

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

% **RCR 51/2008**

+ **Date of Decision: 28th September, 2011**

^ **SARDAR GURMUKH SINGH** **....Petitioner**
! **Through: Mr. Satish Sahai, Advocate**

Versus

\$ **GIAN PRAKASH** **....Respondent**
Through: Mr. Sanjeev Sindhvani,
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 petition under Section 25-B (8) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') is at the instance of a landlord who has

been unsuccessful in securing an order of eviction from the Additional Rent Controller against his tenant in respect of a residential flat which had been let out to him. The petition was filed under Section 14 (1)(e) of the Act by the petitioner-landlord on the ground that he required the flat no. 330, Pocket-3, Paschim-puri Residential Scheme, New Delhi under the tenancy of the respondent-tenant (hereinafter to be referred as the 'tenanted premises') for his residence there along with his family members.

2. The petitioner-landlord had pleaded the relevant facts in support of his claim of *bona fide* requirement of the tenanted premises in para no.18(a) of his eviction petition which is re-produced below verbatim:-

“That the petitioner is the owner of the suit property. The premises in suit were let out for residential purposes and are needed and required by the petitioner *bona fide* for his residence and also for the residence of the family members dependent upon him. The petitioner or any of his other family member dependent upon him for residence has no other suitable residential accommodation in Delhi.

That the petitioner is the allottee of the LIG flat No. 330, Pocket 3, Paschim-puri Residential Scheme, New Delhi-110063 which was allotted to the petitioner by the DDA. The petitioner thereafter inducted the respondent as a tenant vide rent agreement w.e.f. 1.1.1995 for a period of 11 months only. The premises were let out to the respondent for residential purposes and rent agreement was executed between the parties. The petitioner is presently residing at A-16, Mahendra Park, Azadpur, Delhi-110033 which property belongs to his father Shri Dayal Singh. The petitioner and his wife are having strained relations with the parents of the

petitioner. The petitioner is having a large family comprising of 2 sons, and 2 daughters. The eldest son of the petitioner Mr. Gurjeet Singh is aged about 25 ½ years and is unmarried and is doing the job of repairs of air conditioners. Mr. Gurjeet Singh has also done course in air conditioning from Industrial Training Centre, Gurdwara Nanak Pao, Delhi. The second child of the petitioner is a daughter named Ravinder Kaur, age 20 years who is studying in B.A. IIIrd year and is unmarried and the third child of the petitioner again a daughter named Jasbir Kaur age 16 years and is studying in class 11th and the youngest child of the petitioner is a son named Gurdeep Singh age 13 years studying in class 7th.

That the father of the petitioner Shri Dayal Singh as stated above is the owner of the house No. A-16, Mahendra Park, Azadpur, Delhi-110033 where the petitioner along with his family members is residing. The parents of the petitioner and also one unmarried younger brother of the petitioner Mr. Raghbir Singh and a divorcee sister of the petitioner Smt. Kirpal Kaur is residing. The said house measures only 111 sq. yds. and there are three rooms on the ground floor and two rooms on the first floor. The petitioner has another sister Smt. Swarn Kaur who along with her family members and other relatives of the parents of the petitioner also visit the said property at Azadpur, Delhi quite frequently. The accommodation available at the said property at Azadpur is very less. The petitioner and his family members are having separate kitchen on the first floor in that property and also have a separate ration card from the family of the father of the petitioner. Hence on account of the strained relations of the petitioner and his wife with the parents of the petitioner and also on account of paucity of accommodation, the petitioner wants to shift to his own flat i.e. the suit premises.

That the eldest son of the petitioner Mr. Gurjeet Singh who is doing the job of repairing of air conditioner is aged about 25 ½ years is also to be married and his marriage is being delayed on account of the shortage of accommodation. Further the three children of the petitioner are studying in higher classes and all of them require separate rooms for their studies.

That the petitioner is a man of status and is running the business of taxis. The suit premises is genuinely and bonafide required by the petitioner for his residence and also for the residence of the family

members dependent upon him. The petitioner does not own any other residential accommodation in Delhi. Hence this petition.”

3. The respondent-tenant had filed an application for leave to contest the eviction petition on many grounds but the learned Additional Rent Controller had granted leave limited only to the extent of his pleas that the property in Azadpur where the petitioner-landlord was living had not been sold by him to his father and that there was no bona fide requirement of the tenanted premises since the accommodation in the property at Azadpur was quite sufficient for him and his family members.

4. Thereafter evidence was adduced from both the sides and after examining the same the learned Additional Rent Controller dismissed the eviction petition vide his judgment dated 2008. The relevant part of that judgment is re-produced below:-

“7. Only question that requires consideration is the availability of alternative accommodation and also the sufficiency of the accommodation in the said alternative accommodation available with the petitioner. The petitioner has stated that the property bearing no. A-16, Mahendra Park, Azadpur, Delhi where he is residing belongs to his father whereas he has strained relationship with his father and therefore wants to shift to his own accommodation. The said property at Azadpur as admitted by the

petitioner himself previously belonged to him and was sold to him by his father only in the year 1991 for a valuable consideration but it is admitted by the petitioner that no registered sale deed was executed and the property was sold by way of GPA agreement to sell, will etc. which documents as stated were also not got registered. Though the copies of documents were filed on record but the same were neither exhibited nor proved by the petitioner. No more evidence is required to prove that the petitioner continues to be the owner of the property bearing no. A-16, Mahendra Park, Azadpur, Delhi-33 and contrary to his plea the said property does not belong to his father. Further the plea of petitioner was that his parents with his one brother and divorcee sister are residing at the ground floor of the said property. It is already observed that the petitioner is the owner of the above said property and it is also not pleaded that his parents and brother, sister also form part of his family or are dependent upon him for purpose of residence therefore accommodation available with petitioner would be of total five rooms, yet since it was stated that his parents and brother, sister are occupying the ground floor, I will also discuss on this aspect.

8. Copy of ration card ex. AW-1/R-1 is on record in which names of the parents of petitioner, his brother and his sister is mentioned which was issued on 26.11.00 whereas the names of parents and brother and sister of petitioner were not found mentioned in the voters list for the year 1998 as well as for the year 2002 as per the record brought by RW-2 and RW-6 and according to these witnesses the names of only those persons were in the electoral list who were residing at the premises. Even otherwise PW-1 himself has failed to place on record any document to show that those persons are residing at the said address of A-16, Mahendra Park, Azadpur, Delhi-33.....The bald plea of petitioner with respect to his parents and other siblings residing at the ground floor of the property in question is contrary to the documentary evidence on record and rather petitioner did not prefer to bring any of them in the witness box to controvert the plea of respondent that they were not residing at Mahendra Park property and as told to him were residing at Ropar. During the course of the arguments it was contended by Ld. Cl. for petitioner that even if it is held that the petitioner is the owner of the property at Mahendra Park which is comprising of total five rooms whereas his family is consisting of himself, his wife and his two sons and two daughters whereas one of his sons during the pendency of the case has also been married and petitioner has also been blessed with two grandsons

therefore property at the Mahendra Park is insufficient for the needs of the family of petitioner. But the fact remains that the petitioner had tried to make out his case for shifting to the property in question due to strained relations with his parents and for insufficiency of accommodation of two rooms with him but he has not made out any plea for requirement of additional accommodation.....Besides the fact that petitioner has not come to the Court with clean hands by suppressing the factum of ownership of property in question bearing no. A-16, Mahendra Park, Azadpur, Delhi-33, he has also miserably failed to show his bonafide requirement to claim the property in question on the ground of shifting himself and his family dependent upon him to the property in question whereas property already available with him is consisting of much more accommodation than the property for which eviction of respondent is sought. Accordingly in view of the above, instant petition is dismissed..... ”

5. The admitted facts which emerge out of the pleadings of the parties before the trial Court, evidence adduced during the trial from both the sides and the submissions made at the bar during the hearing of this petition by the counsel for the parties are that the petitioner-landlord had acquired one freehold property in Mahendra Park, Azadpur comprising of five rooms and there he was living alongwith his family comprising of his wife, two sons and two daughters(during the pendency of this litigation one of the sons had got married and was also blessed with two sons and these facts noticed even by the trial Court were not disputed during the course of hearing

of the present petition on behalf of the respondent-tenant). Subsequently, in the year 1994 he was allotted by the Delhi Development Authority an LIG category two rooms flat in Pashchim Puri, which is at a distance of about 12 kilometers from Azadpur, and that flat had been let out to the respondent-tenant in the year 1995. In the year 2001 the petitioner-landlord filed the eviction petition against the respondent-tenant to get back the tenanted premises from him claiming that he required the same, *bona fide*, for himself and his family members. Detailed averments made by him in his eviction petition have already been re-produced by me.

6. The learned trial Court has found that the petitioner-landlord had failed to establish that he had sold his property in Azadpur to his father and that in that property his father was also living with his other family members, as was being claimed by the petitioner-landlord. The learned trial Court after arriving at these conclusions had not proceeded further to examine whether the accommodation available with the petitioner in his house at Azadpur was sufficient for his

family which undisputedly comprises of nine members. This exercise was not undertaken on the ground that in the eviction petition the petitioner-landlord had sought eviction of the respondent from the tenanted premises on the ground that he wanted to shift to the tenanted premises because of strained relations with his parents and further that he had not pleaded the requirement of additional accommodation. It was also observed by the learned Additional Rent Controller that the petitioner-landlord was not entitled to the relief of eviction order against his tenant on the ground that he had concealed the fact from the Court that he was the owner of the property in Azadpur.

7. In my view, I need not go into the correctness of the conclusions arrived at by the learned Additional Rent Controller that the petitioner's house in Azardpur had not been sold by him to his father and further that his parents along with their other son and one divorcee sister were not living in that house since this petition is entitled to succeed even if those findings are affirmed, though the counsel for the petitioner had submitted that those findings cannot be

sustained. The eviction petition should have been allowed considering the fact that the petitioner's family undisputedly comprised of six members at the time of filing of the eviction petition and nine members when the same came to be finally disposed of because of the marriage of one of his sons and his being blessed with two sons and the accommodation available in that house was only of five rooms. That much accommodation could not be considered to be sufficient at all for accommodating a family of nine persons and for that matter even for six members, which was the status of the family of the petitioner at the time of filing of the eviction petition. The reason given by the learned trial Court for not going into that aspect is clearly perverse since the petitioner had clearly pleaded in para no. 18(a) of the eviction petition, which para has already been reproduced by me, that he was claiming eviction of the respondent not only on the ground of strained relations between him and his parents but also on the ground of paucity of accommodation in the Azadpur house. It thus, could not be said that the petitioner-landlord had not pleaded the case

for additional accommodation in his eviction petition. No arguments appear to have been advanced on behalf of the respondent-tenant before the trial Court that the plea of additional accommodation cannot be considered. Before this Court, however, this point was raised on behalf of the respondent-tenant by his learned counsel Mr. Sanjeev Sindhwani in his oral submissions as well as in his written arguments. In fact, this was the main argument which was pressed into service with great force. But, in my view, this argument cannot be accepted being devoid of any substance as paucity of accommodation in the Azadpur house was also clearly pleaded in the eviction petition in addition to the other grounds noticed by the trial Court.

8. The learned trial Court has also observed while rejecting the eviction petition that the petitioner-landlord had concealed from the Court about the ownership of the property in Azadpur and Mr. Sindhwani also argued before this Court to the same effect. This finding also, in my view, is totally unjustified and so unsustainable for the reason that there was no fact concealed from the trial Court by the

petitioner-landlord. He had made a categorical averment in the eviction petition that the house in Azadpur where he was residing belonged to his father and in the written statement filed by the respondent-tenant he had pleaded that the documents placed on record by the petitioner-landlord i.e. agreement to sell, etc. in favour of his father were not genuine documents. That shows that even the respondent tenant had clearly understood that the petitioner was claiming that he was not the owner of house in Azadpur because he had already sold it to his father in the year 1991. Just because it was not pleaded that the petitioner had sold that house already in the year 1991 it would not make the petitioner guilty of suppression of facts. It is totally a different matter that the trial Court has not accepted the petitioner's case that he had sold that property to his father because of his failure to formally prove on record the agreement to sell etc. but because of that conclusion it could not be said that the petitioner-landlord had suppressed any fact from the Court which could disentitle him from securing an order of eviction.

9. I also do not find any logic in the observation of the learned Additional Rent Controller that since the petitioner-landlord had with him five rooms in the house at Azadpur he could not be expected to move to a two room flat along with his family members. It was also the argument of counsel for the respondent that the petitioner had also not pleaded a case that in case of eviction of the tenant he would split his family and accommodate the family members at two places. I do not find any merit in this submission also of M. Sindhwani. Since the family of the petitioner comprises of nine members and the accommodation in Azadpur house is only of five rooms it would be for the petitioner-landlord to decide as to how and in what manner his family would utilize the accommodation of five rooms in the Azadpur house and two rooms in the tenanted premises and it is not necessary that the petitioner must shift to the tenanted premises along with his entire family and he was not required to plead as to how he would utilize the available space in the two houses. In case the reasoning of the learned trial Court is endorsed it would mean that the petitioner

would never be in a position to get back the possession of the tenanted premises from the respondent-tenant. Such reasoning can certainly be not accepted.

10. The conclusion thus is that the impugned order cannot be said to be in accordance with law and, therefore, this is a fit case for this Court to exercise its revisional jurisdiction for setting aside the same and ordering the eviction of the respondent-tenant from the tenanted premises. This petition is accordingly allowed. The impugned order passed by the learned Additional Rent Controller is set aside and consequently eviction of the respondent-tenant from the tenanted premises is ordered. However, the respondent-tenant is granted six months time to vacate the same.

P.K. BHASIN,J

September 28, 2011
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