

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

% *Judgment Pronounced on: 03.09.2013*

+ **RC. Rev. No.247/2013 & C.M. No.10716/2013 (for stay)**

THE PUNJAB STATE CO-OPERATIVE SUPPLY & MARKETING
FEDERATION LIMITED (M/S MARKFED) Petitioner

Through Mr.Brijender Chahar, Sr.Adv. with
Mr.Vineet Bhagat & Mr.Akash Tyagi,
Advts. along with Mr.Shiv Kumar,
Senior Manager (Law) in person.

versus

AMIT GOEL & ANR Respondents

Through Mr.Sandeep Sethi, Sr.Adv. and
Mr.Ravi Gupta, Sr.Adv. with
Mr.Lalit Gupta, Ms.Payal Gupta
& Mr.Ashish Kumar, Advts.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”), the petitioner has assailed the order dated 13th May, 2013 passed by the Additional Rent Controller (04), South, New Delhi in an eviction petition filed by the respondents (petitioners therein) in respect of House no. C-212 Defence Colony, New Delhi 110024 (hereinafter referred to as “the suit property”) whereby the leave to defend application of the petitioner (respondent therein) was dismissed.

2. In the eviction petition, it was stated by the respondents that both of them are owners of the suit premises which were given on rent to the petitioner by the previous owners i.e. Sh. Hans Raj and Sh. Kundan Lal vide lease deed dated 5th November, 1974. The respondents purchased the suit premises vide registered sale deed dated 23rd April, 2003.

3. It was stated by the respondents that the suit premises is bonafidely required for the respondent no.1 and his family members dependent upon him. Both the respondents are presently residing at House No. D-13, A/8 Model Town III, Delhi-09 owned by their mother. It was stated by the respondents that the father of the respondents Mr. J. P. Goyal suffered a severe brain haemorrhage in May, 2011 and is in coma since then. Since he needs round the clock specialized medical care requiring installation of specialized equipments as available in the ICUs of hospitals, two specialized attendants were required for his proper care round the clock. It was stated that a physiotherapist, a doctor and a person from pathology lab and other visitors/relatives/guests visit them on daily basis. Therefore the respondents required at least two big rooms on the ground floor alongwith two big toilets for proper care of their father as well as for housing his attendants. It was further state by the respondents that their mother Mrs. Satya Goyal suffering from routine old age ailments also needs one separate room adjacent to the room of her husband.

4. It was further stated by the respondents that their divorcee sister Ms. Renu Gupta who lives with them suffers from mental/psychiatric diseases and a permanent female attendant has been employed to take care of her so at least one room for her is also required. Besides this, one room is required for guests/visitors as the married daughter of Ms. Renu Gupta visits her mother regularly.

5. It was further stated that Respondent No. 2 alongwith his wife need one bed room with attached bathroom, WC, Dressing room etc. for themselves. His elder son who is in business and of marriageable age needs one separate room with attached bathroom, WC, dressing room etc. and his younger son who is pursuing CA also needs a separate room specifically for home tuitions. Further, Respondent No. 1 alongwith his wife were stated to have been requiring one room attached with bathroom, WC, Dressing room etc. for themselves, one room for their elder son who is working and is of marriage age and one room for their younger son who is pursuing graduation as well as doing his business. Besides them, the respondents have also engaged two security guards, three drivers and three domestic servants over and above the specialized attendants for their father and sister.

6. It was stated by the respondents that the present house at Model Town which is owned by their mother is under litigation and comprises of ground floor having three bedrooms, one drawing room and dining room, one kitchen; first floor having two bed rooms, one drawing room, one dining room, one kitchen and one small store room built over and above the 1st floor alongwith one WC/toilet for the servants.

7. It was contended that the existing accommodation is too inadequate and therefore it is being decided among the family that the respondent No.2 alongwith his immediate family and both the parents will continue to reside in the house at Model Town while respondent. No. 1 alongwith his family members and the sister Ms. Renu Gupta would shift out of the Model Town house and therefore they require the suit premises. It is further contended that the respondent No. 1 and his wife would require one room and two rooms would be required for both the sons. One room is required for the sister Ms. Renu Gupta and one room for her attendant, one pooja room, one

servant room, one guest room, one drawing room, one dining room/lobby and at least one kitchen. The suit premises is stated to be required by respondent No.1 for himself as well as his immediate family members dependent upon him and they have no other suitable alternative accommodation available with them.

8. In the leave to defend application, the petitioner disputed the bonafide need of the respondents. The petitioner took the legal objections that it is an Apex co-operative society of State of Punjab and by virtue of Section 3 of the Act, the Act is not applicable to the premises belonging to the Government and therefore the petition is not maintainable. It was also contended by the petitioner that it being a Government institution was not served with the notice under Section 80 CPC. Petitioner further disputed the ownership of the respondents though admitted that a letter dated 27th February, 2004 was written by the petitioner to the respondents asking them to send the title deeds of the suit premises. It was stated that the suit premises are being used by the petitioner for transit accommodation for its officers who come from Punjab, on a meagre charge of Rs. 30/-. It was also stated that due to threats from the respondents to vacate the suit premises, the petitioner filed a complaint with the concerned SHO. It was further stated that since 2011, the respondents had been managing to live in the same house which is big enough to meet their genuine requirements, besides that the respondents owned various benami properties. It was contended that the respondents intended to reconstruct the suit premises and sell out the floors. It was also contended that the sister Ms. Renu Gupta lived with her married daughter.

9. On the submissions so made and material on record, the learned Trial Court on the plea of the petitioner that it is an Apex Co-operative Society of

the State of Punjab and the claim that it is a government organization and hence protected by virtue of Section 3 of the Act, it was observed that an Apex co-operative body cannot be called a government body. A co-operative society is an autonomous association of persons who voluntarily co-operate for their mutual, social, economic, and cultural benefit. However, the petitioner is a federation and so for the purposes of the Act it cannot be called a Government Body. It was contended by the respondents that even if presumed that the petitioner is a government body, the protection under Section 3 of the Act would not be applicable since section 3 applies to cases where the government is the landlord and not when the government is the tenant. Considering the same meritorious, the learned trial court opined that the petitioner cannot be called “Government” and therefore no question of applicability of Section 3 of the Act arose. Similarly on the contention of the petitioner that it was not served with the legal notice under Section 80 CPC as it is a government institution, it was observed that Section 25 B of the Act is a complete Code in itself, and considering that the petitioner is held not to be Government for the purposes of the Act, there was no requirement of the notice under Section 80 CPC.

10. As far the issue of relationship of the parties was concerned, the learned trial court observed that the petitioner in the leave to defend application categorically stated that the petitioner vide a letter had requested the respondents to send them the title deeds of the suit premises to clear the arrears of rent which were subsequently paid. This implies that petitioner was paying rent to the respondents and so the relationship of landlord-tenant was duly admitted. This clubbed with the facts such as petitioner’s admission of the lease agreement executed by the respondents and the erstwhile owners; communication between the parties through a number of

letters in regard to payment of rent, which was not disputed by the petitioner, proved that the said relationship existed.

11. As far the issue of bonafide requirement was concerned, the learned trial court observed that while the respondents had given complete details of each and every family member and also described the accommodation present with them; the petitioner did not dispute the number of family members of the respondents and in fact admitted to the illness of the father and the sister of the respondents. In total, the need of the respondent no.2 was cited to be that of eight/nine rooms, while the Model Town house had five bedroom, two dining cum drawing rooms, two kitchens and one store and it also housed respondent No. 1, his family and their mentally ill sister. Considering this, it was opined by the learned trial court that the need of the respondents for more space is genuine and bonafide. The contention of the petitioner that respondents held a number of benami properties was considered as vague as the petitioner had failed to state any particulars and details thereof. In view of all these reasons, by way of the impugned order dated 13th May, 2013 an eviction order was passed against the petitioner.

12. Aggrieved by the impugned order, the petitioner has filed the present petition on the grounds mainly that the impugned order suffers from illegal and material irregularity. It is contended among other things that petitioner is an Apex Co-operative Society in the State of Punjab, having its registered office in the State of Punjab and is regulated by the Government of Punjab. It is contended that its Managing Director and some of the members of Board of Directors are appointees of the Government of Punjab and so the petitioner is a Governmental Body. It is stated by the petitioner that the Punjab and Haryana High Court in the case of ***Chiman Lal Gupta (dead) through LRs v. Punjab State Co-operative Supplies and Marketing***

Federation Limited, Chandigarh, 2006 (1) PLJ: 2006 (1) SLR 794, had held the petitioner to be an agency and instrumentality of the State that falls within the ambit of the expression “other authorities” appearing under Article 12 of the Constitution of India. Besides this, the grounds taken in the leave to defend application are reiterated and contended.

13. It is submitted that in view of the number of family members and also in view of the peculiar facts, the respondents have engaged two security guards, three drivers and three domestic servants and these are over and above the specialized attendants which are required for Mr.J.P.Goel and Ms.Renu Gupta and the domestic servants remain in the house throughout the day and thus need appropriate and suitable accommodation. Therefore, the existing accommodation available at the only residential house at Model Town is too inadequate and it is difficult for all the family members to continue to live at Model Town and after discussions amongst the family members, it was decided that respondent No.2 Mr.Atal Goel would continue to reside at Model Town residence along with the immediate family of respondent No.2 as well as both the parents whereas, the respondent No.1 would shift out of Model Town house along with his immediate family members as well as the mentally deranged sister, namely, Ms.Renu Gupta and thus the respondent No.1 is required to arrange suitable alternate accommodation. Smt.Satya Goel has herself called upon the respondent No.1 to shift out of Model Town along with his immediate family members and Ms.Renu Gupta inasmuch as the available accommodation at Model Town is quite insufficient and it has become impossible for all the family members to continue to reside at Model Town.

14. It is also the case of the petitioner that the eviction petition is not maintainable in view of Section 3 of DRC Act. It has been further claimed

by the tenant that the eviction petition is not maintainable for want of prior notice under Section 80 CPC.

15. In his first submission, Mr. Brijender Chahar, learned Senior counsel appearing on behalf of the petitioner has strongly referred the case which was decided by the High Court of Punjab & Haryana, titled as ***Chiman Lal Gupta (dead) through LR's vs. Punjab State Co-operative Supplies and Marketing Federation Limited, Chandigarh***, 2006(1) PLJ 407, after considering the facts and circumstances of the above case it was held that, *“Markfed i.e. Revisionist herein is an agency and instrumentality of the State and falls within the ambit of the expression “other authorities” appearing in Article 12 of the Constitution of India. As a contrary of this, we approve the view by the learned Single Judge in K.N. Chopra’s case (supra) and held that the contrary judgments of the Single Benches in Krishan Lal Pahwa’s case (supra), S. Anup Singh’s case (supra) and of the Division Bench in P.S. Saini’s case (supra) do not lay down correct law.”* The relevant extract of Article 12 of the Constitution of India is reproduced here for ready reference:-

“Article 12. Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

16. His submission is that in view of above, the provisions of the Rent Control Act are not applicable to the petitioner Apex Co-operative Society being a Government Body which would be exempted from the provisions of the Rent Control Act as is mentioned in Section 3 of the said Act.

17. It is not denied by the learned Senior counsel appearing on behalf of the petitioner that the Rent Control Act, 1958 is a special Act and has its Code to determine the disputes between the landlords and tenants and there is a bar to file eviction petitions as provided under Section 3 of the Act. The said provision reads as under:-

“3. Act not to apply to certain premises.- Nothing in this Act shall apply-

(a) To any premises belonging to the Government;
(Note: The word "or" omitted by Act 57 of 1988, sec.2 (w.e.f. 1-12-1988).

(b) To any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government:

(Note: Added by Act 4 of 1963, sec.2 (with retrospective effect)

Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy;

[(c) (Note: Ins. by Act 37 of 1988, sec.2 (w.e.f. 1-12-1988) To any premises, whether residential or not, whose monthly rent exceeds there thousand and five hundred rupees; or

(d) To any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction;]

18. In the impugned order, the learned ARC rejected the argument of the petitioner by holding that the petitioner is a co-operative society and thus, it

cannot be called a government body for the purposes of Delhi Rent Control Act. The petitioner may be an agency and instrumentality of the State and falls within the ambit of the expression “Other authorities” appearing in Article 12 of the Constitution of India but this would not imply that petitioner itself is government who cannot be construed as government for the purposes of the DRC Act. Being an agency and instrumentality of the State and falling within the ambit of the expression “Other authorities” appearing in Article 12 of the Constitution of India is one thing and being government is another.

19. A perusal of Section 3 of the DRC Act would reveal that the said Act does not apply to certain premises mentioned therein. In terms of Section 3(a) of the DRC Act, the provisions of DRC Act are not applicable to premises belonging to the government. This would mean that the provisions of DRC Act are not applicable to any premises which are owned by the Government. In the present case, admittedly, the suit property does not belong to the government. Thus, the provision of Section 3(a) of DRC Act is not applicable.

20. In terms of Section 3(b) of the DRC Act, the said provision is only applicable if any tenancy or other like relationship is created by a grant from the government in respect of the premises taken on lease, or requisitioned, by the government.

21. In the case of *Union of India Vs. Bikramjit Nayyar*, 24 (1983) DLT 89, Paras 6 & 7, it has been held that Section 3 of the Delhi Rent Control Act, 1958 would be applicable only in those cases where the government is either the owner or the landlord of the tenanted premises. Paras 6 & 7 read as under:-

“(6) It is against the aforesaid judgment and decree that the present appeal had been filed by the Union of India. The short question that has been canvassed and requires determination is whether on a true interpretation of Section 3 of the Delhi Rent Control Act, 1958, the said Act is applicable to the premises in dispute. Section 3 of the Delhi Rent Control Act is, as under:-

"S.3.- Nothing in this Act shall apply:-

(a) to any premises belonging to the Government.

or

(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government;

Provided that where any premises belong to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy."

(7) Admittedly, sub-Section (a) of Section 3 does not apply to the facts of the present case inasmuch as the premises do not belong to the Government. As regards sub-Section (b) a plain reading of the same would also lead to the conclusion that the same has no application to the present case. It applies to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease or requisitioned by the Government. This indicates that the section would be applicable only in cases where the Government is either the owner or the landlord of the premises. The Government may become landlord after taking the premises on lease or by requisition and then creating the tenancy or lease or license in favor of a third party. That

is not the case here because the premises are admittedly occupied by the Government itself. The contention of the learned counsel for the appellant is that original Rent Act of 1947 did not contain comma after the word "requisitioned" and this having been so introduced for the first time in 1958 Act a meaning has to be given to the same. According to the learned counsel, the effect of the comma after the word "requisitioned" is that Section 3(b) will cover the cases where the Government is a tenant. This, in my opinion, is not the correct reading of the section. The comma has been put because the section contemplates lease or requisitioned and after both these words, comma has been introduced.”

22. The issue at hand is whether, a co-operative society, which has been declared to be falling under the ambit of the expression “other authorities” appearing in Article 12 of the Constitution of India, would be deemed to be ‘Government’ for the purposes of Section 3 (b) of the DRCA?

23. A perusal of the above provision clearly shows that premises belonging to the Government or premises which are taken on a grant from the Government are not subject to rent control legislation. [The proviso, however, clearly stipulates that premises which belong to the Government and which have lawfully been let by any person pursuant to a grant, then such premises will be subject to the rent control legislation.] (See ***Bhim Sain Gupta & Ors. v. S.P. Rao and Ors.***, 85(2000)DLT148).

24. In view of the above, it is clear that the scope of the protection is limited only to:

- (a) premises belonging to the Government or.
- (b) premises which are taken on a grant from the Government.

Even otherwise, all the rent control legislations contain exemption clauses in one form or the other. On close examination of the scheme of

various rent legislations, it is evident that the exemption clause of various acts is applicable to property of either the Government or a Local Authority (like in Maharashtra and Punjab).

25. So far the Delhi Rent Control Act is concerned, only the term ‘Government’ has been used specifically. However, even if we go by the general view taken by other legislations, the words ‘Government’ or ‘Local Authority’ have been used and there is no mention of the word ‘Other authority’.

26. It is pertinent to mention Article 12 of the Constitution of India which reads as under :

“In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

As one could notice, the terms ‘local’ or ‘other authority’ is used separately and one cannot be substituted for the other. So even if Markfed (in the present case) is held to be an agency and instrumentality of the State and falls within the ambit of the expression “other authorities” appearing in Article 12 of the Constitution of India by the Full Bench of Punjab & Haryana High Court, it cannot be said to be covered under the term ‘Government’ or ‘Local authority’, especially when the words are used separately.

27. In the Rent Legislation applicable to Delhi, only the word ‘Government’ has been used so the word ‘other authority’ cannot be said to be covered under the same, when the intent of the legislature does not appear to cover the same as such. Had the legislature intended to give protection to ‘other authorities’, it would have expressly done so. In this

regard reliance can be placed on *Tamlin v. S Hannaford*, (1950) I KB 18 wherein it was observed that *when Parliament intends that a new Corporation should act on behalf of the Crown, it as a rule says so expressly.... In the absence of any such express provision the proper influence, in the case, at any rate, of a Commercial Corporation, is that it acts on its own behalf, even though it is controlled by a Government Department.*

28. In the present case, the petitioner being a government agency is neither the owner nor the landlord of the suit premises but the suit premises are occupied by the petitioner merely as a tenant under a Lease Deed dated 5th November, 1974.

29. Even otherwise, the protection under the exemption clause is to the ‘premises’ i.e. the premises of the Government, and not to the parties. So even if a party allegedly is ‘Government’, the immunity would only be available if the premises in question is that of the government. In the case at hand, it is not the case of the either parties that the premises is a premises under the ownership of the Government.

30. Therefore, the conclusion arrived by the learned ARC appears to be correct that the provision of Section 3(b) of the Act does not attract in the present case hence, the petition was not barred under Section 3 of the Act.

31. The second submission raised by the petitioner is that the eviction petition is not maintainable for want of advance notice under Section 80 CPC. It is settled law that an eviction petition filed under Section 14(1)(e) read with Section 25B of the DRC Act has to be tried in a summary manner as provided under Chapter III-A of the said Act. It has been held in the case of *Prithipal Singh vs. Satpal Singh (dead) Through Its Legal Representatives*, reported as (2010) 2 (SCC) 15 as under:-

“10.... By introduction of Chapter III-A, a special provision was introduced by the legislature for summary trial of certain applications filed under the Rent Act. Section 25-A of the Act clearly says that this provision of Chapter III-A to have over-riding effect notwithstanding any inconsistency thereof contained elsewhere in this Act or any other law for the time being in force. Section 25-B is the provision by which special procedure for disposal of application for eviction on the ground of bonafide requirement filed at the instance of the landlord under Section 14 or 14-A or 14-B or 14-C or 14-D of the Act has been laid down.”

“23... Section 25-B itself is a special code and therefore, the Rent Controller, while dealing with an application for eviction of a tenant on the ground of bonafide requirement has to follow strictly in compliance with Section 25-B of the Act.”

“24.... Rule 23 of Delhi Rent Control Rules does not specifically confer any power on the Rent Controller to follow the provisions of the Code of Civil Procedure in special classes of landlords.”

“26...if Rule 23 cannot be applied in the present case because of applicability of Section 25-B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of Rule 23 of the Rules, the provisions of the Code can be applied in the present case.....”

32. Section 25B of the DRC Act is a special Code and the instant eviction petition filed under Section 14(1)(e) of the DRC Act on the ground of bonafide requirement has to be dealt with as per the specific provisions of Section 25B of DRC Act. There is no scope of application of provisions of Section 80 CPC at all.

33. Even otherwise, as per the settled law, there is no requirement in law that prior to filing of an eviction petition under Section 14 (1) (e) of the DRC Act the landlord should serve a notice on the tenant. In this behalf, reliance may be placed upon the case laws reported as 157(2009) DLT 690 Para 27, titled as *Mehendra Trivedi vs. Jai Prakash Verma* and also 2008 VI AD (DELHI) 103 Para 12, titled as *T.B. Jain (Shri) vs. Smt. Savita Ravi and Another*. In the present case, as held already, that the petition is not barred under Section 3 of the Act, therefore, even otherwise, there was no requirement of issuance of notice under Section 80 CPC before filing the eviction petition. Thus, the second submission of the petitioner is also rejected.

34. As regards the landlord-tenant relationship it was not pressed by the petitioner as it has been duly admitted by the petitioner, that the petitioner is regularly paying rent only to the respondents herein since the date of purchase of suit premises by respondents from the erstwhile owners. A certified copy of registered Sale Deed dated 23rd April, 2003 bearing registration No.3171 in Addl. Book No.I, Volume No.3326 on pages 89 to 108, registered on 29th April, 2003 before the concerned Sub-Registrar, Delhi in favour of the Respondents is also on record. Even, no arguments were addressed from the petitioner's side. Thus, the relationship between the landlord and tenant has been established.

35. In the last submission the bonafide requirement of the respondents is also disputed by the petitioner/tenant on the ground that the respondents have ulterior motives to get the suit property vacated so that the respondents can reconstruct the same and thereafter, use the suit property for gaining profit out of sale of the floors to be constructed. It has been alleged by the petitioner/tenant that the landlords belong to the elite class of Delhi and the

landlords own various other properties either *Benami* or on the name of their family members/companies. It has been further sought to be suggested by the petitioner that since the respondents are till date managing their affairs while the entire family living in the same house at Model Town, they may continue to do so. The alleged bonafide need is nothing but want for lavish and luxurious lifestyle at the cost of causing harm to the petitioner.

36. It is argued by the learned Senior counsel appearing on behalf of petitioner that the respondents have not furnished adequate evidence before Court to show bonafide requirement. Only documents sufficiently proving Mr.J.P.Goel's ill-health have been brought on record and also documents showing Ms.Renu Gupta's illness which are not sufficient to prove the factum of her staying with the Goel family. The factum of alternative properties of the respondents have not been placed on record. The respondents intend to reconstruct the suit premises and to sell the floors. The respondents' sister Ms.Renu Gupta lives with her daughter Nupur Gupta in a separate house. It is submitted that in the case of ***Pearey Lal & Sons Pvt. Ltd. vs. Punjab National Bank & Another***, 2012 X AD (Delhi) 474 = 2012 (131) DRJ 647, in the absence of sufficient explanation put forth by the witnesses, the court opined that proper evidence needs to be placed on record in order to enable the Court to arrive at the conclusion of 'bonafide requirement'.

37. During the course of hearing, learned Senior counsel has admitted that the petitioner is neither running any commercial activity nor is it operating any guest house from the said premises. The petitioner is using the said premises only to have a transit accommodation for its officers who occasionally come from Punjab for official work or to catch a flight/train on the next day and only on such occasions the said part of the premises was

being used. The petitioner is paying the rent @ ₹2500/- religiously to the respondents for the said premises.

38. A perusal of the impugned order would reveal that the question of bonafide requirement of the respondents has been dealt with by the learned ARC in paras 19 & 20 of the impugned order which reads as under:-

“19. Perusal of the leave to defend application shows that the number of the family member of the petitioner has not been disputed by the respondent. Not only that in para 3 J, of the leave to defend application, the respondent has admitted the factum of the severe illness of the father of the petitioners and sister of the petitioners and has not been disputed the same. As per petitioners, their father Sh. J.P. Goel who is in coma and needs around the clock medical supervision and care and specialized medical equipments of the level of an ICU of a hospital have been installed and two specialized attendance are always required to care of their father. Therefore the petitioners required two big rooms for the same. Petitioners have also filed number of documents showing the bills of the nursing bureaus for providing nursing staff as well as filed numerous medical bills and discharged summary of their father Sh. J.P. Goel to show the illness and the requirement of specialized medical care for him. This need of the petitioners is prima-facie bonafide and cannot be stated to be whimsical or a mere desire. Further, the need of the mother of the petitioners for a separate room adjoining to the rooms of her husband is quite natural. Petitioner no.2 and his wife requiring one bed room with attached bathroom and dressing room etc, two is natural, the two sons of the petitioner No. 2 namely Mr. Arjun Goel (24 years) and Mr. Kunal Goel (21 years) also need separate rooms with attached bathroom and same cannot be stated to be unreasonable. Further the petitioners need for a guest room and a pooja room as well cannot be said to be sham. Further as per the respondent himself, the petitioners belong to higher strata of society and live a

luxurious life. Therefore, the need of the petitioner No.2 for one room/some space for servants/drivers cannot be overstated. All this make out a total requirement of eight/nine rooms and the present house of Model Town has five bed rooms, two dinning cum drawing room and two kitchen and one store and it also houses the petitioner no. 1 and his family and the mentally ill sister of the petitioners. All this prima facie shows that the need of the petitioners for more space is genuine and bonafide.

20. The contentions of the petitioners is that as per their internal arrangement, the petitioner No.2 along with his parents and immediate family members will continue to reside at the house at Model Town. The requirement of the petitioner no.2 cannot be stated to be inflated as the need of every person is different and the unique and it depends upon one's social status, upbringing and income and standing. Need is always individual specific and what is luxury for one certainly can be a dire need for others if we take into account the peculiar circumstances of each individual. All this prima facie shows that petitioner No.1 and his family comprising himself and his wife need one room with attached bathroom, the two sons of petitioner No.1 namely Abhishek Goel (24 years) and Pursharth Goel (19 years) need at least one room each. The sister of the petitioners Ms. Renu Gupta who is admitted to be a mentally challenged woman also needs at least one room and some spaces is also required for her attendant. Though in the leave to defend application, it was mentioned by the respondent that Ms. Renu Gupta resides separately, it has been argued by Ld. counsel for petitioners that this is a sham contention of the respondent as respondent has not stated specifically as to where Ms. Renu Gupta resides with her daughter. Petitioners on their part has filed certified copy of the decree sheet in HMA no.448/98 regarding the dissolution of her marriage which shows her address of Model Town i.e. of the petitioners. In my considered opinion, this is a vague averment by the respondent

without any documentary support and leave to defend cannot be granted on such vague averments. Even otherwise, for a while even if it is presumed that Ms. Renu Gupta resides separately in a separate house with her daughter Nupur Gupta, that does not negative or dilute the requirement of the petitioner No.1 and his family members for a separate accommodation. Law is well settled that landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. Reliance in this regard can be placed on ***Ragavendra Kumar v/s Firm Prem Machinery & Co.***, 2000(1) SCC 679.”

39. 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) In the case of ***Ramesh Chand Vs. Uganti Devi***, 157(2009) Delhi Law Times 450, it has been held that while exercising jurisdiction under Article 25(B)(8), this Court does not act as a Court of appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it. I find no irregularity in the order passed by the learned Addl. Rent Controller.
- ii) 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.”

iii) In the case titled as *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta*, reported in **AIR 1999 Supreme Court 2507**, it has been held as under:-

“.....The revisional jurisdiction exercisable by the High Court under S.25-B (8) is not so limited as is under S.115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, 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 could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion for the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller ‘not according to law’ calling for an interference under

proviso to sub-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.”

iv) 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.

v) 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.”

vi) In the case of ***Anoop Singh (dead) LRs. vs. K.N. Garg***, reported in 2005 (9) SCALE 574 it is held as under:-

“....The scope of Revision Petition filed before the High Court was only to see whether there was any error of law

in the order passed by the rent Controller and it could not reappraise the evidence unless the finding of the fact recorded by the Rent Controller was perverse one.”

40. It has been held in various cases that the landlord is the best judge of his requirement of space for his residence and the tenant cannot dictate terms to the landlord as to how else the landlord can adjust himself without getting possession of the tenanted premises. It is also settled law that while deciding the question of bonafides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself. It is further settled law that suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement. Reliance is placed upon the case law titled as ***Sudesh Kumari Soni & Anr. Versus Prabha Khanna & Anr.*** reported in 153 (2008) DLT 652 Paras 24 & 25.

41. i) It has been further held in the case of ***Devi Ram & Ors. Versus 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.) Versus 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) It has been further held in the case of *Sarla Ahuja vs. United India Insurance Company Ltd.*, AIR (1999) SC 100 as under:-

“14. 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 bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

15. Facts such as the cordial relationship between a landlord and her daughter-in-law or that he is comfortably residing in the present building are not relevant in judging the bona fides of the claim of the landlord. Otherwise it would appear that landlord can think of residing in his or her own residential building only when cracks develop in the relationship between him and his other kith and kin.”

iv) It has been further held in the case of *Sarwan Dass Bange Vs. Ram Prakash*, 167(2010) DLT 80 as under:-

“17. The legislative intent is of expeditious disposal of the application for ejection of tenant filed on the ground of requirement of the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession.

17. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. The conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to

approach the court for ejectment of tenant unless his need is bonafide.

17. No unscrupulous landlord in all probability, under this Section, would approach the court for ejectment of tenant considering the onerous conditions imposed on him. Hence, this inbuilt protection in the Act for the tenants implies that whenever a landlord would approach the court, his requirement shall be presumed to be genuine and bonafide.

19. The averment by the tenant that it is highly unlikely for the landlord to shift to the suit premises would not constitute a ground for grant leave to contest to the tenant. It has been held by the Hon'ble Supreme Court that if the landlord does not occupy the premises, the tenant has been provided with a remedy under Section 19 of Delhi Rent Control Act, 1958 of re-possession. Further, Section 48(3) of DRC Act also makes the action of the landlord of disposing off the premises after evicting the tenant on the ground of personal requirement, an offence.”

42. Thus, I am of the considered view that the respondents are able to establish the case of bonafide requirement which caused within the four corners of the provisions under which the eviction petition has been filed.

43. Subsequent to the filing of the present petition and after argument addressed by both parties and reserving the matter for judgment, the petitioner moved an application C.M. No. 12180/2013 under Section 151 CPC praying for an opportunity for re-hearing of the present petition in view of the new and additional facts brought on record by him. Prior to that an additional affidavit was also filed. Both parties were heard for short time in the fresh application filed by the petitioner.

44. It is stated by the petitioner that as per the knowledge acquired by him from the records of MCD, respondent no.1 owns certain other immovable properties i.e. property No. K-1/34, Second Floor, Model Town III, New Delhi and a property in the area of Samaypur, Badli, Delhi; other than the suit premises, which the respondents had not disclosed either before the Court or the learned Trial Court. The petitioner had also filed an affidavit in this regard and in their counter affidavit to the said affidavit, the respondents have stated that the property situated at K-1/34, Second Floor, Model Town III, New Delhi though is in the name of Amit Goel, however stated that this Amit Goel is different entity as to the Respondent no.1 herein and that they are not connected inter-se. It is averred by the petitioner that this fact was neither brought to the knowledge of this court earlier nor to that of the learned Trial Court. In the Rejoinder Affidavit filed by the petitioner, it is contended that the said property at Samaypur is a residential property as per the MCD records and reiterated that the other property at Model Town III was owned and controlled by the respondents. In the sur-rejoinder the contentions of the petitioner are denied by the respondents and it is further re-affirmed that the property at Samaypur is an industrial plot.

45. It is stated by the petitioner that the respondents in their Counter-affidavit failed to disclose and explain as to how the documents relating to the said property as well as documents regarding the identity of the alleged different Amit Goel that they filed along with the counter affidavit, were in their possession. It is averred by the petitioner that this leads to a conclusion that either the property is owned by respondent no.1 in his name or is a benami property. As far the property at Samaypur, Badli, Delhi is concerned, in the Counter Affidavit filed by the respondents it is disclosed

that the said property was inherited by respondent No.1 from his grandmother and is a commercial property.

46. With regard to other property at Village Samaipur, Badli, Delhi, the contention of the counsel is that the said property is a land situated in Lal Dora where industrial /factory shed(s)/godown(s) are existing and partly occupied by old tenants and various original documents to this effect including certificate issued by Tehsildar/SDM, bills issued by MCD, payment receipts issued by MCD, demand raised by MCD have been filed by the respondents. The petitioner also filed an affidavit dated 17th July, 2013 alleging that Mr.Amit Goel, respondent No.1 owns some other property bearing No.K-1/34, Second Floor, Model Town-III, Delhi-110009.

47. Learned counsel for the respondents after the receipt of copy of the affidavit mentioned the matter in Court and has alleged that the said property does not belong to respondent No.1 and after meeting the actual owner, it has become clear that this property belongs to some altogether different person and it is just a matter of chance that the name of this other person is also Amit Goel whose father's name is Sh.Gauri Shankar Goel.

48. Prima facie it has been established by the respondents that both the contentions raised by the petitioner as subsequent events are without any merit and do not help the case of the petitioner in any manner nor these improve the case of trial issues.

49. Even otherwise, unless the permission is granted by the Court to raise the subsequent evidence, the normal practice is that while deciding the revision petition, only the leave to defend application filed by the tenant before the Additional Rent Controller can be considered and no new material can be considered at all.

i) In the case of *Mrs. Krishna Chopra & Anr. vs. Smt. Raksha & Ors.*, 82 (1999) DLT 360, it has been held that:-

“4....The present revision petition was filed aggrieved by the order of the Additional Rent Controller not granting leave to contest the eviction petition. Nothing was urged before me on the basis of leave to defend application filed by the Petitioner before the Additional Rent Controller. Legislature in its wisdom has provided Summary Trial under Chapter-III of the Delhi Rent Control Act. Under Section 25 of the Delhi Rent Control Act procedure has been provided as to how to deal with the petition under Section 14 of the Delhi Rent Control Act. From the service of the notice on the tenant under Section 14(1)(e) of the Act fifteen days’ time is granted to the tenant to file the leave to defend application and to plead all such grounds which, if proved, would disentitle a landlord from obtaining an order of eviction. In view of such a stringent procedure laid down by the Parliament, is it open for the Court which is not even exercising an appellate jurisdiction as contemplated under the Code of Civil Procedure to allow a tenant to say that at the time of filing of leave to defend application certain facts were not available to him and same can be brought to the notice of this Court while exercising revisional jurisdiction. In view of expressed provisions of the Statute, in my considered opinion while exercising the revisional jurisdiction emanating under the Act it is not permissible.”

ii) In *M. L. Prabhakar v. Rajiv Singal*, AIR 2001 SC 522 wherein for the first time in the Special Leave Petition filed by the petitioner a point was taken that the landlord had constructed a building at Greater Kailash and that bungalow was also available to him, it was observed that “we have not allowed the appellant to urge this point in this appeal as these are disputed questions of fact which should have been placed before the Rent Controller so that proper evidence could have been taken on this.”

iii) In ***Bal Krishan Khanna v. Smt. Ravi Kanta Madhok***, 2010 VI AD (Delhi) 986 where the plea of the petitioner/tenant in the revision petition was that there was a mutual understanding between the deceased father-in-law of the respondent/landlady and the petitioner/tenant that the tenanted premises in question shall be used by the petitioner/tenant at his will for the rest of her life is concerned, it was observed that “a perusal of the leave to defend application filed by the petitioner tenant before the learned Additional rent Controller shows that no such ground was taken by him to contest the eviction petition. In para 1 of the leave to defend application, the petitioner/ tenant only stated that the tenanted premises was let out to him on rent by the father-in-law of the respondent/landlady 40 years ago after taking security amount of Rs.8,000/-. There is not a whisper in the application with regard to such a mutual understanding between the petitioner/ tenant and the deceased father-in-law of the respondent/landlady, as claimed in the present petition. The said ground cannot be permitted to be taken at this stage by the petitioner”

50. The next submission of the petitioner that the respondents would subsequently re-let the suit premises after getting the same vacated from the tenant also cannot be a triable issue in view of Section 19 of the DRC Act. It has been further held in the case law titled as ***Mrs. Krishna Chopra & Anr. vs. Smt. Raksha & Ors.*** (supra) that if a landlord abuses the process of the Court, obtains an order of eviction and subsequently lets out the property or sells the same, the tenant can always apply for restitution of the premises under Section 19 of the DRC Act.

51. In the present case, the tenant has not raised any triable issue, which if proved, would disentitle the landlord from obtaining an order of eviction. It

has been held in the case law titled as *Royal Nepal Airlines Corporation vs. Shrishti Properties Pvt. Ltd.*, reported in 184(2011) DLT 362 as under:-

“24. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court cannot mechanically in routine grant leave to defend. Trial is required for establishing facts and not law.

26. Until and unless the tenant has raised disputed questions of fact for which a trial is required, the intent of legislature is that the court shall not in a mechanical manner grant leave to defend.”

52. Lastly, it is pertinent to mention that the said premises is not used by the petitioner for commercial activity. The petitioner itself has admitted that the same is used for Guest House and only to have a transit accommodation for its Officers who occasionally come from Punjab for official visit or to catch a flight/train on the next day. Only on such occasions, part of the premises is being used. The petitioner has also admitted that the respondents have placed on record documents pertaining to illness of their father Mr.J.P.Goel and Renu Gupta. It is not denied that both members of the family are in serious conditions and at least require reasonable accommodation of rooms in view of the nature of illness. The respondents have undertaken that they would use the premises by themselves as they do not have sufficient accommodation. Thus, the requirement of the respondents is genuine. The relief could not be refused.

53. 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, i.e. C-212, Defence Colony, New

Delhi-110024. The petitioner 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 petitioner shall not sub-let and create any third party interest in the suit premises.

54. No costs.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 03, 2013