

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

% *Date of judgment: 23.01.2012*

+ **RC.REV. 346/2011**

ABDUL WAHID Petitioner

Through: Mr.R.K.Saini, Advocate.

versus

ZAHOOR AHMED Respondent

Through: Mr.Fahim Khan, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1. This petition has impugned the order dated 29.7.2011 vide which the eviction petition filed by the landlord Zahoor Ahmed seeking eviction of his tenant from a part of the premises located on the first floor of the property bearing No.9821, Gali Zamir Wali, Nawab Ganj, Azad Market, Delhi had been decreed in favour of the landlord. The application for leave to defend filed by the tenant had been declined; impugned order had noted that no triable issue has been raised by the tenant.

2. Record shows that the present eviction petition has been filed on the ground of bonafide requirement; what has been let out to the tenant has been described as two rooms, one kitchen,

latrine, bath room and open store on the first floor of the aforenoted suit premises; rent was ₹100/- excluding other charges; tenant has been described as a old tenant; it has been averred that he is also a chronic defaulter and he is not paying the rent regularly. In the body of the petition, it has been disclosed that the petitioner is the absolute owner and landlord of the property No.9821, Gali Zamir Wali, Nawab Ganj, Azad Market, Delhi measuring about 200 sq. yards. It comprises of a ground floor and first floor. The ground floor consists of three and open veranda and four shops out of which three rooms, open verandah and open store is in occupation of the petitioner as depicted in the green colour in the site plan. The first floor comprises of five rooms of which two rooms, one kitchen, latrine, bathroom and open store are in the occupation of the tenant and three rooms, latrine, bathroom and kitchen as shown in blue colour in the site plan are in the occupation of Zubeda Yusuf, the sister of the petitioner, who is in illegal occupation of the said premises. Relations between the petitioner and Zubeda Yusuf are strained and despite requests she is not vacating the suit property. Contention of the petitioner is that the his family comprises of himself, his wife, his son aged 30 years, his daughter in law, two

grandsons aged 8 years and 5 years; two married daughters who frequently visit him. Present accommodation available with him is not sufficient; he requires one room for his grandsons who also requires tuitions and for this purpose the tutors visit his home; he requires another room for his married son and daughter in law; one room for himself and his wife; his daughters and sons-in-law visit him often; and as such he requires a guest room for his married daughters when they visit him; he has four vehicles; three are two wheeler scooters and one car; there is not enough parking, as a result the vehicles are parked in the gali which causes a nuisance. His contention is that one room which is adjacent to the main road on the ground floor is required by him for parking the said vehicles; the present accommodation which is available with him is insufficient for his needs; apart from three bed rooms which are required for his immediate family having in the premises a guest room as also a drawing room, living room, pooja room is also required. The accommodation presently available with him as depicted in green colour in the site plan is only three rooms; a bonafide need has accordingly been made out and the petition has accordingly been filed.

3. In the application for leave to defend, the details of alternate properties of the landlord are contained in para 5.

Submission is that sufficient accommodation is available with the landlord; the eviction of the tenant from the present suit premises is not going to make any difference to the landlord. Learned counsel for the petitioner states that he is not pressing his claim qua the property mentioned at sub paras (a) and (b) as in the reply the landlord has specifically stated that the said properties are not connected with him and he is not the owner of thereof; the petitioner is not questioning this. Learned counsel for the petitioner is also not questioning the fact that other accommodations as listed in para 5 (c) to (h) are all commercial properties except the property at serial no.(f); this property belongs to his wife; contention being that why the petitioner's wife has not filed an eviction petition qua this property has not been answered.

4 Relevant would it be to state that the landlord himself in the eviction petition has disclosed that this property i.e. the property No. 786, Shish Mahal, Bahadur Garh Road, Delhi belongs to his wife and the same is under the tenancy of Zubair Ahemd (his son) who is carrying on a business of a repair workshop from the said premises; this is admittedly not a residential accommodation. All the other properties even as per the admission of the petitioner

are all commercial properties and cannot be used for a residential

purpose. They have in fact all (even in para 5) been described as commercial premises. The need of the landlord for the present premises is a residential need. The landlord is admittedly living on the ground floor and he is in occupation of only three rooms. His need as discussed supra is much more. The accommodation on the first floor which comprises of two rooms, kitchen, latrine, bath room and open store which is presently in occupation of the tenant is thus bonafidely required by the landlord for his need in view of the number of the family members as also their requirements as has been detailed; this bonafide need has thus been established.

5. Learned counsel for the petitioner at the outset had relied upon a site plan which has been filed in the appeal book (Page 67); his vehement contention in terms of this site plan is that the landlord is in occupation of the ground floor which comprises of three rooms as also a hall which is a covered hall and this hall can be used as a drawing cum dining room; this hall is in fact large enough to accommodate both a guest room as also a dining room; further submission being (on the same site plan) that the landlord is liable to be ousted forthwith as he has filed a wrong site plan; contention being that in the site plan (Page-67 of the paper book)

he has depicted only one room under the tenancy of the tenant

whereas in the eviction petition he has described the tenanted portion as two rooms; vehement submission being that the landlord is guilty of concealment of facts and his petition is thus if liable to be thrown out at the first juncture itself.

6. In the course of the arguments it has now transpired that this site plan (Page 67 of the paper book) was never a part of the trial court record; it has been filed on record in the appeal paper book without it being a part of the trial court record and thus the vehement submissions which have been addressed on this site plan (which is not a part of the record of the trial court) are arguments which have to fall flat. This court is amazed at these submissions having been advanced upon a document which is not a part of the record; the case set up by the petitioner is all bordered on this site plan which is a document which cannot be adverted to; not being a part of the pleadings of the court below. The site plan on the trial court record shows that there is no hall which has been depicted on the ground floor; the tenanted portion is coloured in red and evidences two rooms and not one room which is in conformity with the eviction petition. The petitioner has clearly tried to misled this Court.

7. Be that as it may, the bonafide requirement of the landlord has been established. No triable issue has been raised. The entire

body of the leave to defend application has only stated that the need of the landlord is not bonafide because of aforementioned alternative accommodation which has been detailed in para 5(a) to (h) in his leave to defend application. They have been discussed supra; none of them are alternative accommodation which can substitute the present accommodation. The landlord is admittedly living on the ground floor in a three rooms accommodation; his need is of a minimum of four bed-rooms as also a drawing/ dining room, pooja room; parking space is also required for his vehicles as his property is admittedly in a busy commercial area i.e. the Gali Zamir Wali, Nawab Ganj, Azad Market, Delhi. His submission that his four vehicles which have to be parked outside create a nuisance and as such the room which is immediately adjacent to the road is required for parking the vehicles is a submission which also has force specifically keeping in view the factual scenario of this present case.

8. In a judgment of the Apex Court reported as G.C. Kapoor Vs. Nand Kumar Bhasin reported in AIR 2002 SC 200 it was inter-alia noted as follows:

"It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattatraya Laxman Kamble v. Abdul

Rasul Moulali Kotkunde and Anr. : [1999]2SCR912 this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt."

9. In Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5 SCC 353 it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally be interfered with.

10. No triable issue has been raised by the petitioner. There is no merits in the petition. As noted supra, petitioner has made every effort to mislead the Court; precious time of the Court has been wasted on arguments which were not based the record. Petition is accordingly dismissed with cost of Rs.10,000/- to be deposited with the Delhi High Court Legal Services Committee. Trial court shall ensure compliance.

INDERMEET KAUR, J

JANUARY 23, 2012
nandan