

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

+ Date of Decision: 10th October, 2012

R.C.R. NO. 51/2009

OM PRAKASH & ANR. Petitioners
! Through: Mr. Rajeshwar Kr. Gupta, Mr. A.C.
Gambhir & Ms. Sumati Sharma, Advs.

Versus

\$ VIJAY SHRI PVT LTD. Respondent
Through: Mr. P.V. Kapur, Sr. Advocate with
Mr. Amit Bhagat & Mr. Aman Anand,
Advocates.

WITH

. RC.REV. 52/2009

S. N. BHATT Petitioner
! Through: Mr. Rajeshwar Kr. Gupta, Mr. A.C.
Gambhir & Ms. Sumati Sharma, Advs.

Versus

\$ VIJAY SHRI PVT LTD. Respondent
Through: Mr. P.V. Kapur, Sr. Advocate with
Mr. Amit Bhagat & Mr. Aman Anand,
Advocates.

WITH

RC. REV. 53/2009

PRADEEP KUMAR SINGHAL & ANR. Petitioners
! Through: Mr. Rajeshwar Kr. Gupta, Mr. A.C.
Gambhir & Ms. Sumati Sharma,
Advocates

versus

\$ VIJAY SHRI PVT. LTD. Respondent
Through: Mr. P.V. Kapur, Sr. Advocate with
Mr. Amit Bhagat & Mr. Aman Anand,
Advocates

WITH

R.C.R.NO. 54/2009

SHAM LAL & ANR. Petitioners
! Through: Mr. Rajeshwar Kr. Gupta, Mr. A.C.
Gambhir & Ms. Sumati Sharma, Advs.

versus

\$ VIJAY SHRI PVT LTD. Respondent
Through: Mr. P.V. Kapur, Sr. Advocate with
Mr. Amit Bhagat & Mr. Aman Anand,
Advocates.

AND

RC.REV. 258/2010

SARLA DEVI & ORS Petitioners
! Through: Mr. Sanjay Kr. Sharma, Advocate.

versus

\$ VIJAY SHRI PVT LTD. Respondent
Through: Mr. P.V. Kapur, Sr. Advocate
with Mr. Amit Bhagat & Mr. Aman
Anand, Advocates.

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

These revision petitions under Section 25-B(8) of the Delhi Rent Control Act, 1958(in short ‘the Act of 1958’) have been filed by the petitioners-tenants against the order of the Rent Controller whereby their applications for leave to contest the eviction petitions filed against them by their landlord, respondent herein, under Section 14(1)(e) of the Act of 1958 to have the possession from the shops under their tenancy in a cinema complex known as ‘Liberty Cinema’ at New Rohtak Road, New Delhi(hereinafter to be referred as the ‘tenanted shops’) were rejected and eviction orders were passed against them giving them six months time to vacate the tenanted

shops. Since the petitioners-tenants had sought leave to contest the eviction petitions from the Rent Controller on almost identical grounds and the learned Rent Controller also had disposed of the leave to contest applications on common grounds and these petitions were also heard together by this Court and common points were urged from both the sides during the course of hearing all the petitions are being disposed of by this common order.

2. The relevant facts pleaded in para no.18 of the eviction petitions by the respondent-landlord to secure the eviction order against the petitioners-tenants in respect of the tenanted shops are re-produced below:

“1. That the Petitioner is the owner/landlord of the Premises bearing No.19-B, New Rohtak Road, New Delhi-110 005, being the Liberty Cinema Building.

2.

3.

4. That the premises in question are situated in and are forming part of the Liberty Cinema Complex, which is a cinema hall being run by the petitioner. The petitioner is desirous of constructing emergency exits leading directly from the auditorium to the road in the said cinema hall, in order to ensure safe and quick passage of the customers of the petitioner, in case of an emergency or in cases when a fire breaks out in the said cinema hall. However, in order to construct the said emergency exits, and to ensure smooth and safe passage of the customers in case of an emergency, the said shop, along with the other surrounding shops, needs to be

converted into passages from the proposed emergency exits to the road. The aforesaid requirement of constructing the emergency exits has become very pertinent more so because recently an explosion had been caused by a terrorist attack in the auditorium of the said cinema hall, while a movie was running in the cinema hall.

5. *That as a result of the said blasts, the business of the petitioner has been adversely affected, as the customers of the petitioner are concerned about their safety, in case such an event occurs again. The said emergency exits are very important in order to do away with the apprehensions of the customers of the petitioner, and to ensure that the business of the petitioner would not be adversely affected, and that the business of the petitioner runs smoothly.*

6. *The petitioner thus requires the premises under tenancy and occupation of the respondent for his bona fide use for constructing emergency exits to ensure safe passage of the customers of the petitioner. Moreover, the said requirement, apart from being for the personal bona fide of the petitioner, is also in general public interest, as it involves the safety of the general public.”*

3. The petitioners-tenants had sought leave to contest the eviction petition and the pleas raised by them were noticed, dealt with and rejected by the learned Rent Controller in the impugned order. The relevant portions from that order are also being re-produced below:-

“i. Petitioner has claimed the ownership of the property in question which is in possession of the respondents which fact has not been disputed by the respondents. Accordingly relationship of landlord and tenant is admitted between the parties.

ii. The purpose of letting out is also not disputed which admittedly is for non commercial purpose as detailed.

iii. In the instant case respondents suggested many other alternative places from where the additional exit gates can be constructed. As stated by respondents there is sufficient passage approximately 20ft. wide from the

auditorium to the road for safe and quick passage of the viewers. At present as stated there are 6 exits gate in the Cinema Hall, 3 towards the main entrance side and while the other 3 are towards the passage which are more than sufficient as each of the said exist gate is about 5 ft. wide and it was stated that if the petitioner is desirous to open more exit gate, he can open more exist gate on each of the said sides and there is no hindrance in that. The passage shown in blue colour is about 20 ft. wide and several rooms are lying vacant with the petitioner on the road side of the said passage and it was stated that if the petitioner wants to open exit gate towards road side then he can easily open gates at points A,B and C shown in the site plan which open towards the road about 20 ft.. Even otherwise as stated petitioner has got 3 vacant shops shown in red colour in the site plan filed by the respondents which is 7/1/2 ft wide. It was also submitted by respondents that even on the road side the petitioner has got about 25ft. wide place on the main entrance side from which the petitioner can easily open exist gate on the road side. Petitioner on the other hand stated that the suggestion advanced by the respondents has already been considered and rejected by the petitioner since the same has the effect of defeating the very purpose for which the additional exit gates are sought to be erected. It was suggested by the respondents that other than the shop in question three other shops as shown in red colour in the site plan filed by the respondent are lying vacant and can be used for the construction of the emergency exit, however contention of the petitioner is correct that the said shops cannot be used in isolation and tenanted shop would also be required for the smooth and safe passage to accommodate the entire strength of the viewers. Other suggestions were also advanced by the respondent for construction of the emergency gates from the different places. I have perused the site plans and seen the photographs placed on record. Submissions made by the petitioner in this context seems to be right and construction of emergency gates from the alternate places as suggested by the respondents does not seem convenient and the same seems more feasible, convenient and easy from the tenanted premises rather to construct the same from any other side. Even otherwise respondent cannot dictate terms on petitioner as the petitioner is the owner/landlord of the property in question and the matter of safety of people in the Cinema hall in question is the liability and responsibility of petitioner and not the respondents. Apart from this the other mode

suggested by the respondents would waste vast portion of land of the premises of petitioner. Accordingly it is held that no other alternative place is available with the petitioner for construction of the emergency exit gates. iv. As far as bonafide need of the petitioner is concerned it was stated on behalf of petitioner that construction of emergency exits is to ensure safety of the viewers and is in the interest of the viewers and there shall be no monetary gain for the petitioner in constructing the said exits and rather the petitioner would lose the entire rental income arising from the said tenancies and shall also have to spend huge amount on creation and maintenance of the said exit. On the other hand respondents have simply denied the bonafide requirement of the petitioner and it was stated that the instant petition is filed just to harass the respondents. Mere bald assertion on the part of respondents would not be sufficient to discard the requirement of the petitioner and even otherwise I agree with the said contention of petitioner as the construction of emergency exit gates in the cinema hall is necessary as now a days terrorist attacks are very common and even otherwise they are necessary to meet out any emergency and is in public interest and not for the personal interest of petitioner. Petitioner has also rightly contended that in doing so he would lose the rental income as well as incur huge cost in construction and maintenance of the same. Besides this it is more suitable and convenient to construct exit door from the premises in question as it lead straight to the main road whereas in the other mode suggested by the respondents there is long passage and turning.”

Hence it is held that the requirement of the petitioner seems to be well justified and respondent cannot dictate terms to the landlord and landlord is best judge of his requirements. For this reliance is placed upon :-

Prativa Devi Vs. TBN Krishnan (1996)5 SCC 353..... *Sarla Ahuja Vs. United Insurance Company* 1998(8) SCC 119..... (1996) 5 Supreme Court Cases 344..... *Meenal Eknath Kshirsagar Vs. Traders & Agencies and Another* wherein it was observed that. “It is for the landlord to decide how and in what manner he should live and he is the best judge of.”

In view of the above it is held that respondents have not been able to show existence of any triable issue whereas petitioner has been able to show that petitioner has no alternative places available with to construct

the exit emergency gates and the suit property is bonafidely required by petitioner for their own use. Accordingly leave to defend application of respondents is hereby declined and eviction order against the respondents and in favour of petitioner is passed.....”

4. Feeling aggrieved, the petitioners-tenants have come to this Court.

5. It was argued by learned counsel for the petitioners-tenants that the impugned order cannot be sustained at all since the learned Rent Controller has given categorical findings about the bona fides of the requirement of the tenanted shop which could not have been given without recording evidence of the parties and, therefore, the limited jurisdiction vested in the Rent Controller under Section 25-B(5) of the Act of 1958 has been exceeded and consequently the impugned order cannot be said to have been passed in accordance with law. It was further contended that even from the averments made in the eviction petition it was clear that it is only a case of desire of the landlord to have more exits in the cinema hall to help the people coming to see the movies in getting out of the hall smoothly in the event of any mishap, like bomb blast, when people have to come out immediately to save themselves but actually there is no requirement

of any additional exit gates and that is evident from the fact that no Government Department like the Fire department had ever called upon the respondent-landlord to have more exit gates in its cinema hall. Thus, it is simply a case of 'desire' of the landlord to have the tenanted premises back from the tenant and not at all a case of bona fide requirement of the same by the landlord. Therefore, counsel contended, the learned Rent Controller was not justified in rejecting the leave to defend application and summarily ordering the eviction of the petitioners-tenants from the tenanted shop. It was pleaded in this petition that in fact a bare reading of the eviction petition would show that the eviction of the tenant was being sought on a ground which fell under Section 14(1)(g) of the Act of 1958 and not under Section 14(1)(e) and so on that ground also the petitioners were entitled to get the leave to contest the eviction petition.

6. On the other hand, Mr. P.V.Kapur, learned senior counsel for the respondent-landlord while supporting the impugned order of the learned Rent Controller contended that since the learned Rent Controller has passed the impugned orders rejecting the leave applications moved by the petitioners for very cogent reasons there is

no scope for any interference by this Court in exercise of the limited revisional jurisdiction conferred on this Court under Section 25(8) of the Act of 1958. Learned senior counsel further contended that the main plea which has been raised in these petitions is that the respondent was actually invoking Section 14(1)(g) of the Act of 1958 but the same cannot be entertained here since it was not taken before the Rent Controller in the leave to contest applications. In support of this submission learned senior counsel cited some judgments also. It was also argued that a bare reading of the leave applications would show that the petitioners were really wanting to convince the Rent Controller that there was enough space elsewhere in the cinema complex where additional exit gates could be opened and the same has been rightly rejected on the ground that it is not for a tenant to suggest to the landlord as to how and in what manner he should satisfy his bona fide requirement of additional space. It was also contended that this is not a case of a whimsical desire of a landlord to have the tenanted premises vacated from the tenants but a genuine requirement of the tenanted shops is there because of the bomb blast in the cinema some years back and so the landlord cannot be expected to wait for another such like incident to take place before it

makes the provision for sufficient exit routes for the public in the event of fire etc. and in case such preventive steps are not taken well in time the respondent-landlord is likely to suffer immensely the consequences of a big lapse.

7. From the narration of the averments made in para no.18 of the eviction petition it becomes clear that prima facie it is really a case of desire of the landlord rather than a bona fide requirement to have the tenanted shops vacated from the tenants. Learned counsel for the petitioners was right in contending that since no Government Department has so far made any complaint against the respondent-landlord that the existing exit gates were insufficient and there was likelihood of people getting trapped inside the auditorium in the event of any incident like fire or bomb blast etc. taking place because of the insufficient exit gates it is only a desire of the respondent-landlord to have the shops vacated from the petitioner somehow or the other. In any event, it cannot be said to be a case where the petitioners did not deserve to get the leave to contest the eviction petitions.

8. The Hon'ble Supreme Court had held in the case of "**T. Sivasubramaniam & Ors. v. Kasinath Pujari & Ors.**", AIR 1999 Supreme Court 190 that there is a distinction between the landlord's desire to have the tenanted premises vacated from the tenant and his requirement for the same. The relevant observations made in this judgment are as under:-

"4. In Amarjit Singh v. [Smt. Khatoon Quamarain, MANU/SC/0579/1986](#) : [1987]1SCR275 it was held, that the distinction between 'desire' and 'need' must also be kept in view for purpose of eviction of a tenant for bona fide need of the landlord. In "Ram Dass vs [Iswar Chander](#)": AIR1988SC1422 , it was held as thus :

Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that desire, to become a requirement must have the objective element of a need.

5. From the aforesaid decisions it is clear that mere desire of the landlord to live separately from his father cannot be attributed to his need for the premises occupied by the tenant. It is often seen that a desire takes its origin from what one likes and dislikes and necessarily it is not depended upon need. But we cannot lose sight of the fact that sometimes the desire may be outcome of one's need. So when a landlord desires a premises, the requirement of law is that the landlord must set out his need for the premises in his petition and establish that such a need is bonafide. The need must be bona fide, genuine, honest and conceived in good faith."

So, in the present case leave to contest should not have been refused to the petitioners and the respondent-landlord should have

been called upon to establish that it was not really his desire but requirement to have the five shops vacated from the tenants.

9. There is no doubt that a tenant cannot dictate to his landlord as to how he should adjust himself and how to meet his requirement of accommodation but in such like petitions for the eviction of tenants the landlord is required to satisfy the Controller that except for the premises from which the tenant is sought to be evicted he did not have any other alternative accommodation to meet his requirement. Here, the petitioners had pointed out to the Controller that the respondent-landlord had the options to open additional exit gates from many other parts of the cinema hall. Now, whether those areas were suitable or not for the opening of exit gates was a question which could be decided only after evidence but the learned Rent Controller has finally held without a trial at the stage of consideration of leave to contest applications that the areas suggested by the petitioners where more exit gates could be opened were not suitable for the purpose for which eviction of the petitioners was being sought. That was not the stage to go that deep into that aspect which definitely required trial in which the

respondent-landlord would have adduced evidence to show that it had no other reasonably suitable space for the opening of additional exit gates in the cinema hall and similarly the petitioners-tenants would have also got a chance to establish that the additional exit gates could be opened elsewhere also without evicting them from their shops which were the sources of their livelihood.

10. So, the impugned orders passed by the learned Rent Controller rejecting the applications of the petitioners-tenants seeking leave to contest the eviction petitions cannot be sustained at all since the Rent Controller has travelled far beyond his jurisdiction which he possessed at the stage of consideration of leave applications under Section 25-B(5) of the Act of 1958. Accordingly these revision petitions are allowed and the impugned orders are set aside. The petitioners are granted leave to contest the eviction petitions filed against them by the respondent. Eviction petitions shall now be taken up by the Rent Controller on 01/11/2012 at 2 p.m. for fixing the date for filing of written statements by the petitioners.

October 10, 2012

P.K. Bhasin,J