

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

% *Date of Judgment: 23.01.2012*

+ RC.REV. 100/2011 and CM No. 6814/2011

GULSHAN RAI Petitioner
Through Ms. Geeta Mehrotra and Mr.
Rahul Tomar, Adv.

Versus

SAMRENDRA BOSE SECY & ANR Respondents
Through Mr. H.C. Kapur, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The order impugned before this court is the order dated 26.02.2011 wherein the application seeking leave to defend filed by the tenant in a pending eviction petition under Section 14(1) (e) of the Delhi Rent Control Act (DRCA) had been granted.

2 Record shows that the petitioner is the owner/landlord of the property bearing Municipal Nos. 1418-1421 and 1424-1427, Nicholson Road, Kashmere Gate, Delhi; a portion of the first floor has been

tenanted out to the respondent i.e. Bengali Club; admittedly, remaining portion of the first floor is a Guest House which is being run by the landlord; his contention in the eviction petition is that he needs more space for the expansion of his business of a guest house which is being run only from a part portion of the first floor; for his bonafide need, an eviction petition under Section 14(1)(e) of the DRCA was accordingly filed.

3 The averments made in the eviction petition have been perused. They disclose that what has been let out to the tenant is a portion as depicted in red colour; contention of the petitioner is that the tin shed which was in occupation of the tenant has been converted into the pacca masonry room as identified by the letters A and B in the site plan. The premises in occupation of the landlord on the first floor has been depicted in green colour; he has admittedly been running his business of guest house from the said premises; he wants more space for the expansion of his business of guest house; further contention being that after obtaining necessary permission he will remove the unauthorized construction on the second floor (as depicted in letters A and B in the site plan); thereafter he will use this first floor for the expanded portion

of his guest house; his bonafide need has been established.

4 The application for leave to defend filed by the tenant has been perused. The contention is that the respondent is a Begali Club which was founded in the year 1925 which has rich heritage values; it is the life and soul of the Bengali Community in Delhi; it is located at a historical site which is the present premises; further contention being that the Municipal Corporation of Delhi has to conserve and preserve the heritage value of the premises; premises occupied by the tenant is a heritage property; in fact a Committee had been constituted by the MCD wherein the premises have been ascribed the status of a heritage property. Landlord is merely harassing the tenant; the Building Bye-laws (specially Clause 23.1.1 (a) & (C) of the Building Bye-Laws for the Union Territory of Delhi 1983 of the MCD) mandate that heritage buildings shall be conserved and preserved; further contention being that a guest house is being run by the landlord without obtaining the necessary permissions; he has no sanction; building bye-laws prohibits the landlord from changing the nature of a heritage site; in these circumstances, the bonafide need of the landlord is not made out; a guest house cannot be run from the said premises; even otherwise the need of

expanding his business of Guest House is not a bonafide need. All these raise triable issues. Further contention is that the landlord has recently let out a huge place on the ground floor to a wine shop which again reveals that landlord does not bonafidely require the said premises; his need is malafide.

5 Reply filed by the landlord to the corresponding paras of the leave to defend has also been perused; his contention is that there is no doubt that the property has been accorded a heritage status meaning thereby that the property has to be conserved and preserved as per the mandate of the bye-laws of the MCD; further contention being that since admittedly the petitioner is carrying on his business of guest house from a part portion of this premises; after the premises which are presently in occupation of the tenant are vacated, he will conserve and preserve the heritage status of the suit property for which nothing in writing has to be given. Attention has been drawn to the concerned bye-laws of the MCD to support this submission.

6 The impugned order has granted leave to defend to the tenant; this is largely on the finding arrived at in the impugned order that since this property has a heritage status, a guest house cannot be run from there

without any permission and no licence or written permission has been filed on record by the landlord showing this fact that he has the necessary permission to run such a guest house from the said building. This raises a triable issue.

7 This court is of the view that the Trial Court has not adverted to the pleadings in the correct perspective; contention raised by the tenant as a triable issue was that a guest house cannot be run without legal sanction; his contention was not that a guest house was not being run; admittedly a Guest House is being run from a part portion of the first floor of the disputed premises. Tenant has contended that such a Guest House is without a licence from the MCD for which he shall be taking appropriate proceedings before the concerned authorities.

8 The tenant has nowhere disputed the ownership/landlordship of the respondent; his only submission being that since the 'Bengali Club' has a heritage status, no guest house without necessary sanction can be run from the said building. Record shows that it is an admitted fact that a guest house is being run from a part portion of the disputed premises; whether it is legal or illegal is a matter inter se between the landlord and the MCD; the tenant has no locus standi to challenge this illegality of his

running a guest house which is admittedly being run by the landlord from the portion immediately adjacent to the Bengali Club. The tenant has also not disputed the specific averment made by the landlord that the portions shown as letters A and B in the site plan were actually tin sheds and where he has now been made an unauthorized construction. Submission of the landlord is that after obtaining the possession of the disputed portion he will take the necessary permissions and after removing the unauthorized construction, he will expand his business of the guest house from the disputed portion. The building Bye-laws for the Union Territories of Delhi, 1983 have also been perused. They do not prohibit such an activity. Clause 23.1, 23.2 and 23.9 are relevant. A heritage building is required to be conserved and preserved; this is the responsibility of the owner of the heritage building; if the owner agrees to maintain the heritage building in its existing state and to preserve its heritage status with due repairs and gives a written undertaking to that effect, he may then be allowed, with the approval of the Heritage Conservation Committee to carry out commercial use/office/hotels even from a non-commercial area. This is specifically stated in clause 23.9; this is an incentive use of a heritage building.

9 Contention of the landlord specifically in the eviction petition is to the effect that after he gets the tenanted portion vacated and after taking necessary permission from the Department, he will get the unauthorized constructions (raised by the tenant) removed and thereafter after obtaining necessary permissions will expand his business of the guest house which he is admittedly carrying out from a portion of the first floor. This is an inter se arrangement between the owner/landlord and the MCD/Government Body, the tenant cannot raise an issue that merely because the property owned by the landlord is a heritage property he cannot run a guest house. If such an argument raised by the tenant is accepted then this would mean that in all such cases where the owner/landlord owns a heritage building he would never be able to get his property vacated only for the reason that it has a heritage status. This is definitely not the import of the Building Bye-laws which have been relied upon by the Trial Court holding that triable issues have arisen. Triable issues have to be gathered from the pleadings of the parties which include the application for leave to defend, reply to the said application as also the averments made in the eviction petition. As matter of routine leave to defend cannot be granted; if the defence

raised is moonshine, sham, and illusory, the leave to defend has to be refused; otherwise the whole purpose and purport of the summary procedure as prescribed under section 25B of the DRCA would be defeated. In cases where no triable issue has been raised, the application for leave to defend has to be declined. The only triable issue raised by the tenant is that since it is a heritage property, a guest house cannot be run; admittedly, a guest house is being run from a portion of the said property; this has not been disputed by the tenant in his application for leave to defend; it is for the landlord to take the necessary permissions from the Heritage Zone of the MCD to extend his business of guest house to the disputed portion; nothing prevents him from adding more rooms to his already existing guest house; this he can do only after gets an eviction order.

10 The Apex Court has time and again reiterated that the landlord is the best judge of his requirement; it is not open to the tenant or to the court to dictate to the landlord the manner or the style in which he must live.

11 In Sudesh Kumar Soni & anr. Vs. Prabha Khanna & Anr.,¹⁵³ (2008) Delhi Law Times 652, the Court observed as under:-

"It is not for tenant to dictate terms to landlord as to how else he can adjust himself without getting possession of tenanted premises-suitability has to be seen for convenience of landlord and his family members and on the basis of circumstances including their profession, vocation, style of living, habit and background."

12 In Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and Others, (2005) 8 Supreme Court Cases 252; the Court observed as under:

"It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

13 In 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, the Apex Court observed as under:-

"However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim.

Many people start new businesses even if they do not have

experience in the new business, and sometimes they are successful in the new business also."

11 Impugned order granting leave to defend in this scenario suffers from an illegality. It is accordingly set aside. Eviction petition is decreed.

INDERMEET KAUR, J

JANUARY 23, 2012
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