

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

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Date of Decision: 9th April, 2012

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C.R.P. 1225/2003

SMT. SONA DEVI Petitioner

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Through: Ms. Vipin Gupta, Advocate

Versus

\$ SMT. NATHIA & ORS. Respondents

Through: Mr. B.B.Gupta & Mr. Ravjyot
Ghuman, Advocates

CORAM:

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

JUDGMENT

P.K.BHASIN, J:

The present petition has been filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 ('the Rent Act' in short) by the petitioner-landlady against the order dated 16.08.2003 passed by the Additional Rent Controller('the Controller' in short) dismissing the eviction petition filed by her against the legal heirs of her deceased tenant late Shri Mithan Lal under Section 14-D and 14(1)(e) of the Rent Act of in respect of a part of property bearing no.4837, Laddoo Ghati, Paharganj, Delhi(hereinafter to be referred to as 'the tenanted premises').

2. The petitioner-landlady had filed the eviction petition in the year 1993 against the respondents by pleading the following facts in para no. 18(a) of the eviction petition:-

“(1).....The premises are required by the petitioner for her own residence including the residence of her family members dependent upon her. The petitioner has no other reasonably suitable residential accommodation in Delhi.....”

(1) The details of the family members of the petitioner who are dependent upon her for their residence:-

(A) Ashok Kumar, married son, having two daughters namely Pooja aged 10 years and Bharti aged 5 years while the name of his wife Smt. Sheila.

(B) Rajinder Kumar, married son and his wife Smt. Prem Lata, with one daughter named Sandhya aged 3 years and one son named Golu aged 1 year.

(C) Smt. Kamlesh, widowed daughter having one daughter Miss Seema and a son named Sanjay.

(D) Sh. Kamal, unmarried son of marriageable age, whose marriage is being delayed for want of residential accommodation.

(E) Miss Ramli, unmarried daughter.

(F) Smt. Veena w/o Upender- married daughter.

(G) Smt. Mala w/o Shri Mahesh- married daughter.

The married son Shri Ashok Kumar requires two rooms accommodation for himself and his family, while the second married son Rajender Kumar also requires two rooms accommodation for himself and his family. Similarly the widowed daughter of the petitioner also requires two rooms accommodation for settling herself and her children who had/have been living since the time of her husband's demise. The third son Kamal is of er obtaining necessary permission from the Controllerso that his marriage may be performed. One more room is required for the unmarried daughter of the petitioner, who is of 21 years of age for her separate bed room and studies. The married daughters of the petitioner had/have frequent

visit to the petitioner at festivals and functions and they stay alongwith their family for days/weeks together for whom, the petitioner also requires at least two rooms.

The petitioner also requires a separate bed room and drawing room for the family and herself. Thus the total requirement of the petitioner is of at least 12 (twelve) rooms for comfortable living of her own alongwith her family members, who are dependent upon her.

The petitioner has the residential accommodation of one big room and two small rooms in her house on the ground floor which accommodation is absolutely insufficient as shown in yellow colour in the site plan, inadequate to meet her requirement of residence, hence she requires the suit premises bona fide for meeting her need of residence.....”

3. The respondents had contested the eviction petition after obtaining permission from the Controller. The main pleas raised by them in their written statement in opposition to the claim of their landlady and which only were pressed into service before this Court also by their counsel while opposing this revision petition were noticed by the learned Controller in the impugned order and dealt with in the following manner:-

“12.....The only dispute revolves around bona fide requirement of the petitioner.

14. The bona fide requirement of the petitioner must remain and continue during the pendency of the present petition. The bona fide requirement of the petitioner has to be seen objectively keeping in view the size of her family and her requirement and it has also to be seen objectively by evaluating her conduct before filing of the petition and during pendency of the petition. The bona fide requirement of the petitioner has to be determined objectively keeping both the factors in mind. In the present petition petitioner herself has admitted that after filing of the present petition she has been receiving possession of the accommodation from one tenant after another and she is letting and

reletting the same during the pendency of the present petition...Once it is admitted by the petitioner that just before filing the present petition after receiving possession from erstwhile tenant she relet the same this raises serious doubt on the bona fide requirement of the petitioner.

15. *It is admitted that petitioner has purchased the property in the year 1986 when only one room was vacant, knowing fully well that remaining portion was under the tenancy of different tenants. In the year 1987 just after purchase of property one tenant Bal Singh admittedly vacated four rooms. Had petitioner been in bona fide requirement she would not have relet the premises just before filing of the petition to other tenants. Further more her letting and reletting does not stopped before filing of the petition rather she kept reletting the premises even during the pendency of the petition. She admitted that room mark A and B fallen vacant during the pendency of the present petition and she has been again reletting the same saying that she was in requirement of finance. Admittedly, portion fallen vacant before filing the petition and during pendency of the petition have been relet at higher rent. She has also admitted that she has constructed two more rooms.*

16. *Requirement of the accommodation of the petitioner for herself and her family members has to be determined keeping in view her conduct. If her intention itself is not bona fide then it is needless to evaluate her requirement. If she admits letting and reletting of the premises before filing of the petition and during pendency of the petition it would be futile to calculate her requirement of additional accommodation. She also failed to prove the additional requirement of the accommodation. In view of the fact that she admitted letting and reletting of the premises time and again she also failed to prove her bona fide requirement of additional accommodation.....”*

4. Thus, with the aforesaid observations primarily in respect of the conduct of the petitioner-landlady in re-letting portions of her property which had been vacated by her other tenants the eviction petition came to be dismissed. Feeling aggrieved with the rejection of her eviction petition the petitioner-landlady filed this revision petition.

5. Before proceeding further it may be noticed here that the eviction petition was initially filed by the petitioner-landlady under Section 14-D of the Rent Act but subsequently Section 14(1)(e) was also added by seeking amendment in the eviction petition. The respondents had raised an objection that the petition under Section 14-D was not maintainable since the tenanted premises were admittedly let out to the deceased tenant Shri Mithan Lal by the erstwhile owner much prior to its purchase by the petitioner-landlady. This position was not disputed even by the learned counsel for the petitioner-landlady while arguing the present revision petition. So now what is required to be considered is whether the learned Controller had committed any illegality in finding the requirement of the petitioner-landlady in respect of the tenanted premises in occupation of the respondents to be not *bona fide*, as was contended on behalf of the petitioner-landlady before this Court by her counsel.

6. The undisputed position which emerges out from the pleadings of the parties before the trial Court as well as in the present revision petition, evidence adduced by the parties during the trial and also the submissions made at the Bar by the counsel for the parties before me is that when the two storeyed house no.4837, having fifteen rooms as per the petitioner's site plan available on record, was purchased by the petitioner in December, 1986 there were as many as nine tenants, including the petitioner-landlady herself. Other tenants as per the sale deed in favour of the petitioner herein were late Shri Mithan Lal, on

whose death the tenancy rights in respect of the tenanted premises comprising of three rooms and kitchen on the first floor and one store room(which as per the case of the petitioner-landlady was initially a bathroom but was converted into a store room by the respondents), on the ground floor were inherited by the respondents herein, Shri Sattee Ram, Shri Ram, Shri Khushi Ram, Shri Narain Das, Shri Harnam Singh, Shri Bal Singh and Shri Avtar Singh. At the time of purchase of house no.4837 by the petitioner only one room was lying vacant(which appears to be the room under the tenancy of the petitioner herself). The petitioner at that time was living alongwith her family in a three rooms in house no. 4834 Laddoo Ghati, Paharganj, New Delhi which was taken on rent by her deceased husband. Her family at that time comprised of two married sons, two daughters-in-law, four grand-children, one unmarried son and one unmarried daughter. In the year 1987, one of her tenants, namely, Bal Singh vacated four rooms under his tenancy and with that five rooms became available to the petitioner-landlady in her house no.4837 and she then shifted there with her one married son, his wife and their two children, unmarried son and daughter and her widowed daughter and her two children family. Her other married son Ashok Kumar continued to stay in house no.4834.

7. It is also not in dispute that the petitioner after shifting to her own house let out two rooms, which her tenant Bal Singh had vacated, to one Lekhu Ram sometime in the year 1990(which tenancy, as per

the case of the petitioner, was created since she was in need of money to repay the loan which she had taken to purchase house no.4837). The eviction petition against the respondents was filed by the petitioner-landlady in September, 1993 on the allegation that she required 12 rooms to accommodate her entire family including her son Ashok Kumar who was being forced by the landlord of house no.4834 to vacate the portion in his possession in that house and he himself was also wanting to stay with his mother(the petitioner herein) on whom he was dependent for residence, while she was having only three rooms in her possession(out of which one room was, as noticed already, was lying vacant at the time of purchase of house no.4837 by the petitioner and two rooms had become available to her when her tenant Bal Singh vacated four rooms under his tenancy while other two rooms had been re-let to Lekhu Ram). The unmarried son and daughter of the petitioner got married during the pendency of this litigation eviction. The petitioner's new tenant Lekhu Ram also vacated the two rooms under his tenancy during the pendency of the eviction petition. The petitioner got possession of one more room also during the pendency of the eviction petition from another tenant and so with that she got the accommodation of six rooms. One room which the respondents were claiming to have been vacated by another tenant Ms. Pammi but petitioner was claiming it to be still with Ms. Pammi also appears to have been vacated by Ms. Pammi since in the present petition the petitioner has not shown her name in the list of her tenants presently occupying different portions. Those names were

given by the petitioner in her reply to the respondents' application under Order 41 Rule 27 CPC filed by them to bring on record some subsequent development of more accommodation becoming available to the petitioner during the pendency of this petition and the petitioner re-letting those portions of her house to new tenants. Counsel for the petitioner did not claim before me that Ms. Pammi was still having one room with her. So, the petitioner had seven rooms with her.

8. Learned counsel for the petitioner-landlady had argued that the eviction petition could not be dismissed only on the ground that she had re-let two rooms in her house no.4837 after the same had been vacated by her earlier tenant Bal Singh and had re-let other rooms also after they had been vacated by other tenants. It was contended that re-letting of rooms was done as the petitioner-landlady required money to re-pay the loan which she had taken to purchase house no.4837. On the other hand, learned counsel for the respondents had contended that the conduct of the petitioner-landlady in letting out two rooms which had been vacated by her other tenant Bal Singh before the filing of the eviction petition instead of accommodating her family members there and then even during the pendency of the eviction petition her letting other portions also which were vacated by other tenants was sufficient to come to the conclusion that her requirement of the tenanted premises was not *bona fide* and had been rightly concluded so even by the learned Controller.

9. The petitioner in this revision petition itself has also admitted that some portions of her house which were vacated by earlier tenants were re-let to new tenants. So, now the question arises whether re-letting of portions of her property at higher rents after existing tenants had vacated the same during this ongoing litigation, even if that was done to enable the petitioner to have income for re-payment of loans though no evidence had been led by her to substantiate that plea, would disentitle her from getting an order of eviction. The answer to this question is available in a judgment of the Supreme Court in ***“Amarjit Singh v. Smt. Khatoon Quamarian”***; (1986)4SCC736 wherein also a similar controversy had arisen regarding the conduct of the landlord in re-letting some part of his property after getting it vacated from another tenant. In that case also a plea was raised on behalf of the landlord that the re-letting was done to have more income which was needed by the landlord and there was nothing wrong in that which could cast any doubt about the *bona fides* of the landlord’s requirement of the premises in question in respect of which eviction order was being sought. The Supreme Court, however, did not accept that argument on behalf of the landlord and it was held that because of the landlord re-letting some accommodation which had become available for claiming eviction of another tenant he became disentitled. In the following paragraphs from the said judgment of the Supreme Court the submissions made on behalf of the landlord and the findings of the Supreme Court are to be found:

“17. Shri Shankar Ghosh, learned Counsel appearing for the appellant, contended before us that in this case the landlady had reasonably suitable accommodation thrice or if not thrice at least twice when tenant left during the pendency of the proceeding for eviction but she chose in view of the facts mentioned hereinbefore not to go into that possession but let out the same to fetch higher income. Therefore, taking the facts into question which indubitably could be taken into account, it cannot be said that the landlady had no other reasonably suitable accommodation, having regard to the size of her family and her need. Therefore the second limb was not satisfied. There is no dispute and Shri S.N. Kacker for the respondent did not dispute that subsequent events if they are relevant could be taken account of cautiously. But he contended as mentioned hereinbefore that the landlady the owner of a house, has to live. He further urged that there was a distinction between self-induced disentitlement and disentitlement forced by surrounding circumstances. He submitted in this case the landlady had to live and for this by the surrounding circumstances, she was forced to let out the floor which fell vacant. It is irrelevant whether it fell vacant once, twice or thrice but it indisputably fell vacant during the proceedings and she chose not to occupy the same. Better exploitation of the house or the premises in possession of the landlady or landlord was not impermissible. He drew our attention to Article [300A](#) of the Constitution and urged that the Constitution provided that no person should be deprived of the property save by authority of law. Therefore, according to Shri Kacker, the landlady had to live and had a right of property in the rental income. The logic of the argument of Shri Kacker is attractive, but the legality of the said submission is unsustainable. Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack renting but restrictive so far as the landlord's right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitual that right the landlord must seek elsewhere.

18. Our attention was drawn to the decision in the case of Bishambhar Dayal Chandra Mohan and Ors. etc. etc. v. [State of Uttar Pradesh and Ors. etc. etc.](#) : [1982]ISCR1137 and our attention was drawn to the observations at pages 66 and 67 of the said case in aid of the submission that right to property is still a constitutional right and therefore in exercise of that right if a landlord or an owner of a house lets out a premises in question there was nothing wrong. Shri Kacker submitted that the second limb of Section [14\(l\)\(e\)](#) of the Act should be

read in such a way that it was in consonance with Article [14](#) and Article [21](#) of the Constitution. Otherwise it would be void as being unconstitutional. As a general proposition of law this is acceptable.

19. We are unable to accept the submissions of Shri Kacker in the way he urged us to read the second limb of Section [14\(l\)\(e\)](#) of the Act.

20. The Act in question is the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section [14\(l\)\(e\)](#) of the Act read in the manner contended for by the appellant. Article [21](#) is not violated so far as the landlord is concerned. The rent restricting acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem of rack renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bonafide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article [14](#) or Article [21](#) of the Constitution.

21. Shri Kacker submitted that this Section should to read literally and we should ask ourselves the question today whether can it be said that the landlady had reasonably suitable other accommdation. We are unable to read it in that sense. If the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disintitled herself to that property by letting it out for higher income, she would be disintitled to evict her tenant on ground of her need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation.

(emphasis supplied)

10. The facts of the present case are similar to the facts of the said case decided by the Supreme Court. In the present case, as noticed already, when the petitioner – landlady had purchased house No. 4837 there were eight tenants. However, in the present petition the petitioner – landlady herself had claimed that all those tenants had vacated the portions under their tenancies and now there were three new tenants in addition to the present respondents. The eviction petition was filed on the allegation that the tenanted premises in occupation of the respondents comprising of three rooms was required by the petitioner – landlady. When more than three rooms occupied by other tenants became available to her she should have occupied those rooms instead of re-letting the same and if she had done that then, of course, her plea that her actual requirement was of 12 rooms would have been considered to be *bona fide*. Re-letting of the rooms vacated by the existing tenants shows that the petitioner – landlady was only interested in higher rents and not additional accommodation. In these circumstances, this Court is also of the view that learned Controller was right in coming to the conclusion that the conduct of the petitioner – landlady in letting different parts of her property vacated by other tenants at higher rents during the pendency of the present litigation and also prior thereto showed that her requirement of the tenanted premises was not really *bona fide* and consequently she was not entitled to have the respondents evicted from the portion in their occupation even if she required twelve rooms.

11. I, therefore, do not find any illegality committed by the learned Additional Rent Controller in dismissing the eviction petition of the petitioner – landlady. This revision petition is, therefore, dismissed.

P.K. BHASIN,J

April 9, 2012