

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **RC. REV. 106/2009 and CM No.15536/2009**

Decided on 27.01.2010

IN THE MATTER OF :

MR. HOT CHAND Petitioner
Through: Mr. Pawan Kawrani, Adv.

versus

MR. DHANPAT RAI & ORS Respondents
Through: None.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

- | | |
|--|-----|
| 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 the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is directed against the order dated 18.07.2009 passed by the learned Additional Rent Controller on a petition preferred by the petitioner/tenant under Section 14 (1)(e) read with Section 25-B of the Delhi Rent Control Act, whereunder an eviction order was passed against him and in favour of the respondents/landlords in respect of the tenanted premises, i.e., one hall on the first floor of premises bearing No.2915/13, Bahadurgarh

Road, Teliwara, Delhi-110 006 along with roof thereof and staircase as shown in the site plan (Ex.PW1/1).

2. The petitioner/tenant has assailed the impugned order on two counts. It is firstly argued by the counsel for the petitioner/tenant that the premises in question was admittedly let out for commercial purpose and hence the petition of the respondents/landlords that they require the said premises for their bona fide need of residence, was not maintainable. He urges that as the purpose of letting out the premises was commercial, having failed to seek eviction of the petitioner from the tenanted premises for putting the same to commercial use, the eviction petition was liable to be dismissed.

3. The aforesaid argument of the counsel for the petitioner/tenant was considered and dealt with by the learned Additional Rent Controller in para 8 of the impugned order, wherein after taking notice of the fact that the purpose of letting was commercial, reliance was placed on a judgment of the Supreme Court in the case of Satyawati Sharma vs. UOI, reported as **(2008) 5 SCC 287** and it was held that in the light of the said judgment, now the purpose of letting had been rendered only of academic interest. In the aforesaid judgment, the Supreme Court held that Section 14 (1)(e) of Delhi Rent Control Act is violative of the doctrine of equality

embodied in Article 14 of the Constitution of India insofar as it discriminates between the 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 latter's right to seek eviction of the tenant from the premises let for residential purpose only.

4. In the aforesaid judgment, the Supreme Court makes it clear that there is no distinction between premises let for residential and commercial purpose in the matter of eviction on the ground of bona fide requirement of the landlord or any member of his family dependent on him. Such a distinction can also not be drawn so as to disentitle a landlord from seeking eviction for bona fide requirement of a premises, be it commercial or residential, for his personal use and occupation, or that of any member of his family dependant on him, by putting it to use either for residential purpose or for commercial purpose. In these circumstances, this Court does not find any justification in trying to draw a distinction between a property let out for commercial purpose, vacation of which is sought for putting the same to residential use, as against a property let out for residential purpose, vacation of which is sought for putting it use for the very same purpose. The plea of the counsel for the petitioner is therefore turned down as being untenable.

5. The second contention raised by the counsel for the petitioner/tenant is that the premises is situated in a commercial area and that considering the fact that the premises is only a single hall without any bathroom facilities or any water connection, it is not understood how the respondents/landlords would put it to use for residential purpose.

6. It is not the case of the petitioner that the civic authority, on an application being received, would decline to grant a water connection to the tenanted premises merely because it is situated in a commercial area. Insofar as the toilet facilities are concerned, as stated by the counsel for the petitioner/tenant himself, the tenanted premises is a single hall in his occupation along with respondents No. 9 to 13, the legal heirs of late Shri Daulat Ram. The Municipal Bye-laws do not bar the respondents from internally partitioning the said hall into rooms by constructing walls including a toilet, after obtaining necessary sanctions in that regard. There is no law that prohibits the respondents from making such an application, and the civic authority entertaining the same if it is in accordance with the Building Bye-laws.

7. It is not for the petitioners to question the decision of the respondents to put the tenanted premises to use for residential purposes. The petitioners do not claim that the area in question has

been declared as non-residential by the civic authority. The respondents cannot be held to be suspect merely because they have opted to reside in an area which is now stated to be largely put to commercial use. The option still lies with the respondents to make it habitable and having exercised the said option, it is not for the petitioners to question the same.

8. It is further relevant to note that on inquiry, counsel for the petitioner/tenant concedes that the aforesaid ground was not taken by the petitioner/tenant before the learned Additional Rent Controller and that ground (E) raised in the present petition has been raised for the first time. He seeks to rely on the last line of para 2 of the impugned order to state that a submission was made on behalf of the petitioner/tenant before the learned Additional Rent Controller that "the tenanted premises is situated in the commercial area and having no civic amenities in the area and as such the premises cannot be used as residence of the petitioners (respondents/landlords herein)". The aforesaid submission is entirely different from what is sought to be urged before this Court now. The petitioner cannot start wondering now as to how the respondents shall put the tenanted premises to use for residential purpose. Nor can he be permitted to urge grounds which were never pleaded before the learned Additional Rent Controller to oppose the eviction petition.

9. No other ground has been taken by the counsel for the petitioner/tenant to assail the impugned order, apart from those noted above herein. It is therefore held that the impugned order does not suffer from any illegality, arbitrariness or perversity, which deserves interference. The same is therefore upheld and present petition is dismissed as being devoid of merits, along with the pending application.

JANUARY 27, 2010
sk

(HIMA KOHLI)
JUDGE