

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

% *Judgment delivered on: September 24, 2013*

+ **RC.REV. 342/2012 & C.M. No.12657/2012**

KRISHNA BHANDARI & ORS Petitioners
Through Mr.Manbir Singh, Adv.

versus

SHANTI DEVI & ORS Respondents
Through Ms.Ruchira V.Arora, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) against the order dated 17th February, 2012 passed by the ARC, (Central), Delhi whereby the leave to defend application of the petitioners was dismissed in an eviction petition filed by the respondents against the petitioners on the grounds of bonafide requirement in respect of a corner room in the property No. 1000, Shivaji Street, Arya Samaj Road, Karol Bagh, New Delhi (hereinafter referred to as “the tenanted premises”)

2. The brief fact matrix of the case is that the above said property was initially owned by the father of the respondents, out of which the tenanted premises were let out to father of the petitioners in the year 1949. The property was bequeathed upon the brother of the respondents by father of the respondents, being the only son. After the death of the brother of the respondents, the respondents (five sisters) became the owners of the property. The said property is a two-story building on a plot of 110 sq. yards.

3. Respondents filed the eviction petition in respect of the tenanted premises stating that they bonafidely require the same on account of various ailments which either the respondents or their spouses are suffering from, due to old age or otherwise, and with a view to get treated in Delhi, they wanted to shift to Delhi. The detail of the grounds taken is as follows:

- Respondent No.5, who is presently living in the said property has two married daughters who visit her regularly to take care of her in her old age. Respondent No. 5 had undergone hip replacement surgery in 2004 and has angina problem, so she needs regular attendant to look after her.
- Respondent No.1, a widow of about 70 years who lives in a village in Haryana would like to shift to Delhi since she has been referred to Sir Ganga Ram Hospital for treatment.
- Respondent No.2 who is living in Uttar Pradesh would like to shift to Delhi with her husband who has had a brain surgery due to head injuries and needs regular treatment from a neuro-surgeon.
- Husband of respondent No. 3, who is presently living in Jaipur, has been getting treatment at Escorts Hospital, Delhi.
- Respondent No.4 would also like to shift to Delhi for the treatment of her husband.

4. It was stated that the accommodation available for the respondents in the said property is not sufficient to meet their requirements as they are in occupation of only five rooms and that the five respondents would require five rooms and at least one room for the attendants, one for the visiting daughter and family members, one pooja room, one store room and one dining room. It was also stated that whenever all the respondents and their

family members get together in Delhi on social occasions, they find the accommodation insufficient.

5. In the leave to defend application, the petitioners contended that except for the tenanted premises, the entire property/house was in the exclusive possession of respondent No.5 alone who had locked the house for five years and is permanently residing with her daughter at Pitampura, Delhi. It was stated that she had locked the house and lodged a report with the police to the effect that she was going to stay with her daughter after locking the house and expected police to take care of the house in her absence. It was further stated that the respondent no. 1 is a permanent resident of village Bharawas, Haryana and she never stayed in the said property even during the life time for her father and brother and in fact after getting reference from a doctor, she had taken no steps to get her treatment in Delhi. With regard to respondent No. 2, it was stated that no particulars regarding the date or place where her husband was operated have been provided and even Lucknow is very close to Badaun, where she resides, and there are as good medical facilities in Lucknow as available in Delhi. In respect of respondent no. 3 it was stated that her husband got retired from Indian Police services on a very high rank and is entitled for the best medical treatment care available in Jaipur where he can get the treatment. It was stated that as per medical record, husband of respondent No.3 came to Delhi in March, 2006 and since then he is not coming to Delhi. With regard to the accommodation available with the respondents, it was stated by the petitioners that the said property consists of two rooms on the ground floor and three rooms on the first floor which are lying unused and none of the respondent is using them. It was contended that the entire property is lying locked, uncleaned and unattended

for last more than five years and that the present petition is filed merely to sell the property on a higher rate.

6. The averments made in the leave to defend application were denied by the respondents in their reply, whereas the same were reiterated in the rejoinder thereto filed by the petitioners.

7. The learned trial court was of the view that the accommodation available with the respondents in the said property is highly insufficient and their need to get the suit premises is genuine and it was observed in para 11 of the impugned order that:

“It is not in dispute that all the petitioners are senior citizens and each is more than 70 years old. The medical papers filed on behalf of the petitioners clearly shows that petitioner no.5, petitioner no.2, husband of petitioner no.3 are getting treatment from various doctors. The husband of petitioner no.3 got treatment and discharged from Escorts Heart Institute and Research Centre, Delhi and the husband of petitioner no.4 is also getting treatment from Sh. Ganga Ram Hospital, New Delhi. I am of the considered view that as the petitioners and their husbands are of old age and getting medical treatment and for this they want to shift to Delhi and required suit premises then it is their bonafide need. Admittedly, there are only 2 rooms on the first floor and three rooms on the ground floor in possession of the petitioners. The petitioners themselves are five in numbers and all are of old age therefore they need separate rooms for their attendant also. They also need puja room, dining room, store room. The petitioners also need separate room for their other family member who will stay with them in their old age. The contention of the respondent that all the rooms are lying vacant as none of the petitioners is lying in it has no substance because it is not necessary for the landlord to live in a particular property permanently. A landlord can use his property his property as per his convenience and requirement. The tenant cannot force the landlord to live in a particular property forever”

8. With these observations, the impugned eviction order was passed against the petitioners dismissing their leave to defend application and aggrieved by the same the petitioners have filed the present petition.

9. During the course of hearing of matter, that is no positive answer given by the learned counsel for the petitioner to the reply that tenanted premises is not put to any use for the last more than 10 years as alleged by the landlord.

10. It is contradicted by the petitioner that the respondents have two rooms, a small kitchen, open courtyard, bathroom W.C. all on the ground floor and three rooms on the first floor with kitchen, bathroom and W.C. and small dochatti over the staircase bathroom and W.C.

11. It is not denied that the respondent No.5 who is living in the said property for past about 45 years has undergone hip replacement surgery. She has two daughters, both married who are taking care of her in old age. The other respondents are coming and staying in the said property.

12. Respondent No.1 lives in village Bharawas, District Rewari, Haryana; she has problems in her knees and has been referred for treatment to Sir Ganga Ram Hospital in Delhi. The respondent No.2 lives in a village in Uttar Pradesh. Her husband had undergone brain surgery due to a head injury, which led to clotting of blood, leading him in a state of coma for sometime and needs regular treatment from a good neurosurgeon. The respondent No.2 would like to shift with her husband to Delhi for proper treatment. The respondent No.3 is presently living at Jaipur. Her husband is getting treatment at Escorts Hospital. She would like to shift to Delhi with her husband for proper treatment.

13. It was the case of the respondents that the accommodation available with them is not sufficient to meet their requirements. They are in

occupation of five small rooms and the present accommodation is highly insufficient. The respondents would have their sons and daughters and family members visiting them. All the respondents have large families. The requirement of rooms has been set out in details in the eviction petition.

14. The bonafide and genuine need of the respondents in respect of the tenanted premises has been upheld by the learned Additional Rent Controller. The findings of the learned Additional Rent Controller have been returned after appreciating the genuine and bonafide requirement of the respondents. The outcome of the eviction petition of the respondents was based on natural, real, sincere and honest desire of these respondents. The given facts were substantiated by the respondents to show the genuine and bonafide need for the tenanted premises. The learned Additional Rent Controller was satisfied with the bonafides of the needs of the respondents by applying objective standards. It is stated that in the application for leave to defend the eviction petition, no positive material was brought on record by the tenant/petitioners, which would have entitled them to leave to contest.

15. It has been held by the Supreme Court in the case of ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta***, AIR 1999 SC 2507 that the convenience and safety of the landlord and his family members would be the relevant factors and while considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members and their style of living, their habits and the background wherefrom they come. It was further held that if the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lessor premises to protect the tenant's occupancy.

16. The concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. The law does not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not; the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out and termed as irrelevant.

17. It is now the settled preposition of law that what further can the landlord do, even if compelled to appear in the witness box. The landlord can at best again depose of his intent to settle down in the house in his old age and the tenant would at best suggest otherwise to the landlord. The position would be no different than it is today. It is stated that in the present case all the respondents/landladies are in the evening of their life. Their bonafides cannot be tested, whether such bonafides are genuine. The house in question requires some work which cannot be carried out with the petitioners continuing to be in possession of a portion thereof.

18. It is a case where the relationship between the parties is admitted. The ownership of the respondents is admitted. The extent of families of the respondents is admitted. There being no suitable alternative accommodation available with the respondents, is also not disputed. The bonafide requirement of the respondents has been clearly shown with averments supported by documents on record. The tenant/petitioners have failed to disclose such facts, which would have disentitled these respondents from seeking eviction.

19. Rather, there is no specific denial on the part of the petitioner at the time of argument that the tenanted premises has not been used by the petitioner for the last 10 years. No prima facie evidence is placed on record.

20. Under these circumstances, it is the duty of the court in the facts of present situation to strike a balance between the parties. Here is the petitioner who is not using the tenanted premises, on the other hand the respondents are suffering due to reasons explained in the eviction petition.

21. The question before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction or not in view of the facts and circumstances of the present case.

i) A Full Bench of this Court in ***Mohan Lal v. Ram Chopra and Anr., 1982 (2) RCJ 161*** exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in ***Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury, A.I.R. 1963 S.C. 698*** and ***Bell and Co. Ltd. v. Waman Hemraj, AIR 1938 Bom (223)*** it was laid down as follows:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court

would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.”

ii) The Supreme Court in another case titled as *Chaman Prakash Puri vs. Ishwar Dass Rajput and Another*, 1995 Supp (4) Supreme Court Cases 445 has examined with regard to High Court’s power to interfere in revision against the finding as to bonafide requirement of landlord. It has been held that if the Rent Controller finds that landlord was in bonafide need of premises, the High Court in revision was not entitled to re-appreciate evidence and reverse the finding.

iii) The Apex Court in *Sarla Ahuja versus United India Insurance Company Ltd.*, reported in AIR (1999) SC 100 held as under:-

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

22. In view of the aforesaid reasons, facts and circumstances of the present case, there is no merit in the petition. The same is dismissed. However, in the interest of justice and equity, the petitioner is granted six

months time to vacate the suit premises. The petitioners shall hand over vacant and peaceful possession of the suit property to the respondents after the expiry of said period and during this period, the petitioners shall not sub-let and create any third party interest in the suit premises.

23. No costs.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 24, 2013