

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

+ R.C. REV. 3/2012

**Reserved on 05.07.2012
Date of Decision: 09.07.2012**

ASHWANI KUMAR & ORS. PETITIONERS
Through: Mr. Ashish Midha, Advocate

Versus

ATTAUR REHMAN & ORS. RESPONDENTS
Through: Mr. S.H. Nizami, Advocate.

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

M.L. MEHTA, J.

1. This revision petition is filed against order dated 22nd September, 2011 of Learned Additional Rent Controller (ARC) whereby application of the petitioners/tenants seeking leave to defend the eviction petition filed against them by the respondents/landlords was dismissed and eviction order of the suit premises No. 3569, Jatwara, Daryaganj, New Delhi was passed against them.

2. The petitioners' predecessor in interest Sh. Ram Saran Dass got the tenanted premises for residential purposes and after his death the present petitioners became tenants therein by operation of law. The tenanted premises comprised of two rooms, one hall, one kitchen and bath on the ground floor of premises No. 3569, Bazar Jatwara, Daryaganj, Delhi.

3. The respondent Nos. 1,2 & 4 are brothers and respondent No.3 is their widowed mother. Respondent Nos. 1 & 2 along with their family

members and also with their mother respondent No.3 are sharing accommodation at 899, Haveli Azamkhan, Jama Masjid, Delhi, whereas respondent No.4 with his family is residing at the ground floor of property bearing No. 3568, Jatwara Bazar, Daryaganj, Delhi. Vide the impugned order, the Learned ARC dismissed the application of the petitioners/tenants and passed eviction order against them. The said order has been assailed by the petitioners/tenants in the present petition.

4. I have heard learned counsel for the petitioners/tenants and also respondents/landlords.

5. During the course of arguments site plan of the premises viz property No. 899, Haveli Azam Khan, Bazar Chitli Qabar, Jamamasjid, Delhi and 3658, 3569, Jatwara Bazar, Daryaganj, Delhi were filed by the learned counsel for the respondents/landlords which was taken on record without objection. Each and every portion of accommodation available with the respondents/landlords in these premises as also the portions available with the petitioners/tenants in 3569 were discussed by the learned counsel for the respondents in the open court. The learned counsel appearing for the petitioners/tenants did not dispute the correctness of these site plans as also the portions shown therein in possession of the respondents/landlords and with the petitioners as also with the other tenants. The tenanted premises in the possession of the petitioners/tenants forming part of premises No. 3659 is just behind the premises No. 3568 and is shown in red lines in the plan. The passage to 3569 is from the main road of Jatwara Bazar. Premises No. 3568 is on the main Jatwara Bazar. Other portions of this premises 3568 and 3569 are undisputedly in possession of other tenants and no other portion

except the portion of 3568 shown in green lines is with the respondents/landlords. It was stated that only respondent No.4 was residing in this premises along with his family.

6. The site plan of premises No. 899, Haveli Azam Khan, the correctness of which was not disputed by the petitioners/tenants, showed this premises to be of two-and-a-half storeyed comprising of ground, first and second floors. This was admittedly wrongly described in the site plan as first, second and third floor. The description of the premises in 899, Haveli Azamkhan as shown in the site plan and which was not in dispute was two rooms, each of size 8'x8' and one room of size 8'x14' with a verandah and open space on the ground floor. On the first floor of this premises, the accommodation available was of two rooms of size 8'x9' & 8'x8' and one open terrace and balcony. On the second floor, the accommodation available was of one room of size 8'x 8' and terrace. Petitioner Nos. 1 and 2 with their families and their widowed mother (petitioner No. 3) are in occupation of this premises.

7. It was the case of the petitioners that the family of petitioner No.1 comprised of himself, his wife and three minor children. Family of petitioner No.2 comprised of himself, his wife and two children at the time of filing of the petition and now during the pendency of this petition this petitioner has addition of three more children in his family. Petitioner No.3 is the widowed mother of these petitioners. The family of respondent No.4 residing at 3568 comprised of himself, his wife and three sons.

8. The accommodation with the respondents/landlords in 3568 as per the site plan consisted of three rooms of the size of 12'x8' and 14'x8',16'

x 8' three rooms of the size of 8'x8', 10'x8', 10'x8', open courtyards, three Dhallans, one kitchen and toilet. These premises were got vacated by the respondents/landlords from their erstwhile tenants in November, 2000.

9. In the leave to defend application it was alleged by the petitioners/tenants that the ground floor portion of premises No. 899 was being used for shops purposes. In this regard, the plea of the respondents/landlords was that these three shops on the ground floor were with the tenants, namely, Nisar Ahmed, Mohd. Yamin and Haji Mohd and they are not in possession of any portion of the ground floor of this property. Taking what was stated by the petitioners/tenants to be correct that these three rooms on the ground floor of this property were being used by the respondents/landlords as shops-cum-residence, still it could be said that the accommodation on the ground floor are not exclusively available with the respondents for their residential purposes. Even assuming further that the same was also used for residential purposes along with commercial activities, the accommodation on the ground floor, first and second floor of this premises could not be said to be sufficient for the residence of the respondents/landlords (respondent Nos. 1 and 2 and their families and their widowed mother). As is noted above, there is only one room of the size of 8'x14' on the ground floor whereas the remaining two rooms are of 8'x8' and similarly two rooms on the first floor are of the size of 8'x8' and 8'x9' and likewise one room on the second floor is of the size of 8'x8'. It is trite that any room of the area less than 100 sq. feet could not be considered a proper living room.

Reference can be made to Harivansh Lal Vs. Madan Lal, 1997 RLR 383.

That being the fact situation, only one room of the size 8'x14' can be said to be proper living room available with the respondents/landlords in this premises 899, Haveli Azamkhan. This is despite that this room was also like others on the ground floor being used for commercial activities also by the respondents.

10. The accommodation at 3568 was quite sufficient and suitable for the residence of respondent No.4 and his family. Even some portion of this premises can be used by any other respondent in conjunction with the premises in question or separately. The premises in question which is in the tenancy of the petitioners is just adjoining on the back of premises No. 3568. This premises could be said to be suitable for the residence of any other respondents/landlords i.e. respondent Nos. 1, 2 & 3. There is no dispute with regard to the proposition that the landlord is the best judge to decide about his requirements and as to how to use his premises. The Supreme Court in the case of *M/s John Impacts Pvt. Ltd. vs. Surender Singh, 2007 (1), RCR 509* has held that the landlord is the best judge of his requirements and a tenant cannot dictate terms on which the landlord should live. Having regard to the entire factual matrix I do not see any infirmity or illegality in the impugned order of the ARC.

11. The petition has no merit and is dismissed. The petitioners/tenants are to vacate the premises within six months from today. The petition is disposed of accordingly.

M.L. MEHTA, J.

JULY 09, 2012

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