

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 24.09.2009

Judgment delivered on: 06.10.2009

+

RC.REV. NO. 04/2007

B.K. SURI

.....Petitioner

Through: Mr. Satish Sahai, Advocate

versus

SH. G.D. CHOPRA & ORS.

.....Respondent

Through: Mr. Y.P.Bhasin, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. I have heard learned counsels for the parties at length and I proceed to dispose off this revision petition preferred by the petitioner/tenant against the order of eviction dated 01.09.2006 passed by the learned Rent Controller Sh. Sanjeev Aggarwal under Section 14 (1) (e) of the Delhi Rent Control Act (the Act) in E-90/2001.

2. The petitioner was inducted as a tenant in respect of one room with bath and kitchen, in the annexe block on the ground floor of property No.B-22, Greater Kailash Enclave-II, New Delhi- 110048 in the year 1978. In the year 1994 the monthly rent settled was Rs.1200/-.

3. The original eviction petition had been filed by Sh. G.D. Chopra, since deceased. During the pendency of the eviction petition he passed away and was substituted by his widow and other legal representatives namely his three sons and four daughters.

4. The original respondent Sh. G.D. Chopra filed the eviction petition on the ground of bona fide requirement of the aforesaid tenanted premises for the purpose of his and his family's residence. The case of the respondent/deceased landlord was that his family consisted of himself, his wife, his elder son Sh. S.M. Chopra, who was 60 years of age when the eviction petition was filed in the year 2000, Sh. S.M. Chopra's wife, Sh. S.M Chopra's two children namely one son and one daughter then aged 30 years and 32 years, the second son of Sh. G.D. Chopra Sh. Ravi Chopra, then aged 53 years, having two children - one son and one daughter, then aged 18 and 16 years, the third son of Sh. G.D. Chopra namely Ram Chopra, his wife and two children then aged 10 years and 8 years, one married daughter Smt. Urvashi M. Singh having three daughters - then aged 38 years, 36 years and 26 years, second married daughter Smt. Snehlata Nagpal having three children - one son and two daughters aged 40, 42 and 36 years, third married daughter namely Smt. Padma Kapoor having three children – two daughters and one son then aged 17, 15 and 12 years and the fourth daughter Smt. Asha having three children – one son and two daughters then aged 16, 13 and 9 years. The respondent/landlord disclosed that his son Sh. S.M. Chopra was residing in flat no. 4-D, Evershine Apartment, Vikaspuri. The second son Sh. Ravi Chopra is

residing on the second floor of the suit premises bearing No.B-22, Greater Kailash Enclave – II, New Delhi. The third son Sh. Ram Chopra was then residing in MCD flats, Model Town in government accommodation. Smt. Urvashi M. Singh, widow, was residing at B-14, MIG Flats Sheikh Sarai, New Delhi. Smt. Snehlata Nagpal was residing at Dehradun, Smt. Padma Kapoor was residing at 15/92 Vikram Vihar, Lajpat Nagar and Smt. Asha, the fourth daughter was residing at A-2 Malviya Nagar, New Delhi.

5. The respondent/landlord also produced a plan of the whole house No.B-22, Greater Kailash Enclave, New Delhi wherein the premises let out to the petitioner / tenant was shown in red colour. The respondent claimed that the accommodation available with him was two bed rooms and one small drawing cum dining room on the ground floor and similar accommodation on the second floor which, as aforesaid, is in possession of second son Sh. Ravi Chopra. The deceased respondent disclosed that the rest of the accommodation in the premises was in possession of the tenants.

6. The deceased respondent further disclosed that the daughters and their families including children are regular visitors to the suit premises. The daughters want to serve the respondent Sh. G.D. Chopra and his wife then aged 88 and 70 years respectively. The sons of the respondent also wanted to live with him as he was suffering from old age disease and the sons want to serve their parents and Sh. S.M. Chopra and Sh. Ram Chopra want to live in the suit premises. It

was further stated that Smt. Urvashi M. Singh is a widow and her daughters are married and therefore, she could not live alone and wants to live with the landlord. It was further stated that Smt. Sneha Lata Nagpal's husband is old and she wants to live in Delhi for treatment of her husband as he is suffering from mental disorder. The respondent/landlord claimed that the accommodation already in his possession was not sufficient for him and his family members. It was further stated that the respondent's daughters regularly visit their parents and when they want to stay overnight, there is no suitable accommodation available with them.

7. After grant of leave to defend, the petitioner filed his written statement. The petitioner submitted that all the children of the respondent/landlord are suitably accommodated and that they do not depend upon the respondent/landlord for the purpose of their residence. The petitioner stated that except Mr. Ravi Chopra, who is living on the second floor of B-2, Greater Kailash Enclave, New Delhi, all the other children of the respondent/landlord are independent and have bought their own houses in which they are presently living. It was further stated that the children of the respondent/landlord hardly visit the landlord and that they never come and stay with the landlord even for a night. It was claimed that the entire ground floor of the built up house on an area of more than 500 Sq. Yds. is with the landlord and his wife, whereas the entire second floor of the house is with Sh. Ravi Chopra, the only son living with the respondent/landlord. It was claimed that the accommodation at the disposal of the respondent /

landlord is more than sufficient and that the eviction petition is mala fide.

8. The petitioner further stated that the first floor and the second floor of the annexe block of the building, in which the premises in dispute are situated, were lying vacant and they had been just let out about two years back. It was stated that the second floor of the annexe block is occupied by two families whereas the first floor of the annexe block had been let out to one doctor. It was contended that, had the need of the respondent/landlord been bona fide, he could have retained the said two units with him. The petitioner further contended that the respondent / landlord did not intend to retain the premises and his only intention was to sell the property in question. He had entered into an agreement to sell in respect of the entire building with one Mrs. Manorama Vaid who is presently in possession, occupation and control of the entire first floor of the main building.

9. The petitioner did not dispute the number of children that the respondent claim he had, their ages and their respective families. However, it was stated that the children of the respondent constitute their own independent families and that the children do not require to come and shift with the respondent/landlord. It was stated that in any case, if help or assistance is required by the respondent or his wife then the son Mr. Ravi Chopra and his family, who are already living on the second floor of the main building, are there to do the needful. The petitioner also seriously contended that the purpose of letting was not

merely residential but the same was residential cum commercial, inasmuch as, the premises had been let out to the petitioner not only for the petitioner's residence but also to enable the petitioner to establish a Yoga Therapeutic Centre.

10. As aforesaid, during the pendency of the eviction petition, the original landlord Sh. G.D. Chopra passed away and was substituted by his widow and children as his legal representatives.

11. In her examination in chief Smt. Raj Rani Chopra, the landlady and widow of Sh. G.D. Chopra, inter alia, stated that her eldest daughter Smt. Urvashi M. Singh aged about 65 years is a widow and her daughters are married and she cannot live alone and wants to live with the landlady. Smt. Urvashi M. Singh is a sick lady. She further deposed that her daughters regularly visit her, and as and when they want to stay during night, there is no accommodation available for them. She further deposed that her two sons who are living outside also want to live with her. In any case they are regular visitors and as and when they want to stay overnight, they cannot do so. Sh. Ram Chopra, and Sh. Ravi Chopra sons of the deceased respondent Sh. G.D. Chopra were examined as PW-3 and PW-4. Both of them made statements in consonance with the averments made in the eviction petition.

12. In the cross-examination of the respondent's witnesses, it came out that Sh. G.D. Chopra had entered into an agreement with Mrs. Manorama Vaid in respect of the entire building. However,

according to the respondent, Smt. Manorama Vaid had breached the agreement and she continued to occupy the first floor premises. The litigation between the landlord and Mrs. Manorama Vaid is stated to be still pending.

13. The learned Rent Controller by a detailed order allowed the eviction petition by concluding that:-

- (i) the respondent/landlord was the owner of the tenanted premises;
- (ii) the purpose of letting was residential;
- (iii) the respondent/landlord did not own any other reasonable suitable residential accommodation;
- (iv) the respondent/landlord requires the tenanted premises for his own residential accommodation and for his other family members dependent upon him for their residential need.

Accordingly, the eviction petition was decreed in favour of the respondents.

14. When this petition was preferred by the petitioner-tenant, this Court on a very first date i.e. 24.01.2007 took note of the fact that as per the lease agreement dated 30.10.1978 Exhibit PW1/R-1, the purpose of letting was residence-cum-therapeutic centre. It, therefore, appears that the notice was issued by the Court, inter alia, for the reason that the Court prima facie saw merit in the petitioner's submission with regard to the purpose of letting.

15. Though learned counsel for the petitioner does not give up his argument that the purpose of letting was not merely residential but residential cum commercial, I am of the view that in the light of the decision of the Supreme Court in **Satyawati Sharma (Dead) by LRs. Vs. Union of India and Anr.** AIR (2008) SC 3148, the issue with regard to the purpose of letting has lost its relevance. The ground under Section 14 (1) (e) can be invoked irrespective whether the purpose of letting was residential or not, in view of the aforesaid decision. I am therefore, not required to get into this issue.

16. The submission of the learned counsel for the petitioner is that all the children of the respondent landlady are themselves old/senior citizens and they are living in their respective houses, except Sh. Ravi Chopra who is residing on the second floor of property bearing no. B-21, Greater Kailash Enclave, New Delhi. He submits that the children of the respondent landlady themselves have grown up children who are in their 40s, 30s and 20s. They have all done well in life and are well settled. He submits that it cannot be believed that any of them would leave their own respective homes to come and live with the respondent. He submits that, in fact, the respondent landlady is hardly residing on the ground floor of the said property. She keeps moving from one place to another and is living with her children and their family members happily. He submits that the accommodation with the petitioner is merely the garage portion and it is unthinkable that the children of the respondent landlady would come and reside in such accommodation even if the accommodation is vacated by the

petitioner. He further submits that the intention of the landlord was never to retain the property in question. The original landlord Sh. G.D. Chopra had entered into an agreement to sell for the entire house with Smt. Manorama Vaid which shows that there was no bona fide need of the respondent/landlord. Else he would not have agreed to sell the entire house to Smt. Manorama Vaid.

17. Learned counsel for the petitioner further submits that the learned Rent Controller has failed to appreciate the significance of the respondent/landlord having entered into an agreement to sell the entire property and has misconstrued the endeavour of the petitioner to bring the said agreement to sell on record as a challenge to the ownership of the landlord in respect of the tenanted premises. He has also placed reliance on various decisions and read out the decision of the Supreme Court in ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*** AIR 1999 SC 2507 wherein the Supreme Court had explained the expressions “bona fide need” and “genuine need”. He submits that apart from the mere expressed desire of the respondent landlady and her children to come and live with her, there is no genuine need made out by the respondent for any further accommodation either for herself or for any of her children/grand children. Learned counsel for the petitioner further submits that the respondent/landlady is also in occupation of the first and the second floor premises in the annexe portion. He submits that even if the respondent/landlady and her sons and daughters require further accommodation, the said portion is available to them for use.

18. Learned counsel for the respondent, on the other hand, argues that the tenanted portion in occupation of the petitioner is not a garage. He refers to the agreement Exhibit PW-1/R-1 dated 30.10.1978 which describes the let out portion as “*one room with bath, kitchen (annexe block) on ground floor*”. He further submits that the petitioner is seeking to call upon this Court to re-appreciate the evidence, which is not permissible in the exercise of the Court’s jurisdiction under Article 227 of the Constitution of India. For this purpose he relies upon the decision of this Court in ***Sahu Basheshar Dayal Bankers & Anr. Vs. Sujata R. Nath Decd. Thr. LRs*** 152 (2008) DLT 18.

19. Learned counsel for the respondent submits that the eldest daughter of the respondent, Smt. Urvashi M. Singh is a widow with three married daughters Smt. Urvashi M. Singh finds it embarrassing and uncomfortable to live with her married daughters. Being herself old and sick, she cannot live alone in her own premises which she owns. Smt. Urvashi M. Singh, therefore needs to live with her mother i.e. the respondent as both the respondent and Smt. Urvashi M. Singh are old and sick and need each other’s care, protection and company. He further submits that the sons and daughters of the respondent, even though the respondent/landlady is aged, cannot think of spending one night with her in their parent’s home on account of paucity of accommodation. He submits that Sh. Ravi Chopra has two children who are now 27 years (son) 25 years (daughter) and both of them are unmarried and are of marriageable age. He submits that the plan of

the property in question has been exhibited during the trial and has been admitted by the petitioner. According to the said plan there are only two bed rooms with attached bath room on the ground floor apart from drawing cum dining room and kitchen.

20. I may note that counsel for the petitioner did make an effort to argue that there was a third room also available on the ground floor, but it was admitted by learned counsel for the petitioner that this stand was not taken by the petitioner before the learned Rent Controller. Therefore, the landlord did not have the opportunity to meet the said contention of the petitioner/tenant. In any event, learned counsel for the respondent has submitted that the so called room admeasures only 6'x 8' and is in fact a store room. It cannot be considered as another bedroom. It does not have a toilet attached to it.

21. The plea of the respondent/landlord that the accommodation on the second floor was also identical has also not been contraverted by the petitioner.

22. Having considered the rival submissions of the parties, perused the trial Court record and the case law cited by them, I am of the view that there is no merit in this petition and the same deserves to be dismissed. To begin with, I may consider the bare minimum requirement of residential accommodation of the respondent/landlady and her one son Sh. Ravi Chopra, who admittedly is residing on the second floor of the property bearing No.B-22, Greater Kailash Enclave-

II, New Delhi. This is being considered on the premise that the respondents' other two sons viz. Sh. S.M. Chopra and Sh. Ram Chopra are independently settled and they do not need to live with the respondent/ landlady on a permanent day-to-day basis in property No.B-22. Similarly, I am assuming in favour of the petitioner that the three married daughters of the respondent viz. that Snehlata Nagpal, Smt. Padma Kapoor and Smt. Asha also do not require any part of the premises bearing No.B-22 for their own residence on a permanent and day-to-day basis. According to the petitioner, the premises with the respondent/landlady on the ground floor and equivalent premises with Sh. Ravi Chopra on the second floor is sufficient for their needs and Sh. Ravi Chopra, his wife and children are present to take care of the respondent/landlady. However, it cannot be denied that the other two sons, namely, Sh. S.M. Chopra and Sh. Ram Chopra and their family members and the three married daughters, as aforesaid, and their respective family members are entitled to visit and to stay with the respondent/landlady from time to time for the purpose of attending to her and spending time with her in her old age. Even for such visits the need for accommodation in property bearing No.B-22 has to be taken into account.

23. The requirement of the respondent, considering that one of his sons Sh. Ravi Chopra is residing with his family on the second floor is : one room for Sh. Ravi Chopra and his wife, one room for the son of Sh. Ravi Chopra aged 27 years, one room for the daughter of Sh. Ravi Chopra aged 25 years, one room for the respondent/landlady, at least

one to two rooms for the other two sons and three married daughters as aforesaid, of the respondent/landlady who may, from time to time, visit the respondent/landlady and wish to stay with her, considering her old age.

24. The requirement of the respondent's daughter Smt. Urvashi M. Singh can also not be termed to be unreasonable, mala fide or improbable. Admittedly, she is a widow in her late 60s with three married daughters. It is well known that in the Indian context, generally the widowed/separated mothers are not comfortable living with their married daughters. The stand of the respondents that Smt. Urvashi M. Singh finds it embarrassing and uncomfortable to live with her married daughters and also that she cannot live alone in her own flat at Sheikh Sarai cannot be said to be unreasonable or mala fide. It is natural that a daughter in such a situation would be most comfortable living with her old and aged mother. Consequently, her requirement for at least one room on the ground floor with the respondent landlady cannot be said to be unjustified or mala fide.

25. With regard to the accommodation allegedly available on the first and second floor of the annexe portion, I may note that the plea of the petitioner in his written statement with regard to the same was that they had been left out by the respondent-landlord to tenants about two years before the filing of the eviction petition. Moreover, it has come in evidence of the respondent's witness, namely, Sh. Ravi Chopra, PW-4, Sh. Ram Chopra, PW-3 as well as in the evidence of the

respondent Smt. Raj Rani Chopra, PW-5 that the accommodation above the portion in occupation of the petitioner are servant quarters. Considering the financial background and status of the respondent and her family members, it is, in my view, very unreasonable for the petitioner to expect that the respondent's children and grand children should occupy the servant's quarters on the first and second floor of the annexe portion. In my view, the same cannot be said about the annexe portion as it consists of an independent unit having one room (according to the petitioner two rooms), one kitchen and one bath room. Considering the age of the respondent/landlady, the need for additional accommodation is most pressing on the ground floor itself where the respondent/landlady is residing. Considered thus, the requirement of the respondent/landlady, her son Ravi Chopra and his family is of at least 6 if not 7 bedrooms, apart from other areas such as drawing-cum-dining room, storerooms and puja room. Admittedly, put together, on the ground and the second floor, there are four bedrooms apart from one drawing-cum-dining room each on the ground floor and second floor and two kitchens, one on the ground floor and the other on the second floor. It is not the case of the petitioner that the respondent/landlady is messing with Sh. Ravi Chopra and, therefore, there is need for only one kitchen. Since Sh. Ravi Chopra is residing on the second floor, the need for a separate drawing-cum-dining room on the second floor cannot also be questioned and no argument has been raised by the petitioner in this regard. The respondent landlady is, therefore, clearly short of at least two rooms for her residence and the

residence of her family members dependant upon her for residence.

26. The decision of the Supreme Court in ***Shiv Sarup Gupta Vs. Mahesh Chand Gupta*** (supra) does not advance the case of the petitioner in any way. Apart from pointing out the meaning of the expressions “bona fide need” and “genuine need” of the landlord, learned counsel for the petitioner has not been able to point out as to how the need of the respondent landlady and her family members can be said to be not genuine or bona fide. In fact, the said decision also holds that the convenience and safety of the landlord and his family members are relevant factors. The decision of the Supreme Court in ***Smt. Sushila Devi Vs. Avinash Chandra Jain*** AIR 1987 SC 1150 relied upon by the petitioner is also of no avail in the facts of this case. In that case the order of eviction was upheld by the High Court merely because the tenant had been residing in the premises for 40 years without applying its mind to the genuineness of the requirement of the landlord under Section 14 (1) (e) of the Act. That is certainly not the case in hand. The decision in ***S.J. Ebenezer Vs. Velayudhan*** AIR 1998 SC 746 also does not in my view, advance the case of the petitioner. In my view, the landlady respondent has more than sufficiently established her bona fide and genuine requirement for accommodation. In this decision as well it was held by the Supreme Court that under Article 227 of the Constitution of India the court cannot substitute its view in place of the views taken by the statutory authority while exercising powers under Article 227 of the Constitution. The decision of the Supreme Court in ***Ram Dass Vs. Ishwar***

Chander AIR 1988 SC 1422 also does not advance the case of the petitioner. As I have already noticed, there is no infirmity in the approach of the learned Rent Controller or in the appreciation of the evidence by him while deciding the eviction petition. In my view, the desire of the respondent/landlady that her children and grand children should stay with her occasionally, if not continuously, cannot be said to be dishonest or unreal or not genuine. Considering the age of the landlady, the said desire is not just a desire but a need.

27. In my view, there is no merit in the submission of the petitioner that the learned Rent controller has not correctly appreciated the petitioner's submission founded upon the agreement to sell executed by late Sh. G.D. Chopra in favour of Smt. Manorama Vaid. The learned Rent Controller has, in my view, rightly observed that the said agreement to sell was entered into in the year 1990, whereas the eviction petition had been preferred after a lapse of nearly 11 years. Had the transaction with Smt. Manorama Vaid gone through, the respondent may have acquired some other accommodation. However, since the said transaction did not fully go through, the respondent / landlord could not be said to have intended to dispose off the property and to own no other accommodation of his own. Merely because he entered into an agreement to sell in respect of the entire property way back in the year 1990, it could not be said that he did not need the tenanted premises bona fide even after a lapse of 11 years. Over this period the respondent and his wife both had aged, and as a matter of fact, the respondent/landlord passed away during the

pendency of the eviction petition. I entirely agree with the observation made by the learned Rent Controller in the impugned order as follows:

“.....Considering the accommodation in possession of the petitioner which consists of only living rooms and one drawing-cum-dining room and family of the petitioner including her widowed daughter and another married daughter alongwith her husband and other sons and their family members and their desire to live with the petitioner, Smt. Raj Rani in the twilight of her life and to serve her in her old age cannot be said to be malafide by any stretch of imagination, and this court has only to see, whether the desire to shift to the premises in question and to stay with the petitioner is bonafide or not. From the above discussion, it appears that the married sons and the married daughters, want to stay with the petitioner Raj Rani Chopra in twilight of her journey of life, which cannot be said to be malafide by any stretch of imagination. Accordingly, I hold that the accommodation available with the petitioner Smt. Raj Rani Chopra is insufficient for accommodating the aforesaid family.”

28. In my view, the need of the respondent/landlady, got further aggravated with the demise of her late husband. Being alone without the company of her spouse, she needs constant care and attention of her children and grand children. She needs sufficient accommodation not only to accommodate the family of Sh. Ravi Chopra, who as aforesaid requires at least three rooms for himself and his children, but also to accommodate herself, her widowed married daughter, Smt. Urvashi M. Singh, and her other children/grand children as and when they desire to come and live with her and spend time with her overnight. I find absolutely no merit in this petition and dismiss the

same.

29. I also find force in the submission of the learned counsel for the respondent that it is not for this court in proceedings under Article 227 of the Constitution of India to re-appreciate the evidence and to take a different view only because the court may be inclined to take another view. I may, however, clarify that I am entirely in the agreement with the judgment of the learned Rent Controller and I am also not inclined to take a different view than the one taken by him.

30. In view of my aforesaid discussion, I find no merit in this petition and dismiss the same with costs quantified at Rs.25,000/-.

(VIPIN SANGHI)
JUDGE

OCTOBER 06, 2009
dp