

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ R.C.R.No.36/2010 & CMs No.2779-80/2010

Decided on 15.02.2010

IN THE MATTER OF :

SMT. MANJU SWAROOP & ORS. Petitioners
Through : Ms. Deeksha Bhutani, Advs. with
Petitioner No.1 in person.
versus

VINAY SHANKER SINGH Respondent
Through : None.

CORAM

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

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| 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 30.9.2009 passed by the learned Additional Rent Controller allowing the eviction petition filed by the respondent/landlord against the petitioners/tenants under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short '**the Act**') in respect of two rooms on the ground floor besides a common toilet on the first floor situated in the property bearing House No.1610(new), H.No.935/1610, T-2243 (old), Tri

Nagar, Delhi. While passing the eviction order, it was clarified that the same would not be executable before the expiry of six months from the date of the order.

2. The brief facts relevant for the purpose of deciding the present case are that the respondent, who is the landlord of the suit premises, filed an eviction petition against the petitioners/tenants under Section 14(1)(e) of the Delhi Rent Control Act. In the eviction petition, it was averred that the predecessor-in-interest of the petitioners, namely, Shri Manmohan Swaroop Gupta, was inducted as a tenant in respect of two rooms on the ground floor of the suit premises besides a toilet on the first floor commonly used by the tenants and the respondent. The said premises was let out for residential purpose @ Rs.300/- per month, excluding other charges. The respondent/landlord averred that he was in possession of two bedrooms, one drawing room, one kitchen, store and veranda besides a common toilet and bathroom on the first floor of the said premises. He submitted that he had no other reasonable alternative suitable residential accommodation and on the basis of bona fide requirement, sought eviction of the petitioners/tenants from the tenanted premises for his residence as well as that of his family members, dependent on him, totalling to seven in number.

3. Summons in the petition were issued to the petitioners/tenants herein (respondents in the court below). Counsel

for the petitioners/tenants states that leave to contest the eviction petition was filed by her clients, which was duly allowed and they were granted an opportunity to file their written statement. In the written statement, the petitioners/tenants disputed the relationship of the landlord and tenant between the parties. It was claimed that the respondent was one of the co-landlords and could not file the eviction petition alone. It was further claimed that the tenanted premises was given to the predecessor-in-interest of the petitioners for residential-cum-commercial purpose. It was also contended that a partial eviction petition had been filed and that the aforesaid premises consisted of one room, one kitchen with roof thereupon and common use of toilet on the ground floor, and that the toilet on the ground floor and roof of the kitchen had not been described in the tenanted premises. The site plan filed by the respondent/landlord was disputed and it was submitted that he had shown reduced number of rooms in his possession by removing the partition walls. It was lastly urged that the respondent/landlord had other residential houses in Delhi, out of which one was situated in Rithala and the other was in Rohini.

4. After the pleadings were completed, the matter was fixed for evidence. The respondent/landlord examined himself as PW-1. The petitioner No.1 examined herself as RW-1 and also produced another witness, Smt. Nagesh as RW-2. After hearing the parties and examining the oral and documentary evidence placed on the record,

the Additional Rent Controller arrived at a conclusion that the respondent/landlord had duly proved that he and the other members of his family did not have any other reasonably suitable residential accommodation and were thus, entitled to grant of eviction orders against the petitioners/tenants, under Section 14(1)(e) of the Act. Consequently, the impugned eviction order was passed. Aggrieved by the aforesaid order, the petitioners/tenants have preferred the present petition.

5. The only ground taken by the counsel for the petitioners/tenants to assail the impugned order is that the learned Additional Rent Controller failed to consider that there was an apparent contradiction in the testimony of the respondent/landlord (PW-1). In this regard, she draws the attention of this Court to the cross-examination of PW-1 (Annexure-11) and states that though the respondent/landlord claimed that two rooms on the ground floor were shown as occupied by a tenant, namely, one Mr. Vivek Singh, in fact, in the site plan (Ex.PW-1/3), the same were actually under his own occupation.

6. I have perused the impugned judgment and also examined the relevant documents, as pointed out by the counsel for the petitioners/tenants, including the affidavits by way of evidence filed by the petitioner No.1 (RW-1) and the respondent (PW-1) as also their testimony in cross-examination, in the light of the findings of the

learned Additional Rent Controller.

7. It may be stated at the outset that the principle that in revision the High Court cannot interfere with findings of fact arrived at by the Controller on re-appreciation of evidence, has been reiterated in numerous cases. The scope of interference in exercise of revisional powers of this Court is very limited. It is settled law that this Court while exercising powers under Section 25-B (8) does not sit in appeal and can re-appreciate the evidence only for the purpose of assuring itself that the order of the learned ARC was in accordance with the evidence and does not suffer from any jurisdictional error or material irregularity. At the same time, if the finding is perverse, or such that no prudent person can come to that conclusion, or is contrary to records or based on absolutely no evidence, the High Court can interfere. In Sumitra Devi Vs. Raj Rani Sehdev **98(2002) DLT 355**, this Court observed as under:

"10. It is also well settled that while exercising powers under Section 25-B(8) of the Act the High Court has to test the orders of the Rent Controller on the touch-stone of "whether it is according to law" or not. The High Court must not substitute its own opinion in place of the view taken by the Controller unless the view taken by him betrays lack of reason or objectivity or appears to be so unreasonable that no prudent man could have taken that view. The impugned order passed by learned Additional Rent Controller does not suffer from any illegality, perversity or error of jurisdiction. The learned ARC had upheld the claim of the

respondent after properly appreciating the evidence on record and had come to the conclusion that the respondent was in bonafide need of the premises in question. There are no good grounds for taking a different view in the matter." (emphasis added)

8. In J.K.Saxena Vs. Shri Madan Lal Khurana **75 (1998) DLT 903**, a Single Judge of this Court discussed the scope of interference in exercise of revisional powers in the following words:

"10. It is next contended that there is limited scope of interference in exercise of revisional powers of this Court and the High Court is merely to examine the records in order to satisfy itself that the decision of the Controller is "according to law". The High Court, however, will not reappreciate the evidence and sit in judgment over findings of fact arrived at by the Controller. The High Court cannot also interfere merely because on the same evidence, it is likely that it may come to a different conclusion. In other words, the High Court will not be justified in interference with the plain finding of fact. Reference is made in this regard to the judgment of this Court reported as M/s Jagatjit Industries Ltd., New Delhi Vs Rajiv Gupta : **AIR 1981 Delhi 359**.

11. It is correct that the findings of the Rent Controller are not ordinarily interfered with. However, when an eviction is pleaded on the question of bona fide requirement and material considerations have been overlooked in assessing the need, it can be termed as material irregularity and the Court will be justified in interfering in revision to rectify that mistake. It is also necessary to decide the bona fide requirement objectively on evidence and the Court cannot overlook the basic criteria to determine the same. Reference may be made to

the judgment of this Court as reported in Uma Rani Vs Vinod Kumar Dubey : 21 (1982) DLT 199.

9. In Akhtari Begum & Ors. Vs. Abdul Qadir, **R.C.R.No.60/2008** decided on 21.08.2008, a Single Judge of this Court, while deciding an application under Section 25-B of the DRC Act, observed as under:

"7. It is settled law that this Court, while sitting in revision, cannot substitute its own judgment in place of the judgment of the learned ARC. The Court can set aside the order of the ARC only if there was some manifest error either of facts or of law on the face of the judgment. The error must be so glaring that it vitiates the judgment itself. The proviso to Section 25-B(8) of the DRC Act indicates that power of High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court must be confined to the limited sphere that the order of the Rent Controller is "according to the law".

10. In the impugned judgment, the learned Additional Rent Controller has dealt with the issue of bona fide requirement of the respondent/landlord from para 15 onwards, which alone is relevant for deciding the present petition as the petitioners/tenants have confined the challenge laid in the present petition to the aforesaid aspect. PW-1 deposed that the suit property is duly constructed on the ground floor and partly constructed on the first floor, having one living room

and three small rooms/stores on the first floor and two bed rooms, one drawing room and three residential rooms besides a small room, a store, bathroom and open space including the tenanted premises, subject matter of the eviction petition, situated on the ground floor.

11. Out of total accommodation available on the ground floor of the suit premises, PW-1 stated that one room and another small non-living room adjacent to the rooms of the petitioner/tenant were occupied by a tenant, by the name of Vivek Singh. It was further deposed that one room on the first floor towards the west was occupied by another tenant, by the name of Hans Raj. The other three small rooms measuring 9"x6" each on the first floor were stated to be used as workshop and store by the sons of the respondent/landlord. Thus, it was submitted by the respondent/landlord (PW-1) that insufficient residential accommodation was available to him and his entire family members, comprising of himself, his wife, two sons, out of whom the elder son is married and has two minor children, totalling to 7 members. Thus, the respondent/landlord stated that he required one bedroom each for himself and his wife, one bed room for his elder son and his wife, one bed room for the two grandsons, one bed room for the younger son, besides a guest room, a drawing-cum-dining room, a Pooja room and a study room for his two grandsons, who were schoolgoing children. In total, the respondent/landlord made out a requirement of 8 rooms for his bona fide need, as also for the

members of his family dependent on him for residence. He stated that he had in his possession, two bed rooms, one drawing room, one kitchen, a store and verandah, apart from a common toilet and bathroom on the first floor, which was far short of the accommodation required *bonafide* by him and the members of his family.

12. The contention of the counsel for the petitioners/tenants that the learned Additional Rent Controller did not appreciate the glaring contradictions in the testimony of the respondent/landlord (PW-1), has to be examined in the light of his testimony juxtaposed against the testimony of the petitioner No.1 (RW-1).

13. The respondent/landlord (PW-1) filed his affidavit by way of evidence reiterating all the averments made by him in the eviction petition. In para 6 of the affidavit, he stated that one room adjacent to the room of the petitioners/tenants towards the north-east and one small non-living room adjacent to another tenanted room of the petitioners towards the east-south, were occupied by Mr. Vivek Singh and one room was occupied by another tenant, namely, Mr. Hans Raj.

14. Counsel for the petitioners/tenants draws the attention of this Court to the cross-examination of the respondent/landlord to state that his deposition is dubious inasmuch as he did not produce the rent deed executed in favour of Mr. Vivek Singh in respect of the two rooms. It is further submitted that the respondent/landlord was also unable to produce any document to show that Mr. Hans Raj was his

tenant. However, in the course of arguments, as she does not deny that Mr.Hans Raj is a tenant in respect of a room on the first floor of the suit premises, there is no controversy left in respect of the said room. She confines her argument to the failure on the part of the respondent/landlord to produce any document to prove that Mr. Vivek Singh was actually a tenant under him.

15. While examining the statement of the petitioner No. 1 (RW-1), the learned Additional Rent Controller took notice of the contradictions in her testimony. In her affidavit by way of evidence, she had stated in para 12 that the respondent/landlord had got all the rooms vacated from different tenants. However, during her cross-examination, conducted on 18.12.2006, she changed her stand and stated that "at present tenants are residing in the premises". In particular, she named two tenants, Mr. Ram Lotan and Mr. Hans Raj. Thereafter, she went on to state that in fact, the rooms were being rented out to several persons. The learned Additional Rent Controller observed that the site plan filed by the petitioners on the record (Ex.RW-1/A) did not reflect the exact measurements of all the rooms. He also took note of the submissions made by the counsel for the respondent/landlord that as per the MCD Bye-laws, an area measuring less than 100 sq. feet cannot be termed as a living room and hence such small rooms should not be counted as living rooms, while examining the bona fide requirement of the respondent/landlord.

16. The learned Additional Rent Controller carefully weighed the evidence produced by both the sides, and after taking notice of the fact that out of the eight rooms alleged to be in the possession of the respondent/landlord, the petitioner No. 1 had herself admitted that two rooms were with other tenants, Shri Hansraj and Shri Ram Lotan. He thus held that against the bona fide requirement of a minimum of seven rooms made out by the respondent/landlord, he had established that he had in his possession only two bed-rooms, one drawing room, one kitchen, a store and veranda besides the toilet.

17. As noted earlier, this Court is not expected to re-appreciate the evidence and sit on judgment on the findings of fact returned by the learned Additional Rent Controller. Nor should it interfere in the impugned order merely because a different conclusion could be arrived at on the same evidence. Even if it is accepted that it was not established beyond doubt that two rooms were actually let out to Mr. Vivek Singh, as argued by the counsel for the petitioners/tenants, the said fact alone is not sufficient to dislodge the entire evidence of the respondent/landlord. Fact remains that the bona fide requirement of seven to eight rooms as set up by the respondent/landlord remains unshaken. Considering that vis-à-vis a need expressed and established for seven to eight rooms, which has not been disputed by the other side, the respondent/landlord had in his possession only two bedrooms, one drawing room, a kitchen, a store and verandah,

besides the toilet, and even if the two rooms with Vivek Singh are added to the accommodation available with the respondent/landlord, there remains a short fall of 2-3 rooms. Pertinently, the younger son of the respondent/landlord also got married during the pendency of the eviction proceedings, as is borne out from the cross-examination of the petitioner No.1 recorded on 18.12.2006. In other words, the needs of the family expanded in this duration.

18. Further, in view of the contradictory statements made by the petitioner No.1 (RW-1) during her cross-examination, the learned Additional Rent Controller cannot be faulted in discounting her testimony and accepting the deposition of the respondent/landlord (PW-1) that he and his wife were entitled to one bed room, and two separate bed rooms were required for each of his two sons, apart from one separate bedroom and one study room for the two minor grandsons, a drawing room, a guest room and a Pooja Room. Thus, a minimum requirement of seven rooms was clearly established for meeting the bonafide requirement of the respondent/landlord and the members of his family, dependent on him for residence.

19. In these circumstances, merely because the respondent/landlord did not produce any document to establish that two rooms on the ground floor were let out, will itself not be sufficient ground to oust the claim of the respondent/landlord, as the petitioner had stated in her own deposition that two tenants were residing in the

suit premises, namely, Mr. Ram Lotan and Mr. Hans Raj. Further, the disputed two rooms on the ground floor with the tenant, Mr. Vivek Singh, even if added to the accommodation already available with the respondent/landlord, are insufficient to meet his residential needs.

20. In these circumstances, the findings returned in the impugned order dated 30.9.2009 are affirmed as being in accordance with the law. The same does not suffer from any illegality, perversity or error of jurisdiction, which deserves interference. The present petition is therefore dismissed, along with the pending applications.

FEBRUARY 15, 2010
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(HIMA KOHLI)
JUDGE