

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

% *Date of Judgment: 21.11.2011*

+ **C.R.P. No. 410/2003**

ZAHIDA BEGUM

.....petitioner
Through: Ms. Manu Nayar and Ms. Amar
Pal, Advocates.

Versus

AKHTAR ALI

.....Respondent
Through: None.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

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

INDERMEET KAUR, J. (Oral)

1. This petition has impugned the judgment and decree dated 10.12.2002 whereby the eviction petition filed by the landlady Smt. Zahida Begum seeking eviction of her tenant from the suit premises (i.e. House No. 6777, Ahata Kidara, Bara Hindu Rao, Delhi) which had been tenanted out to him at a monthly rent of Rs.4/- had been dismissed.

2. Record shows that the landlady claims herself to be the owner of the aforementioned premises; the premises have been described in the site plan annexed along with the eviction petition which shows that the premises comprise of one room with a tirpal and a WC; it is bounded by galies on two sides; it bears property No. 6777, Ahata Kidara, Bara Hindu Rao, Delhi. The ground for eviction is the grounds as contained in Section 14(1)(e) of the Delhi Rent Control Act (DRCA); contention is that presently she is living in a house No. 6322, Gali Hazi Amit Bux, Qasabpura, Delhi which is owned by her father-in-law Mohd. Rafiq and the accommodation in this house consists of one room, one courtyard, kitchen, bathroom and latrine on the ground floor; this property is owned by her father in law; she along with her husband, three sons and one daughter (now married), her father-in-law and mother-in-law are residing in the property owned by her father-in-law which is insufficient; they have no other accommodation; the present tenanted premises is bonafidely required by her for her aforementioned need.

3. In the written statement, this contention was disputed. Oral and documentary evidence had been led. The petitioner had examined herself as the sole witness; she had reiterated her

averments made in the eviction petition; in her cross-examination, she had admitted that the property of her father-in-law is bearing 6322, Gali Hazi Amit Bux, Qasabpura, Delhi and has only ground floor wherein the accommodation consists of one room, one courtyard, kitchen, bathroom and latrine and there is no other built up accommodation in that house. In a further part of the cross-examination she has admitted that this building is a three-storied building; in another part she has stated that this building is a two-storied building; her contention being that only the ground floor which is in occupation of her father-in-law and the first floor is in possession of the younger brother of her father-in-law i.e. Alio-uddin; second floor is in possession of another younger brother of her father in law i.e. namely Mohd. Shamim and the third floor is in occupation of yet another brother i.e. Hazi Babu; reiterating her stand in the cross-examination that this is in fact a three-storied structure. Admittedly, she has not filed site plan of the property where she was residing; she had denied the suggestion that this property comprises of 8 to 10 rooms.

4. Vehement contention of the learned counsel for the petitioner is that in her examination-in-chief AW-1 has relied upon

a partition deed (Mark A); it was the partition deed of the said premises showing partition of the said property between her father-in-law and his brothers; contention being that in her father-in-law's share only the green coloured portion had fallen. Relevant would it to state that Mark A was never exhibited; this document Mark A is purportedly the partition deed accompanied by a site plan. Be that as it may, this site plan (filed alongwith Mark A) is in black and white and the submission of the petitioner that the green coloured portion had fallen to the share of her father-in-law is thus not substantiated. However even presuming this position to be correct and the court having been shown the coloured site plan by the learned counsel for the petitioner (in court today), even otherwise this site plan shows that the ground floor comprises of two rooms, two courtyards, one kitchen, one store, bathroom and latrine on the ground floor; which is clearly contradictory to the stand of the petitioner that they are in occupation of one room, one court yard, one kitchen, bathroom and latrine. This contradictory and conflicting stand of the petitioner had been noted in the correct perspective by the ARC who had in these circumstances concluded that the petitioner has failed to prove as to what is her bona fide need. Thus even

accommodation presently where she is residing i.e whether it is sufficient or insufficient has not been answered by her. The site plan (accompanying the partition deed) has in fact contradicted her stand taken in the eviction petition i.e. which was reiterated in her examination-in-chief. The bona fide need of the landlady has thus not been established and rightly noted in the impugned order.

5. In a judgment of a coordinate Bench of this Court in RC No. 171/2011 titled as Dolly Chandra & Anr. Vs. Rameshwar Prasad dated 08.09.2011 the court had noted that the contradictory stand taken by the respondent-landlord has introduced an element of doubt about the bona fides of his requirement of the premises in occupation of the petitioners as projected in his eviction petition.

6. Reliance placed by the learned counsel for the petitioner upon the judgment of 1997 RLR 539 titled as Om Prakash vs. Dev Raj to substantiate her submission that the landlord is the best judge of his needs would be inapplicable to the instant case; even assuming that the landlord is the best judge of his needs, averments made in the pleadings should not be contradicting his stand in his deposition on oath which is so in the instant case.

7. Petitioner has not come to the court with clean hands.

Parties who approach the court must come with clean hands.

8. Revision petition is without any merit; it is dismissed.

INDERMEET KAUR, J

NOVEMBER 21, 2011
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