

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

**Date of Decision: 05.10.2012**

**+ RC.REV. 183/2012**

**KISHORE ..... Petitioner**

**Through: Mr.Prag Chawla, Adv.**

**versus**

**PRABODH KUMAR & ORS ..... Respondent**

**Through: Mr.R.S.Sahni, Adv.**

**+ RC.REV. 187/2012**

**TRILOK SINGH ..... Petitioner**

**Through: Mr.Prag Chawla, Adv.**

**versus**

**PRABODH KUMAR & ORS ..... Respondent**

**Through: Mr.R.S.Sahni, Adv.**

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

**M.L. MEHTA, J.**

1. By this common order the aforementioned two revision petitions under Section 25B(8) of the Delhi Rent Control Act (for short 'the

Act') are being disposed as common questions of law and fact are arising out of two separate orders, both dated 10.02.2012, of Additional Rent Controller.

2. The petitioners are tenants under the respondents. Petitioner Kishore is a tenant in respect of Shop No.33-E, whereas petitioner Trilok Singh is a tenant in respect of Shop No. 33-D, South Patel Nagar Market, New Delhi. Their evictions are sought from the tenanted shops on the ground of bonafide requirement thereof by the respondents for their commercial requirements. Respondent No. 1 Prabodh Kumar is stated to be running a confectionary business at Shop No. 33-C, which is adjoining the tenanted shops. The case as set up by the respondents is that the tenanted shops are required for expanding the confectionary business as the space available with the respondent No. 1 is not sufficient. It is also their case that he wants to set up an eating joint for his grown up son, and that they have no other suitable commercial space.

3. The petitioners filed leave to defend application on various grounds. They denied the respondent No. 1 to be requiring the tenanted shops for expanding his confectionary business or for his son to set up business of eating joint. It is alleged that the present shop available with the respondent No. 1 is quite spacious for his business and that his son is a school going boy, and not grown up enough to set up his own business.

4. The learned ARC vide his separate impugned orders declined leave to defend to the petitioners. These orders are challenged by the petitioners in the instant petitions.

5. Being mindful of the nature and scope of the revisional power of this court under Section 25-B(8), it may be reiterated that when, from the averments as set up in the leave to defend application, as also the reply filed by the landlord thereto, there appears something on record, requiring to see as to whether the Controller passed the order according to law, this court may peruse the records to ascertain whether any illegality has been committed by the Controller in Passing the order under Section 25-B of the Act. There is no dispute to the submissions, which are made by the learned counsel for the respondent/landlord that the landlord is the best judge to decide about his requirement and choice of the place, and neither the tenant nor this Court can dictate to him as to how else he can adjust himself, without getting possession of the tenanted premises. But, at the same time, it is also settled law that mere assertion that landlord requires the premises, occupied by the tenant, for his personal occupation, is not decisive and it is for the Court to determine the truth of the claim and also to see as to whether the claim is bonafide. Further, in determining as to whether the claim is bonafide or not, the Court is entitled and indeed bound to consider whether it is reasonable. A claim founded on abnormal predilections of the landlord may not be regarded as bonafide.

6. It is also repeatedly reiterated by the Supreme Court and reference can be have to the case of **Shiv Sarup Gupta Vs. Dr.**

**Mahesh Chand Gupta, (1999) 6 SCC 222** wherein the Apex Court held thus:

*“Thus the term bonafide genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more, higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out*

*a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one, but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”*

7. In the backdrop of the above legal propositions, it could be seen that the petitioners have been able to raise triable issues, which seem to have been overlooked by the learned ARC. Undisputedly, the respondent No. 1 which is in possession of Shop No. 33-C, measures 13 ft x 9 ft and the tenanted shops are also of the similar measurement. The respondent No. 1 is running confectionary business in his Shop No. 33-C for the last several years. There is no dispute that a landlord is entitled to seek eviction of the tenanted shop for the expansion of his

business as also for his additional requirement or for the requirement of his dependent family members, but, that could not be on the mere asking of the landlord. In the given facts and circumstances, it may be that projected requirement of the landlord be found to be genuine and authentic, but that would all depend upon the facts and circumstances of each case. A mere wish or desire of the landlord to have the tenanted shops for expansion of his business or for additional accommodation or even for setting up a business for his son may not in every case be taken to be his bonafide requirement. The decisive factor is not the wish or desire of the landlord, but the objective assessment of the Controller.

8. With the acquisition of both the tenanted shops the size of the accommodation available with the respondent No. 1 would be three times of his present accommodation. Certainly, it requires to be tested as to whether the respondent No. 1 does bonafidely require tenanted shops for expanding his confectionary business of that magnitude. Further, it is undisputed that his son is school going and come back from the school not before 3.00 pm. It is not their case that son would stop studying and engage himself in full time business. It would thus require to be tested as to whether the projected requirement of the respondents for setting up business of eating joint for his school going son, is bonafide or is only made out for the purpose of seeking eviction of the petitioners. From the averments of the eviction petitions, relating to the requirement of the tenanted shops by the respondents, triable issues are prima facie, seen to have been made out calling upon

the Court to objectively assess the requirement of the respondents. In such a situation, the petitioners cannot be thrown out of the tenanted premises at the threshold. The learned ARC seems to have overlooked all these issues and simply got swayed by the proposition that the landlord is the best judge of his decisions and neither the tenant nor the Court can dictate terms to him. The applicability of this proposition is only after the landlord is able to demonstrate that his assertion of requirement of the tenanted premises is not a mere wish or desire, but, authentic and genuine. If he is able to show and demonstrate, then certainly neither the tenant nor this Court could dictate terms upon him as to how and in what manner he should utilize his premises.

9. In view of my above discussion, I strongly feel the impugned orders suffering from infirmity which have resulted in miscarriage of justice to the petitioners. Thus, the impugned orders are liable to be set aside. Consequently, the petitions are allowed and the leave to contest is granted to the petitioners. The parties shall appear before the learned ARC on 30.10.2012.

**M.L. MEHTA, J.**

**OCTOBER 05, 2012**

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