

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

% *Date of Judgment: 16.03.2012*

+ RC.REV. 244/2011

BANTAM ENTERPRISES PVT LTD Petitioner
Through Mr. Ravinder Sethi, Sr. Advocate
with Mr. Ajay Verma, Adv.
versus

JASPAL SINGH KAPOOR Respondent
Through Mr. Arvind Nigam, Sr. Advocate
with Mr. Sanjiv Behl, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 25.03.2011; the eviction petition filed by the landlord under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed. The application seeking leave to defend filed by the tenant had been dismissed. Premises in dispute are the first floor of property No. 29, Rajdoot Marg, Chanakya Puri, New Delhi.

2 Record shows that an eviction petition had been filed by the landlord against his tenant on the ground of bonafide requirement; there

are two petitioners i.e. mother and son; contention being that they are the owners of the aforementioned property; earlier this property was owned by petitioner No. 1 and his three brothers besides petitioner No. 2. Disputes had arisen between the family. A suit for partition being suit No. 293/2003 had been filed. A partition decree had followed on 27.08.2003; by virtue of this partition decree, the aforementioned property had fallen to the share of the aforementioned two petitioners whereas the property bearing No. 11, Patel Road, West Patel Nagar, New Delhi had fallen to the share of the other three brothers. The petitioners have become the sole owners of the aforementioned suit property. Plaintiff No. 1 who was earlier residing at House No. 11, Patel Road, West Patel Nagar, New Delhi because of this dispute had shifted his residence to Heritage City, M.G. Road, Gurgaon, Haryana; he had shifted there along with his wife in 2003; he has not been able to live there comfortably; his business interests are in Delhi; he is aged about 70 years and has to travel to Delhi on a daily basis which causes great hardship to him; property at Heritage City, M.G. Road, Gurgaon, Haryana is not suitable for the requirement of the petitioner; he wishes to set up his residence in Delhi. It has further been contended that petitioner No. 2 is also residing

along with him in Patel Road, West Patel Nagar and after petitioner No. 1 shifts to property No. 29, Rajdoot Marg, Chanakya Puri, New Delhi, she will also join him there. These were the grounds on the basis of which the eviction petition had been filed.

3 It is not in dispute that during the pendency of this petition, petitioner No. 2 had expired and by virtue of a registered Will dated 21.08.2004, she had bequeathed her share in the property to petitioner No. 1.

4 Leave to defend had been filed. Title/status of the petitioners as owners/landlords has been questioned; it is contended that the partition decree is a sham; it has been obtained in collusion between the brothers and is of a self-serving nature. The partition decree does not establish the submission made by the landlord that he was earlier living in Patel Road, West Patel Nagar and has now shifted to Heritage City, M.G. Road, Gurgaon; further contention being that cheques were being sent at Patel Road, West Patel Nagar, where they have also been received; further contention being that the office of business of exports of the landlord is located in West Patel Nagar, Delhi which is in an area of more than 1000 square feet and this building comprises of 2- ½ floors;

this should be sufficient for the needs of the petitioners. The contention that Gian Kaur has left a Will bequeathing this property in favour of the petitioner is also a triable issue. To support the submission, learned counsel for the tenant has placed reliance upon (1996) 6 SCC 373 S.K. Sattar Sk. Mohd. Chaudhari Vs. Gundappa Amabadas Bukate; submission being that it is open to the tenant to show that the partition was not bona fide and was a sham transaction which has been executed to overcome the rigours of the rent control law. To the same effect is the ratio of the judgment reported as AIR 1982 SC 1213 Devi Das Vs. Mohan Lal. Reliance has also been placed upon 34 (1998) DLT 186 Sushila Devi Vs. A.C. Jain to support his submission that where collusiveness has been alleged, it is open for the tenant to challenge the partition decree.

5 Arguments have been refuted.

6 Record has been perused. The contention of the petitioner that a partition suit had been filed between the parties which was suit bearing No. 293/2003 which had resulted in a partition decree dated 27.08.2003 is not disputed. This decree has since attained a finality. It has not been the subject matter of challenge before any Court. The question raised by

the petitioner is that this partition decree being collusive can become the subject matter of challenge and raised a triable issue has been answered in the negative by the trial Court and rightly so. This decree was admittedly a decree passed inter-se between the parties which after its finality has been acted upon; it is also not the case of the tenant that pursuant thereto, the landlord has not shifted his residence from Patel Road, West Patel Nagar, New Delhi to Heritage City, M.G. Road, Gurgaon, Haryana. This was in the year 2003. He was living there along with his wife; as pointed out by him, he is not comfortable; his business interests are also in Delhi and he has to travel to Delhi on daily basis which causes great hardship and inconvenience to him; it is also an admitted position that the business interests of his wife and daughter are also in Delhi. In fact it has been averred by the tenant himself in his application seeking leave to defend wherein he has stated that business of export of the landlord is in the West Patel Nagar building and which is large enough to accommodate his residence as well. Relevant would it be to state that the tenant also does not dispute that the landlord has not shifted to Gurgaon; his contention being that the landlord if he wishes to pursue his business interest should shift back to Patel Nagar and not to

the present accommodation at Chankaya Puri. It is an admitted fact that pursuant to this decree, West Patel Nagar is no longer available with the landlord; it has fallen to the share of his brother; he only under a permissive user of his brother is carrying out his business of export from a small portion thereto. The present property is now exclusively owned by the present petitioner; he has admittedly to come to Delhi to watch his business interest as also the business interest of his wife and daughter who are also running their business in Delhi. This being the background over which there being no dispute; the submission of the tenant that the landlord should be asked to set up his residence in West Patel Nagar and not in the disputed property at Chankaya Puri is an argument clearly bereft of all merit as it is not for the tenant to dictate to the landlord as to how and in what manner he should set up his residence.

7 In (2001) 9 SCC 263 Kamal Tanan (deceased) by Lrs. Vs.M.L. Vasishta the Supreme Court while dealing with the powers of the ARC to question a partition decree arrived at inter-se between the parties in collateral proceedings had held as under:-

“That the partition suit had been decreed on 19.09.1977 by the High Court is not in

dispute and since that judgment and decree had acquired finality, both the learned Additional Rent Controller and the High Court while dealing with the eviction proceedings under the Delhi Rent Control Act, exceeded their jurisdiction in pronouncing upon the partition decree as “sham transaction”. The finality of the judgment and decree in the partition suit could not be questioned in any collateral proceeding by a third party to the partition suit. The learned Rent Controller had no jurisdiction to pronounce upon the correctness or otherwise of the judgment and decree of the High Court dated 19.09.1977 in the partition suit. The High Court, while hearing the revision petition in the eviction proceedings, also fell into a similar error and committed a jurisdictional error in agreeing with the learned Additional Rent Controller to hold that the partition decree was “a sham transaction”. The very basis for non-suiting the appellant, therefore was erroneous.”

8 In 113 (2004) DLT 137 Praladh Singh Rekhi Vs. Smt. Bhawani Devi & Anr. 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 DRCA had noted as follows:-

“.....The proceedings under the said Act cannot be converted and utilized by a tenant to prevent eviction merely on the ground that he seeks to cast doubt on the title of the property which has been inherited when there is really no one else claiming right to the property. In any case, this is matter between the legal heirs of the owner.

16 It must be kept in mind that the context in which the word ‘owner’ has been used in Section 14 (1)(e) of the said Act has been succinctly set out in the judgment of the Supreme Court *Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors.* 33 (1987) DLT 80 (SC) 2028. This Court in a recent judgment in CRP No. 153/2001, M/s RCR No.244/2011

Gayties Manufacturing Company Vs. Sh. Kanwaljit Singh decided on 03.08.2006 had the occasion to refer to the said judgment of the Supreme Court. The relevant portion of the judgment in Smt. Shanti Sharma and Others. Case (supra) is reproduced as under:-

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 is 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 Govt. 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. Admittedly in these cases where the plot of land is

taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term 'owner' as is contemplated under this Section. This term came up for consideration before the Delhi High Court and it was also in reference to Section [14\(1\)\(e\)](#) and it was held by the Delhi High Court in T.C. Rekhi v. Smt. Usha Gujral [1971] R C J 322 as under:

The word "owner" as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word 'owner' in this clause seems to me to have been inspired by the definition of the word 'landlord' as contained in Section [2\(e\)](#) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word "owner" is used in Clause (e), it seems to me to include all persons in the position of Smt. Usha Gujral who have taken a long lease of sites from the Government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of Clause (e) and would render all such landlords remedyless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the Legislature and I repel the appellant's contention. I consider it proper before passing on to the next challenge to point out that the word "owner" as used in Clause (e) in Section [14\(1\)](#) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe some one as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special

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provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject-matter and object and the occasion on which and the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning part from the context (See Halsbury's Laws of England Third Edition Vol. 36 Par 843 . The meaning of the word "owner" in Clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision."

9 The landlord is also the best Judge of his requirement; he has a complete freedom in the matter; it is not the concern of the Court to dictate to him as to how and in what manner he should live or to prescribe for him a residential standard of its own; there is no law which deprives the landlord of the beneficial enjoyment of his property. This has been held by a Bench of this Court in 67 (1997) DLT 585 Rajender Singh Vs. P.K. Sukumaran Nair.

10 The facts as emanated in this case clearly disclose that the petitioner has built up a bonafide and genuine need for the premises which are at the first floor of property No. 29, Rajdoot Marg, Chanakya Puri, New Delhi and which are presently with the tenant. The landlord is

living in a far away state i.e. in the state of Haryana in Heritage City, M.G. Road, Gurgaon; he admittedly has his business interests; not only of his own but also of his wife and daughter in Delhi and has to come to Delhi everyday to watch these interests part of which are being carried out under permissive user from a portion of West Patel Nagar which property has now fallen to the share of his brothers. His visits from Heritage City, Gurgaon to Delhi, keeping in view the fact that the petitioner is a senior citizen aged 70 years and having an accommodation in Delhi which he cannot utilize for the reason that it is with the tenant is admittedly a valid and genuine requirement and which has prima-facie been established by him.

11 The Court cannot thus grant leave to defend in a routine or in a mechanical manner; the whole purport of the summary procedure as contained in section 25-B of the DRCA would otherwise be defeated.

12 In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled

the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

13 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court has held:-

“Prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.”

14 In this background the eviction petition having been decreed and the application seeking leave to defend having been dismissed as no triable issue has arisen, suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 16, 2012

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