

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

% C.R.P.NO. 700/2001

+ Date of Decision: 26th March, 2012

SABRA BEGUM & ORS. Petitioners
Through: Mr. B.P. Dhalla, Advocate

Versus

\$ MOHD. RAFI Respondent
Through: Mr. S.H. Nizami, Advocate

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

JUDGMENT

P.K.BHASIN, J:

This revision petition has been filed by the legal heirs of the deceased tenant Sh. Kifayat Ali against the order dated 07.12.2000 passed by the learned Additional Rent Controller(‘the Controller’ in short) allowing the eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act,1958(‘the Rent Act’) by the respondent-landlord against the deceased tenant in respect of premises no. 627, Ward no.VII, Gali Masjid Fakhrulla Beg, Farash Khana , Delhi(hereinafter referred to as ‘the tenanted premises’).

2. The respondent-landlord had filed the eviction petition on the ground that tenanted premises were required by him for residential purposes for himself and his family comprising of his wife, one

married son and his wife and six children, five unmarried sons and three unmarried daughters. They were all residing in respondent-landlord's brother's house no. 618, Gali Masjid Fakhruallah Beg, Farash Khana, Delhi.

3. The relevant facts which emerge out of the pleadings of the parties during the trial as well as in the present petition, evidence adduced by the parties during the trial, the impugned order of the Controller are that respondent-landlord's parents had died leaving behind some properties in old Delhi and those properties were partitioned amongst the respondent-landlord and his brothers and sisters. The property which fell to the share of the respondent-landlord was in Gali Masjid Fakhruallah Beg, Farash Khana, Delhi which was having two floors out of which ground floor portion and one room of the first floor was having municipal no. 617 and the remaining portion on the first floor was given the number 626. The property no.618 also in Gali Masjid Fakhruallah Beg, Farash Khana, Delhi where the respondent-landlord alongwith his family was living at the time of filing of the eviction petition in the year 1992 had fallen to the share of his brother Mohd. Ahmad with whose permission they have been living there in one room accommodation. In some part of the house no. 617-626 falling to the share of the respondent-landlord there were tenants out of whom one Mohd. Yaqoob had handed over the possession of one room with him after eviction order had been passed against him and against another tenant of one room Batool Begum also eviction order had been passed but possession had not been given

by her and execution proceedings were pending. In one room in the portion bearing no. 626 his widowed sister Shahzadi Begum was staying, though in the partition she had got property no.628. Property no.627, of which a portion was let out to the deceased tenant was, however, purchased by the respondent-landlord from its erstwhile owner Abdul Rehman through a proper sale deed copy of which was produced and proved by him during the trial as Ex. AW-1/1.

4. The respondent-landlord had sought eviction of the deceased tenant on the ground that it was required *bona fide* since he was living in the house of his brother in one room with his big family. The deceased tenant had contested the eviction petition after obtaining leave from the Controller as was required to be obtained by him under Section 25-B(4) of the Rent Act. In his written statement he had claimed that the respondent was in the habit of letting and re-letting his properties to have higher rents and also that he already had sufficient accommodation but he was using the same for commercial purposes. He further pleaded that the respondent-landlord had got one tenant Mohd. Yaqoob evicted from his house no. 617 and had re-let the same to that tenant's son Mohsin. Similarly property no. 626 was got vacated from his other tenant Fazal and then was let out to his own son Mohd. Naqi, who was using it for commercial purpose. Respondent-landlord had also got possession of one portion of property no. 627 from another tenant Mohd. Khalil and given it to his another son Mohd. Ashim and landlord's another son Mohd. Zaffar was residing in another portion of the house and using it as residential-

cum-commercial purposes. Another plea taken was that the sons of the respondent-landlord were independent and were not dependent on him even for residence. His sister was living in the house of the respondent-landlord not because she was dependent on him but only to make it a case of paucity of accommodation with the landlord. It was also pleaded that that entire area has been extensively commercialized and that the landlord was also thinking of getting his properties vacated from all his tenants and converting them all into commercial one and that the landlord has no paucity of place as he has a house in Model Town also along with the house no. 618, 617 and his share in 627 and one of his tenants has expired leaving that entire portion vacant and also that his widowed sister has joined hands with him and can vacate the premises in her possession as and when she likes. He pleaded that all the family members of the landlord were independent and had independent jobs and were independently residing in the portions which had been vacated by other tenants.

5. The respondent-landlord filed his replication to the written statement of the deceased tenant and had reiterated that he had a genuine requirement of the tenanted premises. In respect of the allegation that after getting the room vacated from tenant Mohd. Yaqoob he had re-let the same to that tenant's children his stand was that Mohd. Yaqoob had vacated only one room and rest of the tenanted portion was still with his grand-children who had not vacated the same.

6. At the final stage of the trial the tenant Kifayat Ali had died and his legal heirs were brought on record. The Controller allowed the eviction petition vide impugned order in which the relevant contentions raised from both the sides were dealt with as under:-

“14..... It is admitted by the respdt. that he(reference here is to the landlord) is residing at the top floor of property No. 618 and there is only one room on the top floor of property No. 618 where the petitioner resides. It is further admitted that Mohd. Yaqoob who according to respondent has vacated the premises has vacated only one room in property No. 617 and the same is now in possession of the son of the petitioner.....So far as the family members of the petitioner are concerned that have never been disputed by the respondent.....

15. Ld. Cl. for the respdt. argued.....there were five more tenants in the premises besides Kifayat Ali now represented by his LRs and they were Mohd. Salim, Mohd. Mobin, Mohd. Mustkin, Mohd. Swalin and Mohd. Sadiq. Mohd. Salim was inducted as a tenant in 1977, Mobin who is brother of Salim was also inducted as tenant in 1995-96 and Mohd. Mustkin was inducted as tenant in 1997, Mohd. Sadiq was inducted as a tenant about 10 yrs. ago before Mohd. Salim and Mohd. Mobin were inducted as tenant.....This clearly shows that petitioner is not in bona fide requirement of the premises in dispute. If the petitioner would have been in bona fide requirement of the premises he would not have let out these premises in 1997 and 1995.....

16.....So far as the question of ownership is concerned petitioner has placed on record the Sale Deed Ex. AW1/I which shows that he has purchased the property from Abdul Rehman. The respondent has not disputed the same.....Now the only question is whether the requirement of the petr. is bona fide or not. Admitted facts are that petr. is now residing in property No. 618 and that also in one room as admitted by the respondent himself in his cross-examination.....It is also admitted that entire house bearing No. 627 is in the possession of the tenants and out of premises no. 617 and 626 some portion is under the possession of the tenants which is admitted by the respondent himself thus corroborating the testimony of the petitioner. The main question now arises is whether the petitioner has let out any property to Mohd. Swalin in 1995 and 1996 and to Mohd. Salim and Mohd. Mobin in 1997. The respondent has placed on record the receipts but there is no such evidence on record that these tenants were

inducted in 1997 or 1995 and according to the petr. so far as Mohd. Saleem and Mohd. Mobin are concerned they are grand sons of Mohd. Yaqoob who was tenant in the property and after his death they continued to live in the same premises and the respondent has not denied this suggestion. So far as Mohd. Swallen is concerned he was tenant about 15 yrs. ago according to the petr. and respondent himself has stated that there were five more tenants in the property besides his father i.e. Mohd. Salim, Mohd. Mobin, Mohd. Mustkin, Mohd. Swallen and Mohd. Sadiq. Petitioner in his petition filed on 17.03.92 has mentioned that Mohd. Swalin is a tenant which clearly shows that Mohd. Swalin was not inducted as tenant in 1995 as alleged by respondent and the stand taken by petitioner is correct. The onus was on the respondent to show that petr. has recently inducted any tenant in the premises or during the pendency of suit but no such evidence has been brought on record.....

17. So far as the bona fide requirement is concerned, as discussed above the family members are not disputed by the respdt. He only submitted that they are financially independent but that does not establish that they are also residentially independent and are not dependent for that purpose on the petitioner. admittedly, 5 sons of the petr. are still unmarried and three daughters are still unmarried. They naturally are dependent for the residence purpose on the petitioner. At present petitioner himself is also residing as a licensee in one room in property No. 618 thus petitioner also requires one room. As discussed above, genuine requirement of the petitioner is seven rooms, i.e. one room for the petr., two rooms for his married son, two rooms for his unmarried sons, one room for his unmarried daughters and one room for his married daughter and at present he is forced to live in single room that also on the top floor. Thus, in my opinion the requirement of the petitioner is genuine and bona fide.....”

7. Aggrieved by the impugned order of the Controller the petitioners had filed this revision petition.

8. The learned counsel for the petitioners argued that the landlord-respondent never required the tenanted premises since he already had with him alternative accommodation and this fact had been overlooked by the learned Controller. It was also argued by the

learned counsel on behalf of the petitioners that the family members of the landlord are all independent. It was also pointed out that in the counter affidavit of the respondent-landlord he had himself admitted that he had obtained possession of two rooms from other tenants including Batool Begum's legal heirs after her death and had accommodated his two sons there. It was also contended that the respondent had also now taken back two rooms from his sister Shahzadi Begum after she had shifted to her own house no.628. This fact was pleaded in para no.8 of the revision petition also.

9. Learned counsel for the respondent-landlord on the other hand fully supported the order of the Controller and submitted that the eviction order had been rightly passed against the legal heirs of the deceased tenant. It was also contended that the respondent has himself placed on record certified copies of two judgments of the Rent Controller passed in two separate eviction petitions filed by the respondent against his other two tenants and in those judgments it had been held that considering the large size of the family of the respondent-landlord his requirement was of fifteen rooms and so even after the number of rooms which according to the petitioner he had got back from other tenants and also from his sister is accepted, the requirement of the landlord still was not satisfied and the tenanted premises would still be required *bona fide*.

10. After having given my due consideration to the rival submissions and going through the record of the Controller I find that there is no merit in this revision petition. The learned Controller has

committed no illegality justifying interference by this Court in exercise of its limited revisional jurisdiction under section 25(8) of the Rent Act. The petitioners have not been able to point out any illegality in the impugned order. Considering the large size of the family of the respondent – landlord the rooms which even the petitioners are claiming to be in their possession in different properties will not meet the requirement of the respondent – landlord. I am in full agreement with the submission of the learned counsel for the respondent – landlord that when even in another eviction case against some other tenant of the respondent – landlord it has been held that the minimum number of rooms required by the respondent – landlord was 15. This petition has to be dismissed for that reason also since the number of rooms available with him is much less than that and so the requirement of the room in possession of the petitioners herein was clearly a *bona fide* requirement. Consequently, no interference in the impugned order of the Controller is called for. This revision petition is dismissed accordingly.

P.K. BHASIN,J

March 26, 2012