

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

+ R.C.REV 175/2012

Date of Decision: 04.12.2012

SHARMILA BANERJEE LIVINGSTON Petitioner

Through: Ms.Malvika Rajkotia, Advocate
with Mr.Ashwani, Mr.Puneet,
Advocates.

Versus

MOHD. ABBAS & ORS Respondent

Through: Mr.S.K.Sharma, Advocate.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. This is a revision petition u/S 25B (8) of the Delhi Rent Control Act (for short "the Act"), assailing the order dated 06.01.2012 passed by the Ld. ARC, Saket Courts, Delhi, whereby the leave to defend application filed by the petitioner, was dismissed and an eviction order was passed.

2. The petitioner is a tenant with respect to one living room/drawing room, two bedrooms, one kitchen, two toilets and some utility space on the ground floor in property bearing No. C-17, Nizamuddin West, New Delhi-110023 (hereinafter referred to as “the tenanted premises”). The property of which the tenanted premises form a part was said to be sold to late Mohd. Shahid through an agreement to sell and a registered general power of attorney in the year 1994. At the time of purchase, the ground floor was occupied by tenant late Brojendra Nath Bannerjee, who died in the year 2001 and since that time, his daughter, the petitioner herein has been residing on the first floor. Late Mohd. Shahid expired on 15.05.2004 intestate leaving behind the respondents as his legal heirs. The respondent nos. 4 and 9 are the wives of late Mohd. Shahid, respondents No 1 to 3 and 8 are his four sons and respondents 5 to 7 are his daughters. Among them, only nos. 8 and 9 have their own residential houses in Delhi. Respondent No. 7 lives with her husband in Delhi. An eviction petition was filed on 15.09.2009 on the ground that the tenanted premises was bonafidely required by respondents No.1 to 6 for their residential purpose. It was submitted that the respondents are running a family business comprising of many companies/firms/outlets/factories in Delhi and Moradabad (Uttar Pradesh). Respondent No 1 has five sons, two are in business and three are pursuing their studies. It was averred that he, his wife and eldest son Mohd. Ahmar Abbas frequently visit Delhi for business, but are unable to stay continuously due to lack of accommodation and that they have to share space with respondent nos.

7, 8 and 9. It was further submitted that respondent No 2 is a U.S citizen and is now a PIO card holder and is living in India in a rented accommodation in Defence Colony, Delhi for the past year, paying a monthly rent of Rs 99,000/-. He has been visiting India regularly to look after the family business along with his brothers. He has a wife, two sons and one daughter. His two sons also wished to stay in India but due to lack of accommodation cannot do so. Respondent No 3 is also a U.S citizen who holds a PIO card and has been living in India for the past three to four years in a rented accommodation in Gurgaon. He and his wife help in looking after the family business in Delhi. Further, the son of the respondent no. 3, being mentally challenged, is taking treatment in Delhi and needs to be admitted in a special education programme in Delhi. He also has three minor daughters, who require care. He also does not have any other property in Delhi. Similarly, respondent nos. 4, 5 and 6 have no separate accommodation of their own in Delhi.

3. It was further stated that the property in question comprises of three floors being ground, first and second floors. Out of these three floors, the first floor is in possession of the respondents in which respondent nos. 1, 4, 5 and 6 stay for short durations during their business trips to Delhi. The second floor which was previously occupied by a tenant namely Rahat Hasmi also came in the possession of the respondents in the year 2009. This premises is also used by

respondent nos. 1, 4 and 6 and their family members whenever they visit Delhi. It has been submitted that these premises are not sufficient for the requirements of the large family of respondent nos. 1 to 6. Thus the tenanted premises was bonafidely required by the respondents for residential purposes.

4. The petitioner tenant filed her leave to defend application, wherein she disputed the ownership of the tenanted premises. Her contention was that the owner of the property was Smt. Ratna S. Advani and that the petitioner's father, late Brojendra Nath Bannerjee was inducted as a tenant in the year 1965. She claimed that since the inception of the tenancy, all the expenses, water bills, electricity bills and telephone bills have been issued in the name of Smt. Ratna S. Advani. The petitioner also submitted that rent was being paid to Smt. Ratna S Advani till the year 1981, when she asked the tenant to pay the rent to one Smt. Hingorani. Rent was subsequently being sent to her till the year 1993-94. But since that time, there has been no communication, neither from Smt. Ratna S. Advani nor Smt. Hingorani, because of which, no rent was sent to either of them. The petitioner further submitted that the letter dated 14.01.1995, sent by Smt. Ratna Advani, informing the petitioner that the suit premises had been sold to the late Mohd. Shahid was forged and fabricated. She claimed that Mohd Shahid was trying to gain unlawful possession of the suit property and she sent letters dated February 1996 to Smt. Tara. A. Jagatiani and Smt. Champa Nanda, both daughters of Smt. Ratna. S.

Advani, requesting them to take action, but no response was received. The petitioner also contended that a complaint was made to the Governor, Raj Bhawan, Delhi and thereafter a civil suit was filed wherein, vide order dated 18.12.2000, the court directed the petitioner to continue to live in the tenanted premises, as ownership of the respondents could not be established. Lastly, the petitioner stated that the respondents are very well off and are capable of maintaining their families at the first and second floors of the suit property, already occupied by them, whereas evicting the petitioner would cause her irreparable loss and suffering.

5. In reply to the leave to defend, the respondents denied that they were not owners of the disputed property. They submitted that the property in question was jointly owned by Smt. Ratna S. Advani and her two daughters, and which were sold in the year 1994 to Mohd Shahid. A registered general power of attorney was also executed in favour of Mohd Shahid. This fact of change of ownership was informed to the three tenants occupying different floors of the property vide letters sent by Smt. Ratna S. Advani. Consequentially, it was requested to them through those letters that future rents have to be paid to Mohd. Shahid. Further, it was stated that after the death of Mohd Shahid, the respondents had become owners of the property and that the rent was being paid, though irregularly, by the petitioner to them till January 2007. It was averred that other tenants also accepted the respondents as the owners/landlords and vacated their respective

portions, and this undisputed fact would again substantiate the claim of the respondents that their predecessor in interest, Mohd Shahid had purchased the property in question. It was averred that since the property was not free hold, the sale deed could not be executed, but, Mohd Shahid had in the year 2003-2004 got his name entered in the municipal records for the purpose of paying the property tax and they have been paying the tax regularly since then. The respondents also brought to the attention, letters which were exchanged between Mohd Shahid and Smt. Ratna S. Advani, wherein she informed him that intimation of the transfer of ownership was made to the tenants, who were residing in the suit property and that future rent payments were to be made to him.

6. The learned ARC dismissed the application for leave to defend and passed an eviction order on 06.01.2012. This order has been challenged in the present petition.

7. Before proceeding to examine the submissions made by the Ld. Counsels, it is vital to note that the powers of revision of this court u/S 25B (8) are not as wide as that of an appellate court. If it is found that the impugned order is according to law and does not suffer from a jurisdictional error, then this court has no power to interfere. Only when there is a gross miscarriage of justice caused or where the conclusion arrived at by the ARC, based on the material provided is not possible, that this Court interferes. Keeping this aspect in mind, I

have examined the impugned order and the arguments put forth by the learned counsels.

8. The Ld. Counsel for the petitioner argued that the respondents were not the actual owners of the tenanted premises and that it was owned by one Sh. Ratna S. Advani. Further, it was contended that the letter dated 14.01.1995 which was sent by Sh. Ratna S. Advani to the petitioner about the sale of the property to respondents has been fabricated and forged. This contention of the petitioner cannot hold well, unless she is able to make out a prima facie case. The said letter, which is placed on record, shows the signature of Smt. Ratna S. Advani. In the said letter, Smt. Ratna S. Advani also stated that she enclosed three letters which were meant to be delivered to the tenants staying in the suit property, out of which one was the petitioner's father. Further, a letter dated 04.02.1996, was sent to the petitioner's father by the daughters of Smt. Ratna S. Advani requesting him to pay rent to Mohd Shahid as it was informed to them that the rent had not been paid. In furtherance of this letter, a letter dated 23.02.1996 was sent by the advocate of the petitioner's father stating that he does not acknowledge Mr. Mohd. Shahid as the owner and requested a copy of the sale deed showing him to be the owner of the suit property.

9. It is settled principle of law that in an eviction petition u/S 14 (1) (e) of the Act, the landlord need not prove his absolute ownership. All that is needed to be proved is that he owns the property in a capacity

greater than the tenant. In the case of **Shanti Sharma vs. Ved Prabha**, AIR 1987 SC 2028, the Apex Court held that:-

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term

“owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant.”

10. In the present case, the respondents/landlords have placed on record the agreement to sell, and registered power of attorney dated 29.12.1994. In addition, various letters of communication regarding the sale of the property and change of ownership have also been placed on record by the respondents. The petitioner brought before this court for the first time photocopy of a Power of Attorney purported to be and executed by Smt. Ratna S. Advani in favour of Mohd. Shahid on 27.07.1998, and alleged it to be having forged signature of Smt. S. Advani as she had expired on 20.02.1996. This plea was nowhere taken in the leave to defend application or raised before the Ld. ARC and thus, cannot be allowed to be raised for the first time in this petition under Article 227 of the Constitution. In any case, it being only a photocopy and even not legible, cannot be looked into and relied upon. As is noted by the ARC, the Power of Attorney filed on his record is dated 29/12/1994, and not dated 27.07.1998, and it was never controverted by the petitioner before him. The respondents have claimed having purchased the premises in question for consideration by virtue of agreement to sell and registered power of attorney from owners Ratna S. Advani and her two daughters. The bank statements also testify the payments made to the vendors. The petitioner did not dispute these pleas in the rejoinder, but only alleged that the title could not be transferred by these documents.

11. The contention of the petitioner that the respondents are a well off family having businesses and firms in Delhi and Muradabad and could take care of themselves, is noted only for rejection. It is settled principle of law that the high financial status of the landlord is itself no ground to doubt his bona fide requirement of the tenanted premises. Likewise, the plea that the eviction would cause more hardship to the petitioner being extraneous, is not tenable. This itself is also no ground to deny the landlord of his entitlement of recovery of the tenanted premises, if it was otherwise bona fide established by him. In the case of eviction of the tenanted premises, the tenant might have to undergo some hardships, but the law seeks to strike a balance between his right and that of the right of a landlord to seek eviction for his bona fide requirement.

12. With regard to the business of the respondents in Delhi and Moradabad, and their having the family members as noted hereinabove as also some of the respondents making frequent visits to Delhi and accommodating themselves in the first and second floor of the premises, there is no dispute raised by the petitioner. No dispute has also been raised as regard to some of the respondents and their family visiting from U.S. being PIO card holder, and their living in Delhi and Gurgaon in a rented accommodation for the last about three years. Further, there is also no dispute that the son of the respondent No. 3, who is mentally challenged, is being treated in Delhi and needs to be educated in special educational programme. With regard to the bona

fide requirement of the respondents, the only plea that was taken by the petitioner was that they are well off and capable of maintaining their family in the two floors in the suit premises. This plea of the petitioner has been repelled by the ARC and is untenable, as is noted above. From the uncontroverted facts that the respondents No. 1 to 6 have their family businesses in Delhi and Moradabad and they often visit Delhi, and that all of them have large families as discussed above, the present accommodation available with the respondents in the first and second floor, cannot be said to be sufficient

13. In view of my above discussion, I do not see any infirmity or illegality in the impugned order passed by the learned ARC dismissing the leave to defend application of the petitioner. The petition being without any merit is hereby dismissed.

M.L. MEHTA, J.

DECEMBER 04, 2012

rmm/akb