store, 7′ × 5¼′, a room, 12′ × 7¼′, a bath and a kitchen. In front of the store and the bath there are verandahs, and in front of the

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rooms, there is another room, through the middle of these three a blue line in drawn, which is a line of division and on either side of the line is shown a passage. This accommodation the Rent Control Tribunal has found sufficient for the landlord and his wife. Two of his sons, namely, Jagmindar Lal and Tarlok Chand, are independent earning members and their families are living in separate portions of this very house. Those are not found dependants of the landlord. The question then only remains with regard to the third son, Prem Chand, He has come back from Agra and it is admitted at this stage by both the parties that he in these days employed at Ghaziabad. The landlord says that he was married some five or six months back and is at present drawing a salary of Rs. 1,000 per mensem. In *C. L. Davar* v. *Amar Nath Kapur* (1), it has been decided by my Lord, the Chief Justice, that the term 'dependent' must be construed as meaning somebody not wholly dependent or self-supporting and in a position to set up a separate residence. The third son Prem Chand of the landlord, who, otherwise in different circumstances, may have been his dependent, cannot in the circumstances be said to be his dependent, though he has recently been married, because he is self-supporting and in a position to set up a separate residence. No doubt, according to the admission of the parties at this stage, he is residing with his father, but that still does not make him dependent as that expression is used in the Act. So that he and his family are also to be dropped from consideration.

The result then is that what is left for consideration is the landlord and his wife. The Rent Control Tribunal is correct in pointing out that in the eviction application the landlord has never claimed eviction of the tenant for his personal requirement in the sense as the requirement of himself and his wife. What he has stated is that he requires the vacation of the portion with the tenant for himself and his family. There are two ways of looking at this. The word 'family' may be taken to include not only his wife, but also his sons and their families. If looked at in this manner, the three sons and their families are to be excluded as explained. This leaves him and his wife. The other way to look at is that what he meant by

(1) I.L.R. (1962) 2 Pun. 484=1962 P.L.R. 521.

his family was he himself and his wife. If so, the accommodation to which reference has already been made has been found as a fact to be sufficient for them, and the finding of the Rent Control Tribunal that the claim of the landlord is not made in good faith cannot be interfered with.

There has been an objection on the side of the landlord that the appeal before the Rent Control Tribunal was not a competent appeal. The basis of the objection is that the order of the Rent Controller bears a stamp of Rs. 1.25 Paise, whereas according to article 7 in Schedule I of the Court Fees Act, as amended in Punjab and applied in Delhi, it should have been stamped with a stamp of Rs. 2.65 Paise. The copy of the order bears the stamp as stated by the learned counsel for the landlord and article 7 refers to 'copy of a decree or order having the force of decree', and the learned counsel lays emphasis on the word 'or order having the force of decree'. His position is that under section 42 of the Delhi Rent Control Act, 1958, an order made by the Rent Controller, or an order made on appeal under that Act is executable as a decree of a civil Court, and he says that this means, within the scope of article 7 in Schedule I to the Court Fees Act, an 'order having the force of decree'. Section 38 of this Act provides for an appeal from the order of the Controller and section 39 for a second appeal from the appellate order of the Rent Control Tribunal. Section 43 of the Act says—"Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings." When these three sections are considered together, the order of the Rent Controller still remains an order and so also the order of the Rent Control Tribunal in appeal. Merely because the order is executable as a decree of a civil Court, it does not become an order having the force of a decree. It still remains an order even in the terms of section 42 of the Act, but, remaining an order, the manner of its execution is the manner of the execution of a decree. If an order is executable in the same manner as a decree is executable, that does not make the order one having the force of a decree. So that article 7 in Schedule I of the Court Fees Act is not attracted as the order of the Rent

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Controller is not an order having the force of a decree, though executable as a decree of a civil Court. The appeal to the Rent Control Tribunal was against the order of the Rent Controller and that order has correctly been stamped as such. This argument on the side of the landlord does not prevail.

In the consequences, this second appeal fails and is dismissed, with costs.

R. S.

SALES-TAX REFERENCE

Before Inder Dev Dua and R. S. Narula, JJ.

M/s NAND LAL-HIRA LAL,—*Applicant*

versus

THE PUNJAB STATE,—*Respondent*

General Sales-tax Case No. 2 of 1962.

1965

April, 28th.

Central Sales-tax Act (LXXIV of 1956)—S. 9—Transaction of sale or purchase in Amritsar which occasions the movement of goods to Jammu and Kashmir—Whether liable to Central Sales-tax—Interpretation of Statutes—Taxing Statute—Construction of—Rules as to, stated.

Held, that it is permissible to impose sales-tax on a transaction of sale or purchase which takes place in Amritsar, but occasions the movement of the goods from the Punjab State to the State of Jammu and Kashmir.

Held, that under section 9(1) of the Central Sales-tax Act, the tax is to be levied and collected in the State from which the movement of the goods sold in *inter-State* trade commences. It is thus clear that so far as the payment of tax on sales is concerned, the State in which the movement of the sold goods terminates does not come into the picture at all except for the purpose of determining whether or not the sale in question has been effected in the course of *inter-State trade*. This cannot, in any manner, affect the State in which the movement of the goods terminates so as to influence the construction to be placed on the liability of the dealer to be taxed in regard to the transaction taking place in the State from which the movement of the sold goods commences.

Held, that for the purpose of statutory construction, taxing statutes bear little analogy to penal statutes because the burden of paying