

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

% **RC.REV .55/2011**

+ **Date of Decision: 5th July, 2011**

KAPOOR CHAND GUPTA **....Petitioner**

! **Through:Mr. Rohit Kumar, Advocate**

Versus

\$ **BP SINGH & ORS** **....Respondent**

Through: Mr. Harish Malik, Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. **Whether Reporters of local papers may be allowed to see the judgment?(No)**
2. **To be referred to the Reporter or not?(No)**
3. **Whether the judgment should be reported in the digest?(No)**

ORDER

P.K BHASIN,J:

This is a petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 filed by the petitioner-tenant against the order dated 01.09.2010 passed by the learned Additional Rent Controller whereby the application filed by him under Section 25(5) seeking leave to contest the eviction petition under Section 14(1)(e) filed against him and respondents 2-7 herein, who all are the legal heirs of the original tenant, late Shri Rati Ram, in respect of one garage of property bearing no. 59

Sunder Nagar, New Delhi, had been dismissed and consequently an eviction order stood passed.

2. Late Sh. B.J Singh, father of respondent no. 1 herein, had let out one garage in property bearing no. 59 Sunder Nagar, New Delhi to late Sh. Rati Ram, the father of the petitioner and respondents 2-7 herein, in the year 1964. The respondent no.1 claims to have become the owner-landlord of the garage in dispute after the death of his father as per the partition which took place amongst the legal heirs of late Shri B.J.Singh. The legal heirs of the original tenant inherited the tenancy rights but only one of them, namely, the petitioner herein had sought to oppose the eviction petition by filing his affidavit alongwith the application for leave to contest as required under Section 25-B(5) of the Delhi Rent Control Act,1958.

3. The respondent no.1 filed an eviction petition under section 14(1)(e) seeking an order of eviction against the petitioner and respondents 2-7 and in the petition it was alleged that he required the garage for parking his cars as which he was presently parking outside the house on road and during night with the permission of the ground floor occupant in the driveway.

4. The petitioner in his application for seeking leave to contest the eviction petition stated that the respondent no.1 had ample space to park

his cars in the drive way and outside his house as was being done by other residents also of the locality. It was also pleaded that respondent no.1 and his deceased father had always been parking their cars in other portions of the property. It was also stated that respondent no.1 had no intention of using the garage as it had been specifically told by him that he had been offered a sum of Rs 10,000/- for letting out the garage both from the occupants of the various shops in the market and even from outsiders.

5. The respondent-landlord filed a reply to the leave to contest application of the petitioner-tenant and reiterated his claim that he required the garage bona fide for parking his cars.

6. The learned Additional Rent Controller dealt with the points raised by the tenant in his leave to contest application in the impugned order and came to the following conclusions in para nos. 6-8 of the impugned order:-

“6.....Another ground put-forth in the application is that the petitioner is having enough space for parking his cars . according to the respondent, the petitioner can park his cars in front of the house near the boundary wall of building, front verandah/open space/ driveway, side open space, rear verandah / open space/ lawn and the service road/lane in from and the back of house. It is also stated that the various other residents of the area are parking their cars on the front roads,back lane,side roads of their houses and also in the drive way. It is the common knowledge that garage is safer and secured place for parking the vehicles. Garage in any case is better place for parking the vehicle than the verandah/open space/drive way,side open space,

*rear verandah/open space/lawn and the service road/lane in front and back of the house. The fact that other residents of the area are parking their cars on the road does not mean that the petitioner can be forced to park his vehicles in the open road/service lane. Another contention of the respondents is that the petitioner was having cars when the tenanted property was initially let out to him and the petitioner never used the garage for parking his cars. It has been consistently held by the Superior Courts that the landlord is the best judge of his requirement. Reference in this regard can be made to judgment titled as **M.L Prabhakar Vs. Rajiv Singhal reported at I(2001)SLT 282 (2001)2 SCC355** wherein it was held **the court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for his purpose, the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too constructive or pedantic must be guarded against**"*

7. Similarly in 1996 SCC 353-Prativa Devi Vs. T.V Krishnan it was held that landlord is the best judge of his residential requirement. He has complete freedom in the matter .It is no concern of the courts to dictate to the landlord how and in what manner ,he should live or to prescribe for him a residential stand of their own.
8. From the above discussion ,it is clear that petitioner requires the tenanted property which is garage bonafide for parking cars on the open roads. The application filed by the respondent seeking leave to contest the eviction petition fails to disclose any fact which gave rise to any triable issue. Accordingly, the application is dismissed....."

7. Feeling aggrieved, the petitioner-tenant has invoked the revisional jurisdiction of this Court under Section 25-B(8) of the Delhi Rent Control Act,1958 since no appeal is maintainable against an order of eviction passed by the Rent Controller in the special category of cases decided by following the special and summary procedure provided under Section 25 including a petition for eviction of a tenant under Section 14(1)(e) on the

ground of *bona fide* requirement of the landlord. Sub-section (8) of Section 25 says that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Rent Controller in accordance with the procedure specified in this section. The proviso to that Sub-section however provides some remedy to the aggrieved party. It reads as under :

"Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."

8. Dealing with the scope of revision under the said proviso to Section 25B(8) the Supreme Court had in "Sarla Ahuja vs United India Insurance Company Ltd." 1998 VIII AD (S.C.) 63 observed that:-

"6. The above proviso indicates that power of the 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 when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order Under Section [25B](#). It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.

7. Although, the word "revision" is not employed in the proviso to Section [25B\(8\)](#) of the Act it is evident from the language used therein that the power conferred is revisional power. In legal parlance distinction between appellate and revisional jurisdiction is well understood..... "

9. It was contended by learned counsel for the petitioner that the learned Additional Rent Controller was not justified in rejecting the leave application since the points raised in that application were triable issues which require to be decided after giving opportunity to the tenant to adduce evidence in support thereof. It was submitted that earlier the mother of the respondent no. 1 had filed a petition under Section 14-D of the Delhi Rent Control Act but during the pendency of that petition she had expired and since none of her legal heirs had come forward to be substituted in that petition the same had been dismissed as having abated and, therefore, the present petition, which has been filed on the same ground on which the mother of respondent no. 1 had filed the earlier petition and getting that petition dismissed as abated would show that respondent no. 1 only require the garage in question for parking his car. It was further submitted that the need of the respondent no. 1 was not *bona fide* also for the reason that ever since the creation of the tenancy in favour of the petitioner's father by the deceased father of respondent no. 1 the cars belonging to their family have always been parked either in the drive way of the house or outside on the road like other residents of the same locality who park their cars outside their houses on the road and the sudden decision taken by the respondent no. 1 to park his cars inside the garage would at the most be his desire to do

that but that desire cannot amount to *bona fide* requirement of the same and in any event these points raised entitle the tenant to the leave sought for by him.

10. On the other hand, learned counsel for the respondent no.1 – landlord supported the order of the learned Additional Rent Controller passing an eviction order in his favour and submitted that it cannot be said that the impugned order was not in accordance with law justifying interference by this Court in exercise of its revisional jurisdiction which has a very limited scope.

11. After having considered the submissions made by the learned counsels for the parties and the reasons given by the learned Additional Rent Controller. I have unhesitatingly come to the conclusion that the decision under the challenge cannot be said to be not in accordance with law. All that the petitioner-tenant is claiming since father of respondent no.1 had been parking the cars in the drive-way or on the road outside his house the respondent no. 1 should also continue to do the same thing. That plea can certainly not accepted . A tenant can't dictate the terms to his landlord. When the landlord has a garage to park his car then why he be asked to take the risk of losing his car by parking it on the road. The petition is devoid on any merit,therefore it is dismissed with costs of Rs.15,000/- which shall be paid to the Delhi High Court Legal Services

Committee within 15 days. In case of default, the Secretary of Committee shall take steps to recover it through the process of the Court and so a copy of this order be forwarded to it.

P.K. BHASIN,J

July 05, 2011
sh