

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

% Judgment pronounced on: October 28, 2013

+ RC. Rev. No.346/2012 & CM No.12793/2012

GHANSHYAM DASS Petitioner

**Through Mr.Manoj Sharma, Adv. with
Mr.Kapil Kaushik, Mr.V.K. Khurana
and Mr.Ankur Saini, Advs.**

versus

SHAKUNTLA BAKSHI & ORS Respondents

**Through Mr.Ratan Kr. Singh, Adv. with
Mr.Nikhlesh Krishnan, Mr.Saurav
Sumkan, Mr.Shashi Bhushan and
Mr.Jaipratap, Advs. for R-1.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner (respondent No.2 in the eviction petition) has filed the abovementioned revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (in short, called the “DRC Act”) against the order dated 28th February, 2012 passed by the learned Rent Controller (South), Saket Courts, Delhi in Eviction Petition bearing No.E-216/09 whereby the eviction order was passed against the petitioner and respondents No.2 to 6 herein by dismissing the application for leave to contest in favour of respondent No.1, directing the petitioner and respondents No.2 to 6 to vacate the ground floor, South-East portion forming part of property bearing No.18/1, Mehrauli, New Delhi, shown in red colour in site plan (hereinafter referred to as the “Suit Premises”).

2. Brief facts are that the respondent No.1 filed an eviction petition under Section 14(1)(e) read with Section 25-B of the DRC Act against the petitioner and respondents No.2 to 6 on the ground of bonafide requirement. The respondent No.1 is the owner/landlady of the property bearing No.18/1 which is a two storeyed house. The petitioner and respondents No.2 to 6 are the tenants in the suit premises. The said property was originally purchased by Sh.Ram Dayal in public auction from competent Officer, Rehabilitation Department, Jaisalmer House, New Delhi on 21st March, 1958. The certificate of sale was issued on 4th November, 1963. Said Sh.Ram Dayal sold vertical half portion of the said two-storeyed house consisting of ground and first floor to the husband of respondent No.1, Late Sh.J.N.Bakshi vide agreement to sell and other sale documents.

3. The suit premises was let out to Mr.Ram Kumar, father of the petitioner and respondents No.3 to 6. The rate of rent of the suit premises was ₹7.50/- per month. The case of the respondent No.1 was that the tenants have not paid the rent for the last 20 years.

4. Sh.J.N.Bakshi expired on 4th April, 2003 and after the demise of Sh.J.N.Bakshi, the aforesaid property was mutated in the name of the respondent No.1, as other legal heirs of Sh.J.N.Bakshi relinquished their respective shares in the property in the name of the respondent No.1 vide registered Relinquishment Deed dated 20th August, 2004. Presently, the respondent No.1 is aged about 76 years and is residing on the first floor of the aforesaid property along with her family. The first floor comprises of two bed rooms, one drawing room, one bathroom and one WC toilet, two kitchens, one verandah and balcony. The second floor is having one small asbestos temporary shed which is being used as store room.

5. The family of the respondent No.1 consists of herself, two married sons namely Sh.Virender Bakshi and Sh.Sanjay Bakshi and two married daughters namely Smt.Chander Prabha and Smt.Renu Grover.

The family of Sh.Virender Bakshi comprises of his wife and two sons namely Himanshu Bakshi aged about 19 years and Gaurav Bakshi aged about 14 years.

The family of Sh.Sanjay Bakshi comprises of his wife and one son namely Akshit Bakshi aged about 10 years and one daughter namely Yamini aged about 9 years.

The married daughters are residing at their respective matrimonial houses.

6. Out of the two bed rooms presently available with the respondent No.1, one room is occupied by her elder son who stays in the same with his wife and the second room is occupied by her younger son who resides there with his wife. The respondent No.1 who is suffering from several ailments as alleged in the petition is compelled due to lack of accommodation to live and reside in the drawing room along with her grand children including Himanshu Bakshi who is studying in B.Sc. IInd Year and requires a separate room for residence as well as for studies.

7. It is also the case of the respondent No.1 is that due to various ailments, she is not at all in a position to move or walk on her own as fingers of the respondent No.1 have bent due to Rheumatoid Arthritis and she is totally dependent on her family members for her daily and other needs. Due to the said ailments which are of serious nature, the respondent No.1 is required to visit doctors periodically and as she is unable to move and walk

and climb or get down the stairs herself, she is carried on stretcher from first floor to ground floor, but the staircase is narrow and it is very difficult for the family to bring down the respondent No.1 from the first floor to the ground floor portion and there is a great hardship even for the respondent No.1 herself in the said process. Thus, the respondent No.1 requires shifting to ground floor in view of the physical and mental hardships.

8. It was stated in the petition that the respondent No.1 does not have any other alternative residential accommodation available with her. The respondent No.1 and her family members who are dependent upon her for residence require at least five bed rooms, i.e. one room for the respondent No.1, one room for her eldest son, one room for younger son, one room for eldest grandson of the respondent No.1, Himanshu Bakshi and one room for remaining grand-children. In addition to this, the respondent No.1 requires two study rooms, one drawing room each on both floors, one pooja ghar, three store rooms, two kitchen, three toilets, bathroom and a servant quarter. Therefore, she requires the entire ground floor including the suit premises to meet her bonafide requirement.

9. The petitioner upon service filed the application/affidavit for leave to defend raising inter alia question that the respondent No.1 is not the owner of the suit property i.e. tenanted premises. M/s. Mehrauli Dehat Company Pvt. Ltd. is not a necessary party in the present case and the present eviction petition is bad for mis-joinder of parties. The respondent No.1 is not suffering from any serious disease or is chronic patient of rheumatoid arthritis and even if, it is assumed that she has been bed ridden and not in position to move, then the question arise as to why she had been waiting for 20 years for filing the present eviction petition. The medical documents to

show her ailments and diseases are forged and fabricated documents. The respondent No.1 has sufficient accommodation at her disposal, as she has four big bed rooms, one big drawing room, two toilets, store at her disposal which is sufficient to meet the requirement of the family of respondent No.1. The petitioner has been residing in the tenanted premises for last more than 60 years and his family has no alternative accommodation. Comparative hardship likely to be faced by the petitioner/tenant in the event of an eviction order being passed is not relevant in the eviction petition filed under Section 14(1)(e) of Delhi Rent Control Act, 1958.

10. Learned Trial Court rejected all the pleas raised by the petitioner i.e. ownership of respondent No.1 qua the tenanted premises, learned ARC held that the plea of ownership is untenable in view of material available. The dispute or litigation between respondent No.1 and respondent No.2 will not effect the present eviction petition and any order that is passed under the present eviction petition will not result in multiplication of proceedings. Event if, it is assumed that petitioner has four rooms in possession of petitioner and her family, same will be highly insufficient for a family comprising of nine members excluding the married daughters. The requirement of married daughters cannot be ruled out. They will be visiting their ailing mother and separate room is required for this purpose as the petitioner has not disputed the number of family members of petitioner. The respondent No.1 requires separate bed room for herself, elder son of respondent No.1 and his wife require another bed room. Similarly, the younger son of respondent No.1 also requires a bedroom. The eldest grandson namely Mr. Himanshu who is studying in B.Sc. also requires separate bed room for residence as well as for studies. Two study rooms are

required for remaining grand children of respondent No.1. Requirement of one Puja Room at this advance stage is also not unjustified. Separate guest room is also required as daughters and grandson will be visiting her frequently. Hence the requirement of respondent No.1 qua the tenanted property is genuine, honest, real and bona fide.

11. The issue before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that 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. In other words, this Court has only to see whether the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it. 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.

12. The High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of

ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity would have reached on the material available before him.

13. The Apex Court in *Sarla Ahuja Vs. 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.”

14. During the arguments, learned counsel for the petitioner has specifically disputed the accommodation available with the respondent no.1 at the first floor. According to the petitioner, on the first floor, there are five rooms, one drawing room, one bathroom and one WC toilet, two kitchens, one verandah and one balcony. It was further alleged by him that the respondent No.1 has not filed the correct site plan of the first floor. The argument of the learned counsel for the petitioner has been denied by the learned counsel for the respondent No.1 who stated that the accommodation available with the respondent No.1 at the first floor has only two bedrooms. The petitioner in order to counter the argument has pointed out the site plan filed along with the present petition Annexure P-15. The site plan filed by the petitioner itself shows that the right side portion of the property which is

in possession of respondent No.1 consists of two bedrooms. Thus, the said argument of the petitioner is without any force.

15. The second submission of the learned counsel for the petitioner argued that the respondent has got the possession of ½ portion of the big hall on the ground floor (North-East side) in the suit property in Eviction Petition bearing No.E-15/10 which was decided in favour of the respondent No.1 vide judgment dated 7th April, 2011. In reply to this argument, the learned counsel for respondent No.1 stated that the said eviction order dated 7th April, 2011 has been confirmed by this Court in RC. Rev. No.373/2011 decided on 21st October, 2013. Counsel further stated that the said accommodation is merely about 700 sq. ft. which still does not satisfy the requirement of the respondent No.1 in view of the large family as detailed in the eviction petition. The petitioner was not able to show even *prima-facie* that the respondent No.1 or her family members owns any other alternative residential accommodation.

16. The next argument of the learned counsel for the petitioner is that the learned Rent Controller did not apply his mind while considering the documents filed by the respondent No.1 with regard to her ailments alleged by her. According to the petitioner the said medical documents filed by respondent No.1 about her illness are fabricated and manipulated. His next submission is that the respondent No.1 nowhere mentioned in the eviction petition that the family members are dependent upon her for residence. Even, the respondent No.1 failed to file the complete site plan of the first floor. Therefore, she is guilty of suppressing the material facts. The husband of respondent No.1 had earlier filed the petition under Section

14(1)(c) of the DRC Act who did not disclose the ailments of the respondent No.1.

17. After having considered the Trial Court record and the documents placed on record by respondent No.1 along with the eviction petition, it is clear that the submissions of the petitioner are totally misconceived and not tenable. The respondent No.1 had filed the original medical record for the period 1994 to 2009 which indicates the details of her ailments confirmed by the well known hospitals of the city. On the contrary, no material was placed by the petitioner/tenant to show that the medical documents were fabricated and manipulated.

18. As regards the ownership of the property, the relinquishment deed placed on record shows that the respondent No.1 was represented through her son Virender Bakshi which is in favour of respondent No.1. In fact, in the Company Petition No.7/99 filed by the petitioner, the Division Bench gave the judgment which records that the case of the petitioner was with the husband of the respondent No.1 as his landlord.

Even otherwise, the said arguments are totally misconceived and are also without any force, as the petitioner has specifically admitted in paras 4, 5 & 8 of the application for leave to defend that earlier his father was the tenant and after his death, now he is the tenant. In view of the aforesaid admission in the company petition, the petitioner attorned tenancy in favour of the husband of the respondent No.1 and paid the rent for more than 25 years which indicates that respondent No.1 is the owner of the property in question and the petitioner is estopped in law from disputing that the respondent No.1 is not the landlady/owner of the suit property.

19. The ground that whether the suit premises is suitable for the purpose for which eviction is sought can only be proved by leading evidence, is legally untenable and goes against the very scheme of the provisions of Section 14(1)(e) and Section 25 B relating to the summary procedure for eviction on the ground of bona fide requirement. The provisions of the Act as well as the well settled on the subject clearly provide that in the proceedings of present nature, evidence can be allowed to be led only pursuant to the grant of leave to defend, which is otherwise granted by the trial court only when certain triable issues arise from out of the grounds on which leave to defend is sought. A perusal of the record of the present proceedings would clearly show that nothing pleaded in the affidavit seeking leave to defend which could be said to have raised triable issue. It cannot be said till the time some doubts exists on the suitability of the premises that every time if the tenant challenges that the premises are not suitable for the purpose for which the eviction is sought for, the court will make the same as triable issue. The dispute as to the suitability of the purpose of the premises shall become triable only when on the material available on record, there exists a doubtful case on the genuineness of the need which may emerge from the affidavit along with the leave to defend application along with the documents filed there with. If that is not so, it cannot be said that there exists a triable issue on the count of the suitability of the purpose.

20. i) The Supreme Court in the case of ***Sri Ram Pasricha Vs. Jagannath***, AIR 1976 SCC 2335 has ruled that in a suit for eviction by landlord, the tenant is stopped from questioning the title of the landlord in view of Section 116 of Evidence Act. The Apex Court has held in ***Anar Devi Vs. Nathu Ram***, (1994) 4 SCC 250 that ever since, the accepted

position is that Section 116 of the Evidence Act applies and estopes even a person already in possession as a tenant under one landlord from denying the title of his subsequent landlord, once he acknowledges him as his landlord by attornment or conduct.

ii) In the case of ***Ramesh Chand Vs. Uganti Devi***, 157 (2009) DLT 450, it was held that :

“It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly.”

iii) This Court in the case of ***Navneet Lal S/o Sh. Hira Nand Vs. Deepak Sawhney***, 174 (2010) DLT 189 held that it is well settled that it is not open for the tenant to dispute the title of the landlord. The question as to whether Will is valid or not can only be challenged by the LRs of the deceased. Tenant is a stranger to the Will and as such he has no locus standi to challenge the same.

21. In view of the averments made in the eviction petition and material placed on record, I am of the considered view that the respondent No.1 is

able to establish the case of bonafide requirement within the four corners of the provisions under which the eviction petition has been filed. All other submissions of the petitioners are totally vague and contrary to law and facts.

i) It has been further held in the case of ***Devi Ram & Ors. Vs. Ram Kapoor***, 76 (1998) DLT 637 as under:-

“7....It is settled law that grownup children require separate rooms to live in a manner he or she likes (***Brij Mohan vs. Shri Pal Jain***, 49 (1993) DLT 543.

9..... It is well settled that the landlord cannot be dictated the way he shall reside, nor can the mode of division of rooms can be prescribed for each family member. Sometimes the children in the family cannot be accommodated in the rooms used by the adults and it is illogical to hold that minor children can be accommodated with the elders of the family.

11.....The full bench of the Punjab High Court in ***M/s. Sant Ram Das Raj Kalka Vs. Karan Chand Mangal Ram***, AIR 1963 Punjab Page 1, had evaluated the definition of requirement and came to the conclusion that where the landlord establishes that he has made his application for eviction in good faith and he requires the premises for his own accommodation and further that the premises already in occupation do not meet his requirements and needs, he is entitled to evict his tenant.

12..... As a broad workable rule the landlord must be left to assess his requirements in the background of his position, circumstances, status in life and social and other responsibilities, and other relevant factors can formulate the criteria to assess the bonafide requirement.

15.....That law is, therefore, well settled that the landlord is entitled to assess the need and requirement for himself and his other family members. Neither the Court nor the tenant can dictate to him the mode and manner in which he should live or to prescribe for him a residential standard of their own.”

ii) In the case of *Prativa Devi (Smt.) Vs. T.V. Krishnan*, 1996 (5) SCC 353, it was held as under:-

“2.....The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is not concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own... There is no law which deprives the landlord of the beneficial enjoyment of his property.”

“4.....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 lesser premises protecting the tenant’s occupancy.”

iii) In the case of *Sarla Ahuja Vs. United India Insurance Company Ltd.*, VIII (1998) SLT 374, it was held that *the crux of the ground envisaged in clause (e) of Section 14 (1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bonafide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide.*

22. In view of the aforesaid reasons, the impugned order does not suffer from any infirmity. The present revision petition is accordingly dismissed. However, in the interest of justice, the petitioner and respondents No.2 to 6/tenants are granted six months time from today to hand over the peaceful and vacant possession of the suit premises, i.e. ground floor, South-East portion forming part of property bearing No.18/1, Mehrauli, New Delhi, as shown in red colour in site plan.

23. During this period, the tenants shall not sublet or create third party interest in the suit premises and shall also pay the user charges fixed by this Court in terms of the order dated 19th October, 2011 passed in RC. Rev. No.373/2011.

24. Pending application also stands disposed of.

25. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 28, 2013