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THE HIGH COURT OF DELHI AT NEW DELHI

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R.C.REV. 161/2012

Date of Decision: 22.08.2012

ANIL KUMAR

..... Petitioner

Through: Mr. Rajiv Bakshi, Adv. with
Mr. Shekhar Prasad Gupta, Adv.

Versus

LT. COL. GURINDER SINGH (RETD.) & ORS.

..... Respondents

Through: Ms. Anju Lal, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25B(8) of the Delhi Rent Control Act (for short the 'Act') is directed against the order dated 21.11.2011 of Addl. Rent Controller-Central (ARC) whereby the leave to defend application filed by the petitioner herein, who was the tenant under the respondents, was dismissed.

2. The petitioner is the tenant in respect of two rooms, one verandah, one Kitchen and one bathroom on the first floor of premises bearing No. 1800-1802, Ward No. XIII, Wazir Singh Street, Chuna Mandi, Paharganj, New Delhi. His eviction was sought on the ground of bona fide requirement of the tenanted premises by the respondent No. 1/landlord for residence of himself and family members dependent upon

him. The landlord and his family was stated to be staying in a rented accommodation at Gurgaon. The landlord is a retired Lieutenant Colonel from Indian Armed Forces. His family consists of self, his wife and two children. It was averred that he, along with his family intends to settle permanently in Delhi where he can take re-employment in some job. It was averred that on the second floor in the suit premises, they are in possession of two tin roofed rooms, which cannot be used as bed rooms and two other rooms, wherein he has kept his surplus baggage after retirement from the Army, and these also being of small size cannot be used as regular rooms. His brother i.e. respondent No. 3/Captain Gurneesh Singh as also his daughter Dr. Mona (respondent No.4) are doctors and posted at Gwalior and Hisar respectively. The tenanted premise was also required for their residence on their visits.

3. The petitioner sought leave to defend disputing the ownership of the tenanted premises and also the projected need of the tenanted premises by the respondents. It was alleged that the respondents are the owners of Gurgaon house and that the present accommodation with them in the suit premises comprised of 17 rooms in that, four rooms' set is in their possession on the second floor and three rooms' set on the first floor. The alleged tin roofed rooms are stated to be *pacca* rooms fit for residential use. The site plan filed by the respondents was also alleged to be incorrect.

4. In reply, the respondents denied to be the owners of Gurgaon house or that they were in possession of three rooms' set on the first floor and four rooms on the second floor, as alleged. Entire first floor

was stated to be in possession of the petitioner and another tenant B.M.Gupta. The petitioner filed yet another rejoinder stating that in May, 2011, D.P.Mohan, who was the tenant in the two rooms' accommodation on the ground floor has expired and the possession of the said accommodation was being taken by the respondents and in this way, they are in possession of 9 rooms with Kitchen etc. including 4 *pacca* rooms on the second floor, three rooms on the first floor and two rooms on the ground floor of the suit premises, and that this accommodation was sufficient for the requirements of the respondents.

5. The learned ARC elaborately dealt with all the pleas taken by the petitioner/tenant in leave to defend application and also the responses of the respondents. He held the respondents to be the owners/landlords of the rented premises and that there was nothing on record to substantiate that they are the owners of the Gurgaon property. He held that in any case, the respondents have made out their case of bona fide requirement of the tenanted premises for their residence in Delhi. Learned ARC consequently declined leave to defend and passed eviction order.

6. I have heard learned counsel for the petitioner and also the respondents. The submissions which were made by the learned counsel for the petitioner/tenant are the same which were raised before the ARC i.e. that the petitioner/tenant has raised triable issues in disputing the respondents to be the owners/landlords of the suit premises or that their requirement of the tenanted premises was bona fide.

7. With regard to the plea regarding ownership of the suit premises of the respondents, it may be noted that the petitioner/tenant had admitted that Late Sh. Harnam Singh, grandfather of respondents No. 1, 3 and 4 had let out the tenanted premises to Sh. Ruliaram, grandfather of the petitioner. The petitioner also admitted that Sh. Pritpal Singh, son of Late Sh. Gurdev Singh i.e. uncle of the respondent No. 1, 3 and 4 informed him that Smt. Savitri Devi (respondent No. 2) had become the landlady of the tenanted premises by virtue of compromise arrived at between the parties in Civil Suit No. 97/07 titled as ‘Savitri Devi Vs. Pritpal Singh’. The learned ARC has taken note of the fact that from the certified copy of the order dated 15.1.2008 in Suit No. 97/07 along with the certified copies of the site plan, it was evident that the tenanted premises shown in the green colour in the site plan fell in the share of the respondents. It is also admitted case that thereafter, the petitioner started sending rent to Savitri Devi (respondent No. 2). It is settled legal proposition that in a case of eviction on the ground of bona fide requirement, the landlord is not required to prove the absolute ownership which may be required to be proved under Transfer of Property Act. The concept of absolute ownership in the case of eviction of a tenant is unknown to this law of eviction.

8. In **Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450**, a bench of this Court while dealing with a similar objection and on the concept of ownership in proceedings under Section 14 (1)(e) of the Act had noted thus:

"It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly."

9. In any case, as noted above, the petitioner himself has admitted his predecessor-in-interest to be the tenant under the predecessor-in-interest of the respondents and he himself had been paying rent to Savitri Devi (respondent No. 2) after he received information from Pritpal Singh about the tenanted premises having fallen in the share of this respondent. From the above, it is seen that the objections regarding the ownership of the respondents in the suit premises as also they disputing them the landlords qua the tenanted premises, have been taken only for the sake of objection. These have no substance and are rejected.

10. With regard to the petitioner's plea regarding the respondents to be having their house at Gurgaon and settled there, the later have specifically denied to be the owner of the said property at Gurgaon. This plea is also without any substance in view of its specific denial and

there being nothing on record to challenge that. The learned ARC observed and rightly so that even otherwise, if it is assumed that the respondents are the owners of the property at Gurgaon, their intention to come and settle in Delhi in their own property in the given circumstances, was not doubtful or unbelievable. The respondent No. 1 is undisputedly the retired Lt. Col. from the Indian Army and is a highly qualified engineer. He intends to settle in Delhi for his gainful employment. It is common knowledge that in the present day life, one usually tries to get re-employment even after the retirement, which may not be only for economic gains, but for various other considerations and the paramount of them is to keep oneself busy for maintaining good health. This is moreso in the case of retired army personnel. During the course of arguments, it was submitted by the learned counsel for the respondents/landlord that the respondent No. 1 Lt. Col. Gurinder Singh has taken employment in Greater Noida and was daily commuting there from Gurgaon. This was not controverted by the learned counsel appearing for the petitioner/tenant. One has to take pragmatic and practical aspect of the prevailing circumstances and the court cannot and should not permit the tenant to dispute the capability and intention of the landlord to take some job after retirement. In ***Jamshed Frenchman (Dead) by LRs Vs. Sardar Dastur Schools Trust and Others***, II (2005) SLT 576, the Apex Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. This is also settled legal proposition that the landlord is the best judge of his requirement and the tenant cannot dictate him as to

what should he do and how or as to where he should live or not. In *Siddalingamma & Anr. Vs. Mamtha Shenoy (2001) 8 SCC 431*, the Hon'ble Supreme Court while considering the reasonable and bona fide requirement of landlord, held that the question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record, the need to occupy the premises can be said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide.

11. The petitioner/tenant had contended that there are five rooms on the ground floor out of which three are in possession of tenant D.P.Mohan and two with tenant Aggarwal. It was also his contention that there are three rooms along with kitchen, bathroom on the first floor which are lying vacant and in occupation of the landlords. It was also his contention that on the second floor, landlord had eight rooms, out of which, four rooms are occupied by them and remaining four rooms are with the tenants Anil Aggarwal and Ashok.

12. The learned ARC has dealt with these contentions of the petitioner/tenant and also the factual situation as presented by the respondents/landlords as regard to the availability of the accommodation in their possession in the suit premises. He has noted that in the site plan which was filed in Civil Suit No. 97/07 and to which, there was no dispute, it was shown that after excluding the portion of the tenanted premises with the petitioner, there is only one room, one verandah and store, kitchen and bathroom on the first floor. The respondents' plea with regard to this accommodation was that this was with the tenant Brij

Mohan Gupta. This was not in dispute that Brij Mohan Gupta was in occupation of the aforesaid portion on the first floor and thus, there was no accommodation available with the respondents on the first floor. The learned ARC has also noted that the measurements of the tin roofed rooms are 8' X 6'6" and 8 X 11' and that of the other room on the second floor is 8' X 7'6". He has recorded and rightly so that the measurements of these rooms being less than 100 sq. ft, these cannot be considered as proper living rooms and no law can compel a landlord or his family to huddle in small accommodation for the sake of the tenant. With regard to the ground floor, the plea that the tenant D.P.Mohan has expired and the landlords are likely to take possession of this portion, is another plea having no merit. During the course of arguments, it was submitted on behalf of the respondents that after the death of D.P.Mohan, his legal heirs are in occupation of the said portion of his tenancy. This was not refuted by the learned counsel for the petitioner/tenant. It was not the petitioner's case that the landlords have already taken possession of the accommodation in occupation of late D.P.Mohan. Even in the case of a death of a tenant, taking of the possession by the landlord is not as easy as is sought to be presented. There may or may not be inheritance of tenancy by the heirs of deceased tenant, but there may be invisible hurdles in taking the possession. What is to be seen is the extent of present accommodation available with the landlords and not as to what would happen in future. By any means, the petitioner/tenant has not been able to demonstrate the respondents/landlords to be in possession of alleged accommodation on

the second floor and which also, as noted above, comprised of two tin roofed rooms and two other rooms and which as noted above, are of smaller size and cannot be used as regular living rooms.

13. The family of the respondent No. 1 Lt. Col. Gurinder Singh (retd.) consists of himself, his wife and two children, which is not in dispute. The presented need of this respondent of one bedroom for self and his wife, one for his two sons, one as study room, one drawing-cum-dining room, one small room for *pooja* and one for the guests, does not appear to be unreasonable or unjust by any means. Respondents No. 3 and 4, who are the doctors and presently posted at Gwalior and Hisar respectively, would also be needing some accommodation for their stay on their visits to Delhi. Even if it is assumed that the aforesaid rooms on the second floor can be used and the respondents can stay therein, still those rooms would be highly insufficient for their needs and requirements.

14. In view of my discussion above, I do not see any infirmity or illegality in the impugned order of ARC. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

AUGUST 22, 2012/akb