

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **RC.REV. 93/2011**
+ **Date of Decision: 22nd September, 2011**

KAMLA DEVI **...Petitioner**
! **Through: Mr. P.D. Gupta, Advocate**

Versus

\$ **DHARMANAND PANDEY**
(DECD) THRU LRS **....Respondents**
Through: Mr. L.N. Jha, 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 revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') has been filed by the petitioner-tenant against the order dated 03-12-2010 passed by the Additional Rent Controller whereby her application for leave to contest the eviction petition filed against her by her landlord, who died during the pendency of the eviction petition, under Section 14(1)(e) of the Act to

have the possession of one shop in property bearing no. B-1C-164, Chander Lok, Main Mandoli Road, Delhi-110093(hereinafter to be referred as the 'tenanted shop') on the ground that he required the same bona fide for his residence and that of his dependant family members has been dismissed and she has been ordered to vacate the tenanted shop.

2. The deceased-landlord claimed in his eviction petition that he was earlier the owner of property bearing no. B-1C-164, Chander Lok, Main Mandoli Road, Delhi-93, of which the tenanted shop was a part, but in the year 2002 some part of this property was gifted by him to his deceased sister's daughter and her son. Thereafter the petitioner along with his family consisting of his wife, two sons and two unmarried daughters were residing in the back portion of the tenanted shop. However, the said portion of the building was an old one and it had collapsed and thereafter, the petitioner and his family members, having no other accommodation, had taken shelter in the gifted portion of his sister's daughter Smt. Bhagwati Joshi. The petitioner is a physically disabled person and senior citizen and was not having good health and so had no occupation also to earn his livelihood and, therefore, he required the tenanted shop as well as another shop also let out to another tenant for the residence of his family members and for some occupation. It was further pleaded in the eviction petition that the tenanted shop was in dilapidated condition and required

immediate repairs and re-construction. On these averments, the eviction petition was filed by the deceased-landlord.

3. An application under Section 25-B(4) of the Act was filed by the petitioner-tenant for grant of leave to contest the eviction on the following pleas in para nos. 4, 5, 7 & 10 of the leave application :-

“4. That the petitioner is not the owner of the tenanted premises hence is not entitled for the recovery of the possession of the tenanted premises under section 14(1)(e) of the Delhi Rent Control Act, 1958.

5. That the tenanted premises is not requirement bona fide by the petitioner for his residence and occupation for himself or for the member of his family members dependent upon the petitioner for their residential accommodation. There were five shops initially on the front portion of the premises/building. Out of four shops one is big shop in size having two shutters. The petitioner is a quarrelsome person and regularly harassing the respondent, her family members since 1996 and the other tenant Shri Prakash Gupta with an intention to get vacated the tenanted shop from the respondent and other tenant Shri Prakash Gupta. In the year 2007 the petitioner himself has demolished his back portion of the premises in which the petitioner was residing with his family members and also has demolished the roof of his one shop in which the petitioner was also carrying his business and now has shown that shop as a Gallery between the shops of the respondent and other tenant Shri Prakash Gupta. The petitioner still in possession of three shops. The petitioner has not filed the true and correct site plan of the premises. The petitioner has falsely shown one shop in the possession of Guddu Pandey and one shop in possession of Bhagwati Joshi. The petitioner is carrying seasonal items business along with wooden ladder/Sidhi, Bans and Balli. The petitioner is habitual to encroach upon the Government Road to harass the respondent and the other tenant by creating nuisance. The petitioner is residing on the 1st floor of the premises of the northern side and also carrying his business of cotton spinning machine in winter season on the 1st floor portion of southern side of the premises, with the help of employees. The petitioner has also taken false plea that the petitioner has gifted some portion of the premises to one Bhagwati Joshi and Sonu Joshi. The complete premises is in exclusive possession of the petitioner, which is more than 200 sq. yds. at the spot.

7. That the petitioner is also owner of the premises no. E-551 Gali No, 18 Shastri Gali, Ashok Nagar, Shahdara, Delhi, measuring about 200 sq. yds., having sufficient alternative residential accommodation, which the petitioner has willfully concealed from the Hon'ble Court.

10. That the petitioner has not given the detail of his bona fide requirements. The petitioner has displayed a board at the premises "MAKAN DUKAN BIKAU HAI" house and shops are for sale."

4. The respondent filed a reply to the leave to defend application denying the allegations made by the tenant.

5. The learned Additional Rent Controller rejected the tenant's application vide impugned order in which the various pleas of the tenant were dealt with and rejected in the following paras of the impugned order:-

"In sub-para 5 of the para 16(1) of the petition, the petitioner has also mentioned that the tenanted shop is in dilapidated condition and requires immediate repair and reconstruction. The present petition is under Section 14 (1) (d) of the DRC Act which is concerned with the limited scope of bona fide requirement of the landlord and his family members and other grounds cannot be looked into. Ld. Counsel for the petitioner has also conceded during arguments that the averments regarding the dilapidated condition of the tenanted shop is a passing reference and his prayer is for an eviction order on the ground of bona fide requirement only.

The respondent has not disputed the landlord tenant relationship. The respondent has, however, averred that the petitioner is not the owner of the tenanted premises. It has not been stated who is the actual owner of the tenanted premises if not the petitioner. The petitioner has averred in his petition that initially he had purchased land measuring 150 sq. yds. but, out of love and affection, he gifted a portion measuring 6' x 35' to the daughter of his sister and her minor son vide a Gift Deed dated 21.03.2002. Copy of this Gift Deed has been filed on record. Now, he is left with the portion, as shown in the site plan which includes open space, gallery and two tenanted shops. It has been argued on behalf of the respondent that this Gift Deed is unregistered and insufficiently stamped and therefore, it is invalid. On this ground, the respondent claims that the petitioner has entire area of 150 sq. yds. at his disposal to meet his requirements. On the one hand, the respondent has disputed the ownership of the petitioner, on the other hand, he claims that the entire 150 sq. yds. belongs to him. The respondent cannot blow hot and cold at

the same time. There is also nothing on record to rebut the case of the petitioner that he has gifted a portion measuring 6' X 35' to Smt. Bhagwati Joshi and her minor son.

It has been alleged by the respondent that the back portion of the property of the deceased petitioner Sh. Dharmanand Pandey was deliberately demolished by him and has been shown as open space in the site plan. He has also argued that the portion shown as gallery was, in fact, a third shop which was also deliberately demolished by the petitioner. These allegations of the respondent further make it clear that now the open space and the portion shown as gallery are not available to the legal heirs of the deceased petitioner for running their business or for residence.

It has also been argued on behalf of the respondent that the petitioner is also the owner of the premises no. E-551, Gali No. 18, Shastri Gali, Ashok Nagar, Shahdara , Delhi measuring 200 sq. ydd. Which is a sufficient alternate residential accommodation. The petitioner has specifically denied this allegation. During the course of arguments, Ld. Counsel for the respondent conceded that he does not have any documentary evidence in support of his assertion and has argued that since the respondent is a tenant of the petitioner, he has come to know that the petitioner is the owner of the abovesaid premises also. The Court concurs with the argument of the petitioner that mere assertion of the tenant would not be sufficient to rebut the strong presumption in landlord's favour that he does not have a suitable alternate accommodation to meet his requirement. The tenant should have brought some material on record to corroborate his assertion. No such document has been placed on record.

It is well settled that the expression 'bonafide requirement' means that the requirement of the landlord is genuine and his claim is not motivated by the extraneous consideration. The respondent has failed to establish 'extraneous consideration' and to bring anything on record that rebuts the strong presumption of bonafide requirement in favour of the petitioner."

6. It was contended by learned counsel for the petitioner that the deceased – landlord's case that a part of the property owned by him had been gifted by him to his sister's daughter and her grandson was not

acceptable since the copy of the Gift Deed which the deceased – landlord had placed on record did not bear the signature of his sister's daughter or her grandson and, therefore, that document could not be considered to be a Gift Deed in law and based on that document the landlord could not have claimed that the accommodation where he was living along with his family members did not belong to him and belonged to his sister's daughter. It was further contended that even though the deceased – landlord had claimed in the eviction petition that some portion of the property on the back side of the tenanted shop had collapsed but, in fact, it was the landlord himself who had intentionally pulled it down to create artificial scarcity of accommodation with him. Another point urged before this Court by the learned counsel for the petitioner was that the legal heirs of the deceased – landlord had themselves now put up a notice for sale of the property which shows that they were no more interested in having the possession of that property and wanted to give it to some builder to make money.

7. On the other hand, learned counsel for the respondents submitted that the Gift Deed was of the year 2002 and the petitioner-tenant had no right to challenge the gift and the gift deed on the ground on which it is being challenged here as it was not taken in the leave application. It was also contended that part of the property had collapsed on its own and the

deceased landlord had not demolished it only to create grounds for the eviction of the tenant.

8. As noticed already, learned Additional Rent Controller has dealt with all these pleas which were raised there also at the time of hearing of the petitioner's leave to contest application and the same have been rejected and in my view no fault can be found with the decision of the learned Additional Rent Controller in rejecting all these pleas which, in my view also, do not give rise to any triable issue. It was not the ground taken by the petitioner in her leave application that there was no legal gift deed in existence because of the reason being urged before this Court. So, the landlord's case that he was living in the house which did not belong to him cannot be doubted and no mala fides could be attributed to him in filing the eviction petition against the petitioner.

9. This revision petition accordingly is dismissed.

P.K.BHASIN, J

September 22, 2011
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