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

Date of Reserve: 1.10.2008

Date of Order: 11.11.2008

+ RC REV.68/2008

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11.11.2008

GIRISH PAL SINGH

... **Petitioner**

Through: Mr.Manish Gandhi, Advocate

Versus

SARWAN DASS BANGE

... **Respondent**

**Through: Mr.Sandeep Sethi, Sr.Adv. With
Ms.Ankur Mahajan,Advocate**

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? *Yes.*
2. To be referred to the reporter or not ? *Yes.*
3. Whether judgment should be reported in Digest ? *Yes.*

ORDER:

The petitioner is aggrieved by an order dated 7.4.2008 passed by the learned Addl. Rent Controller dismissing the application under section 25B of the Delhi Rent Control Act of the petitioner seeking leave to contest an eviction petition filed by the respondent under section 14(i)(e) of the Act.

2. In order to raise triable issues, the petitioner had taken a stand before the Addl. Rent Controller that the respondent was not the owner of the premises. The trial Court found that the respondent himself

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had filed an application in an execution petition filed by one Sri Kishan that he was tenant under the respondent in respect of two rooms, kitchen, bath room and toilet. He had also filed objections in the execution filed by Sri Kishan on this ground. The learned Addl. Rent Controller observed that he cannot be allowed to take different stands at different occasions and cannot be allowed to blow hot and cold. This defence of the petitioner was found to be patently false. The other plea taken by the petitioner was that he was tenant only in respect of one room, kitchen and toilet and not two rooms. This defence was also found patently false in view of the affidavit filed by the petitioner in the execution petition and the stand taken in various documents. The learned Addl. Rent Controller observed that the petitioner cannot be allowed to withdraw his stand in respect of either tenancy or extent of tenanted premises. The petitioner had next contended in his leave to defend application that the respondent/landlord did not require the property for his bonafide use. He was having a property at Mayapuri and ancestral property at Jalandhar where he was comfortably settled.

3. The respondent had filed eviction petition on the ground that he was earlier working in United Kingdom in British Airways. He retired from there and since his retirement, he was residing at district Jalandhar (Punjab). He wanted to live in his own property in Delhi with his wife and children. His children were residing in Britain who used to visit him. About Mayapuri property he had stated that this property belonged to his

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friend and he had lived in this property for a short time during his visits to Delhi. The property at Jalandar was an ancestral property belonging to entire family and relatives. He further stated that he wanted to settle and live in Delhi in his own property. The learned Addl. Rent Controller observed that the petitioner herein had failed to substantiate his claim that property in Mayapuri belonged to respondent. The Court also observed that since respondent/landlord has retired from service and has desired to settle in Delhi; he is already living in India since long; his requirement of living in his own property after retirement was a bona fide requirement and his desire to live in his property is not a mala fide desire.

4. It is argued by learned counsel for the petitioner that the respondent prior to filing of this petition had never told the petitioner about his bona fide requirement and his bona fide requirement cannot be considered to have sprang out over-night. The respondent owns better and bigger property in better locality in Delhi i.e. Mayapuri and the trial Court should have granted him leave to defend to prove that the respondent did have a property in Mayapuri. It was also argued that the respondent who had lived at United Kingdom cannot be expected to live in the property in occupation of the petitioner, situated in a slum area like colony. There were other tenants in the suit property as well and the respondent had failed to seek same relief against other tenants and therefore, his requirement was not bona fide.

5. It is settled law that while entertaining a revision under

section 25B (8) this Court does not act as a Court of appeal and cannot substitute its own findings in place of findings of Addl. Rent Controller but the Court has only to see that Addl. Rent Controller has acted within his jurisdiction and the order of Addl. Rent Controller does not suffer from any perversity in the sense that the order is based on no material or is contrary to the material on record.

6. While considering application for leave defend the learned Addl. Rent Controller is supposed to look into the defences raised by the tenant in the light of documents placed on record by both the parties. Vague allegations about ownership of another premises by the landlord or vague allegations of any other accommodation available to the landlord cannot be a ground to grant leave to defend. If the tenant makes allegations about another accommodation/property being owned by the landlord, he must place on record some material to connect the landlord with the property. Landlord is under no obligation to prove or show the negative. It is the tenant on whom onus lies to substantiate his assertion of another premises being owned by landlord by cogent material. The tenant may allege that half of Delhi belongs to landlord or landlord is owner of several properties without placing on record any material in support of this contention. Such vague allegations cannot be considered by the Addl. Rent Controller to grant leave to defend. If the tenant states that some specific property belongs to landlord, he must place on record material to show connection of the landlord with that property so that an

inference can be drawn that the property is available to the landlord. Otherwise a tenant would get leave to defend by just specifying a property belonging to a stranger as the property of the landlord, defeating the very purpose of section 25B.

7. Not filing eviction petition against other tenants, reflects bona fide on the part of the landlord. It is for the landlord to choose in which premises he wants to live and to file eviction petition against that tenant who is in occupation of that premises. The tenant cannot take the plea that since no eviction petition has been filed against other tenants, the requirement of landlord was not bona fide.

8. It is settled law that tenant cannot dictate terms to the landlord in what kind of colony he should live and what kind of environment he should have. If the landlord wants to live in his own premises situated in a slum, the tenant cannot take a stand that slum is not a good place to live for the landlord.

9. I find that the present petition is devoid of merits and is hereby dismissed.

November 11, 2008.
v


SHIV NARAYAN DHINGRA, J.