

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

% **C.R.P. 796/2003**

+ **Date of Decision: 27th February, 2012**

ANIL KUMAR SHARMA Petitioner

! Through: Mr. S.P. Pandey, Ms. Rashmi Pandey &
Mr. Raghav Pandey, Advocates

Versus

\$ **RAM KISHAN DASS**
(being represented through his LRs)

... ..Respondent

Through: Mr. A. Mirza, Advocate

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

ORDER

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-landlord against the order dated 09.05.2003 passed by the learned Additional Rent Controller dismissing the eviction petition filed by him against his tenant Ram Kishan Das, who died during the pendency this petition and is now being represented by his widow and one son, under Section 14(1)(e) read with Section 25-B of the Rent

Act of in respect of a part of property bearing no. 3179, Ward no. IX, Lal Darwaza, Bazar Sita Ram, Delhi (hereinafter to be referred to as 'the tenanted premises').

2. Briefly stated, the relevant facts of the case which have emerged to be the admitted facts from the pleadings and the evidence adduced by the parties before the trial Court some of which even the Additional Rent Controller has found to be proved, are that the petitioner is the owner of three storeyed property bearing no. 3179, Ward no. IX, Lal Darwaza, Bazar Sita Ram, Delhi. He had purchased this property from its erstwhile owner in the year 1986 when the entire property was in occupation of different tenants, including late Shri Ram Kishan Das who was let out two rooms and common WC on the ground floor. Father of the petitioner-landlord Shri Ganga Parshad was also a tenant in respect of one baithak on the ground floor and one room on the first floor and he was carrying on his business there in the name of Sharma Industries. Shri Yad Ram was a tenant in one room on the second floor and one Shri Bril Mohan Bansal was a tenant in one room and one store room on the first floor. The petitioner-landlord had filed the eviction petition against the deceased tenant Shri Ram

Kishan Das in the year 1993 on the ground that he required the premises under his tenancy, which were being used for residential purpose, for his own residence as he was living with his parents in a house which belonged to his mother. He wanted to shift to his own house along with his wife and one daughter (Subsequently, as stated during the course of hearing by the counsel for the petitioner and not disputed by the other side, the petitioner's wife gave birth to two more girls also).

3. The deceased respondent-tenant had contested the eviction petition after he was granted leave to contest it. A written statement, which was really argumentative, was filed by him. Regarding the *bona fide* requirement of the petitioner-landlord as pleaded in the eviction petition he pleaded that the petitioner had all along been living with his parents in property no. 3178 and then on acquisition of property no. 3258 he was staying in that property as a member of Joint Hindu Family which comprised of his father, mother, younger brother and two sisters and that property no. 3258 was a five storeyed house having 18 rooms and thus the need for the tenanted premises was not *bona fide* at all. The respondent further pleaded that one baithak on

the entire ground floor was in the possession of the petitioner-landlord where he was running a 'kaarkhana' and first and second floors of the property of which the tenanted premises formed a part, were also in possession of the petitioner-landlord and which fact he had not disclosed. It was also pleaded that the petitioner had come out with a false story(in his reply to the leave to defend application) that one room on the first floor which was earlier in the occupation of one Mr. Brij Mohan Bansal was got vacated by the petitioner-landlord on 22-10-1991 and then re-let to one Mr. Ravi Shankar Rastogi on 11-12-1991 as he was unmarried at that time and so did not require accommodation in his own property no. 3179, while in fact there was no tenant on the first floor and that was only cooked up story since if that was true he would not have let out the room to so called tenant Rastogi just a few months before his marriage. It was also pleaded that the *mala fides* of the petitioner-landlord in filing the eviction petition were also clear from the fact that his father had filed a case of eviction in 1994 against one of his tenants in his another property on the ground of *bona fide* requirement of the tenanted premises for his family which included the petitioner herein also and that showed that

when the present petition was filed the petitioner really did not require the tenanted premises and he always wanted to stay together with his parents.

4. The learned Additional Rent Court after trial held that the petitioner did not require the tenanted premises. The relevant paras of the impugned order dated 09.05.2003 where the requirement of the petitioner-landlord in respect of the tenanted premises was dealt with and not accepted to be *bona fide* rejected are re-produced below for proper appreciation of the rival contentions of the parties:-

“16. BONAFIDE REQUIREMENT: Ld. Cl. for the petitioner submitted that petitioner is the owner of this property. He does not own any other property. He is residing as a licensee in property No. 3258, Lal Darwaza, Bazar Sita Ram. Relationship between the wife of the petitioner and mother of the petitioner are not cordial as mother of the petitioner asked the wife of the petitioner to prepare meals.....

17. Ld. Cl. For the respondent submitted that petitioner has not come to the Court with clean hands. There was one earlier litigation filed by Ganga Pd. against Sh. Ram Niwas on the ground of bona fide requirement itself. Copy of that petition is proved on record as Ex.RW 1/1. In para 18(1) of that petition petitioner has requested for eviction order for himself and his family members and the family of the petitioner which he alleged is his wife, one married son, his wife and a grand daughter, another unmarried son around 20 yrs: two unmarried daughters aged 22 yrs. and 18 yrs. approximately. This eviction petition was filed on 28.1.94. In that petition Ganga Pd. is claiming that he intend to shift his married son i.e. the petr. herein to H.No. 3277 and i.e. why he require it..... In that eviction petition judgment was passed on 8.12.97..... petitioner had got the eviction order with respect to one room, two kotha, kitchen, toilet, court yard and Chajja of first

floor has satisfied the requirement, if any of the married son of Ganga Pd. i.e. the petitioner herein for whose benefit that petition was filed but surprisingly even before the filing of that petition petitioner have filed this present petition claiming that he is not having good relations with his parents whereas parents are so concerned that they have already filed an eviction petition for the benefit of the petr. herein only. This itself shows the malafide of the petr. Ld. Cl. further submitted that besides that in this building itself petitioner is in possession of first floor, second floor and also one Baithak on the ground floor. It is now alleged that Sharma Industries is doing business from this building from one room on the first floor and Baithak on the ground floor. It has come in the eviction of Ganga Pd. In the earlier eviction petition that Sharma Industries is doing business from 3278, Lal Darwaza, Sita Ram Bazar and its godown is situation in H.No. 3270 and not in this building. This observation has also been made by Ld. A.R.C. while passing eviction order proved on record as Ex.RW1/13 in para 13 on page 12. Ld. Cl. submitted that meaning thereby that Sharma Industries is not having anything in this building. The story is concocted one and is a bundle of lies. Petitioner also alleges that there is one more tenant in this bldg. of one room on the first floor and he is Brij Mohan but no such evidence has been brought on record. Brij Mohan was infact there but he has vacated that room in 1991. Ld. Cl. submitted that according to the evidence room 'X' is now in possession of Ravi Shanker Rastogi but admittedly Ravi Shanker Rastogi is residing with his father on the second floor in Gali Shish Mahal..... Ld. Cl. submitted that if he was already residing as a Licensee and was in need of the premises he should not have let out the premises and that also only to his friend. There is no record of any rent deed or rent receipt issued in favour of Ravi Shanker Rastogi. The second floor room is also lying vacant and none has occupied it, petitioner has not shifted there.....Ld. Cl. submitted that all these facts clearly shows that requirement of the petr. is not bona fide but infact the present petition is moved with malafide intention to get it vacated and convert it into commercial establishment.

18. After hearing the arguments and perusing the record it is clear that Ganga Pd., father of the petitioner moved an eviction petition No. 12/94 on 28.1.94 and there he asked for eviction of Ram Niwas and others on the ground that he require the premises forming part of H.No. 3277, as he intends to shift his married son (petitioner herein) to the tenanted house or in the alternate make some arrangement for the accommodation of the family members. When Sh. Ganga Pd. appeared in the witness box as AW.1 in his

examination in chief dtd. 28.11.94 proved on record as Ex.RW 1/4 he stated

“that the premises is required bona fide by me for occupation as residence for myself and members of my family dependent upon me. I have no other reasonably suitable accommodation for myself.”

and the family members which he deposed were he himself, his wife, one married son, the petitioner herein, his wife and a grand child, one unmarried son, one unmarried daughter and one married daughter. This witness has further stated during cross-examination dtd. 21.2.95 that

“first floor of the property no. 3270 situated at Lal Darwaza, Sita Ram Bazar, Delhi is in my tenancy for godown purposes. I store my factory material in the said godown. I am running my factory under the name of Sharma Industries India at 3278, Lal Darwaza, Bazar Sita Ram Delhi. My godown in H.No. 3270 is not registered.”

Whereas when AW.1 in the present case appeared he stated that

“the Baithak on the ground floor and one room on the first floor is in possession of Sharma Industries being run by the father of the petr. herein.”

No such document has been placed on record. Admittedly factory of Sharma Industries is being run from 3278 and the godown is at 3270 then I fail to understand for which purpose Sharma Industries is in this building. Furthermore, Sh. Ganga Pd. in the eviction petition No. 12/94 got the eviction order on 8.12.97 as the premises was required by him for shifting the present petr. that accommodation meaning thereby that the requirement, if any, of the petitioner has been satisfied after that order but petitioner even then continued with the present petition. The petitioner has also got possession of one room in this bldg. in December, 1991 and was already in possession of one kitchen but he did not possess the same reason is obvious that he, as alleged by the respondent, was living with his parents in more palacious and good accommodation. He rented out that room to Ravi Shanker Rastogi as alleged by him though no such evidence has been brought on record. He has infact not disclosed about another room which was in his possession but when respdt. came up with the visiting card of the petr. then he admitted that one kitchen is in his possession in this property. So far as other room, as shown in Ex.PX Mark Z.1,

Z.2 are concerned those are also in possession of the petr. as is evident from the testimony of Ganga Pd. and the other circumstances but the petr. has not occupied the same. No doubt in the sale deed it is mentioned that this portion is under the tenancy of Sharma Industries but these facts were there in 1986. Since then much water has gone down the river and the circumstances now disclose that petitioner is in possession thereof. All these discussion, in my opinion shows that petitioner does not require the premises bona fide.”

5. Feeling aggrieved by the judgment of the learned Additional Rent Controller, the petitioner-landlord filed the present revision petition. The learned counsel of the petitioner-landlord argued that the petitioner-landlord has five members in his family which consists of himself, his wife and three daughters, two of whom were born during the pendency of this litigation. It was also submitted on behalf of the petitioner that he is entitled to live in his own house and that right cannot be denied to him by the tenant by telling him to stay with his parents. In this regard reliance was placed on some Supreme Court judgments reported as 2000 (1) SCC 679, (1998) 8 SCC 119 and (1996) 5 SCC 353 according to which judgments the landlord is the best judge of his requirements and he has got complete freedom in the matter.

6. Learned counsel for the deceased respondent-tenant, on the other hand, supported the impugned judgment.

7. After having gone through the impugned order and considering the submissions made by counsel of both the parties I have come to the conclusion that the order passed by learned Controller dismissing the eviction petition of the petitioner-landlord is not in accordance with law. From the judgment of the trial Court it is clear that it has rejected the case of the petitioner-landlord mainly relying upon the judgment passed in the eviction petition filed by his father against his tenant in his own house and the evidence given by his father in that case and highlighting the contradictions in the evidence of his father in that case and that of the petitioner herein in the present case. That, in my view, was not permissible in law and not a correct approach to have been adopted by the trial Court. On whatever grounds the petitioner's father had filed the eviction case against his own tenant in his own property those grounds could not have bound the petitioner herein particularly when that eviction case was filed after the filing of this case by the petitioner. It could be open to the tenant in that case to contend that his landlord's requirement was not *bonafide* as his son for whose residence he was being sought to be evicted was wanting to stay in his own house i.e. the tenanted premises in this case and the

respondent-tenant here could not take any advantage from the filing of the eviction petition against his tenant. Similarly what the petitioner's father had claimed in his evidence in his own case could not be used against the petitioner by referring to the contents of the judgment passed in that case in which case the petitioner herein was not a party and not even a witness. Based on that judgment, it could not be said that the petitioner's father was not doing his business on the ground floor baithak and one room on the first floor of the property in question particularly when the trial Court has itself observed in the judgment that in the baithak on the ground floor 'kaarkhana' was being run. I am also of the view that even if petitioner's father had claimed in his own case that he was doing his business in property nos. 3270 and 3278 as noticed by the trial Court in its judgment, that would not show that he had vacated the room and the baithak in the petitioner's property after he had purchased it. Similarly just because the petitioner's father had got an eviction order against his tenant the petitioner's claim here could be rejected on the ground that his requirement had ceased to exist with the passing of the eviction order in another case filed by his father against his tenant. The petitioner can very well decide to live in

his own house and not to continue to stay with his parents and the tenant cannot tell him to stay with his parents. This view is fully supported by the Supreme Court judgments cited by the counsel for the petitioner (*supra*).

9. I am also of the view that even if it is accepted that one room on the first floor and one room on the second floor were with the petitioner-landlord that would not make his requirement of the tenanted premises to be not *bona fide* considering his family strength. In any case a landlord has the right to stay on the ground floor in preference to the first and second floors which is normally a barsaati floor.

10. Therefore, I am of the view that this revision petition deserves to be allowed. The impugned order dated 09.05.2003 passed by the learned Additional Rent Controller is set aside. The legal heirs of the deceased tenant are directed to vacate the tenanted premises. Six months time is granted to them to vacate the same.

P.K. BHASIN,J

February 27, 2012