

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

% RC.REV.201/2010

+ Date of Decision: 4th May, 2011

DHARMARTH AUSHDHALAYA

PARBANDHAK COMMITTEE

...Petitioner

**! Through: Mr. D.K. Rustagi & Mr. B.S. Bagga,
Advocates**

Versus

\$ MOOL RAJ AGGARWAL

....Respondent

Through: Mr. Satya Prakash Gupta, 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 revision petition filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act, 1958 against the order dated 19-02-10 passed by the Additional Rent Controller whereby an eviction order was passed against it in respect of a portion of premises no.E-5/5, Krishna Nagar, Delhi-110051 (hereinafter to be referred to as 'the tenanted premises') after dismissing its application for grant of leave to

contest the eviction petition filed on the ground of *bona fide* requirement by the respondent herein.

2. The petitioner-tenant has been running a charitable dispensary in the tenanted premises for over forty years. Municipal Corporation of Delhi has been giving some financial aid to the petitioner-tenant for the running of the charitable dispensary. As per the case of the respondent, the said property belonged to his father and after his death a partition suit was filed in Court in which a decree of partition had been passed in the year 2007 according to which he had become the exclusive owner of the tenanted premises in the possession of the petitioner-tenant herein on the ground floor as also of one room and a store room etc. on the backside of the tenanted premises and the first floor portion.

3. After the decision of the partition suit amongst the legal heirs of the deceased owner-landlord Sri Ram the respondent filed an eviction petition in the year 2008 against the petitioner herein on the ground that he required the tenanted premises *bona fide* for opening a stationery shop for himself as well as well for his son who was employed on a meagre salary of Rs.6000/- p.m. It was pleaded in the eviction petition by the respondent that he was a school teacher and had retired on 31/10/06 and after his retirement was doing nothing since he did not have any place to start his work. Now he needed a place to start his own

work along with his son, who was about 32 years of age and was getting only Rs. 6000/- per month as salary. In the tenanted premises he wanted to start a shop for sale of books and stationery as 4-5 schools are situated in the vicinity and there was no other accommodation with him from where he could run the shop and the room and one store in his possession on the backside of the tenanted portion was not suitable for running the shop since there is no direct approach to that portion.

4. The petitioner-tenant had sought leave to contest the eviction petition but the grounds taken in the leave application were rejected by the learned Rent Controller. Out of the grounds taken by the petitioner in its application, one was that property no. E-5/5, Krishna Nagar, Delhi was situated in a residential area and so the same could not be used for opening a stationery shop by the respondent herein and, therefore, his case that he required the tenanted premises for his *bona fide* use could not be accepted. The learned Rent Controller rejected that contention on the ground that the tenant (petitioner herein) itself was carrying out commercial activity in the tenanted premises and the aspect whether any commercial activities were permitted in the area in question was for the concerned authorities to take care of.

5. Before this Court, the learned counsel for the petitioner pressed into service only the afore-said ground that since the tenanted premises

cannot be used for running a shop the requirement of the respondent – landlord cannot be said to be *bona fide*. Learned counsel also submitted that as far as the user of the tenanted premises for running a charitable dispensary by the petitioner is concerned the same cannot come in its way of claiming before the Court that the tenanted premises cannot be used for a commercial activity/shop since running a charitable dispensary with the aid of grant being given by Municipal Corporation of Delhi cannot be said to be a commercial activity. It was also contended by the learned counsel that in case the respondent – landlord is in a position to get a no objection from the Municipal Corporation of Delhi for opening of a shop in the tenanted premises the petitioner – tenant would vacate the same without any demur but if he is unable to get that clearance the petitioner should not be dispossessed summarily.

6. Learned counsel for the respondent – landlord supported the decision of the learned Rent Controller that it would be for the concerned Government authorities to see whether the petitioner can open a shop in the tenanted premises or not and the petitioner herein cannot oppose the eviction petition on this ground. It was also contended by the learned counsel for the respondent that it is a well known fact that in most areas of the city and particularly where people

belonging to middle class like the respondent are residing shops etc. are being run in some portions of the houses for earning livelihood by the owners and, therefore, the respondent cannot be denied the benefit of utilizing his property to earn livelihood for himself and for his family on the ground that the Government authorities may not permit any shop to be opened in the tenanted premises.

7. After having given my thoughtful consideration to the rival contentions I am of the view that the point raised by the petitioner – tenant that the tenanted premises cannot be used as a shop at all being situated in a residential area requires consideration and in case it succeeds in establishing the same the respondent – landlord may not finally succeed in getting the tenanted premises vacated for running a shop therein. It is significant to note that it was not claimed before this Court on behalf of the respondent – landlord during the course of hearing of this petition that no permission from any Government authority is required by him for running a shop in the tenanted premises and, therefore, at this stage it cannot be said that he requires the tenanted premises *bona fide* for opening a shop therein.

8. In the facts and circumstances of this case, this petition is allowed and the petitioner – tenant is granted leave to contest the eviction petition but only in respect of the plea that the tenanted

premises cannot be used for running a shop. Accordingly, the matter is now being sent back to the Rent Controller for disposal of this eviction petition after giving opportunity to the parties to adduce evidence in support of their respective pleas. However, considering the fact that only limited leave to contest is being granted to the petitioner – tenant not much evidence will be required to be adduced by it, the Rent Controller shall make all efforts to dispose of the petition as expeditiously as possible and in any case not beyond a period of one year.

9. The matter shall be taken up by the Rent Controller now on 30th May, 2011 at 2 p.m. on which date the parties shall appear there.

P.K. BHASIN,J

May 4, 2011
sh