

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

% *Order pronounced on: October 21, 2013*

+ **RC. Rev. No.373/2011**

ARYA SAMAJ Petitioner
Through Mr.Dhruv Kumar, Adv. with
Mr.Milandeep Singh, Adv.

versus

SHAKUNTALA BAKSHI Respondent
Through Mr.Ratan K.Singh, Adv. with
Mr.Suraj Prakash, Mr.Saurav Suman
& Ms.Sonakshi Banga, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner (respondent in the eviction petition) has filed the abovementioned Civil Revision Petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (in short, called the “DRC Act”) against the order dated 7th April, 2011 passed by the learned Addl. Rent Controller (South), Delhi in Eviction Petition bearing No.E-15/10 whereby the eviction order was passed against the petitioner by dismissing the application for leave to defend in favour of the respondent, directing the petitioner to vacate the half portion of big hall on the ground floor (North-East Side) in the property bearing No.18/1, (Old No.948/2, Ward No.1), Mehrauli, New Delhi-110030, shown in red colour in site plan Ex.C-1 (hereinafter referred to as the “Suit Premises”).

2. Brief facts are that the respondent filed an eviction petition under Section 14(1)(e) read with Section 25-B of the DRC Act against the petitioner on the ground of bonafide requirement. The respondent is the owner/landlady of the property bearing No.18/1 which is a two storeyed house. The petitioner is a tenant 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 vide Certificate of Sale dated 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 the petitioner, Late Sh.J.N.Bakshi vide Agreement to Sell and other sale documents. At the time of entering into the said Agreement to Sell, the petitioner was occupying the suit premises.

3. In addition to the suit premises, there are two more rooms, portion of hall and attached open verandah on the ground floor which is in possession of another tenant against whom the respondent has already initiated eviction proceedings.

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, as other legal heirs of Sh.J.N.Bakshi relinquished their respective shares in the property in the name of the respondent vide registered Relinquishment Deed dated 20th August, 2004. Presently, the respondent 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 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, one room is occupied by the elder son of the petitioner 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 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. The case of the respondent 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 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 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 from the first floor to the ground floor portion and there is a great hardship even for the respondent herself in the said process. Thus, the respondent requires shifting to ground floor in view of the physical and mental hardships.

8. It was stated in the petition that the respondent does not have any other alternative residential accommodation available with her. The respondent and her family members who are dependent upon her for residence require at least five bed rooms, i.e. one room for the respondent, one room for her eldest son, one room for younger son, one room for eldest grandson of the respondent Himanshu Bakshi and one room for remaining grand-children. In addition to this, the respondent 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 has not disputed the accommodation available with the respondent at the first floor, i.e. two bed rooms, one drawing room, one bathroom and one WC toilet, two kitchens, one verandah and balcony. It is also not disputed by the petitioner about the family size of the respondent. The petitioner has not denied the fact that the respective families are residing with the respondent at the first floor.

10. The petitioner was not able to show even *prima-facie* that the respondent or her family members own any other alternative residential

accommodation, nor the petitioner has denied the fact that the respondent is suffering from several ailments.

11. After considering the entire gamut of the case, the learned trial Court in para 21 of the impugned order has held that the respondent requires the tenanted premises bonafidely for the purpose of residence for herself and her family members dependent upon her. The details of the said requirement mentioned in para 21 reads as under:-

“21. Therefore, keeping in view the family size of the petitioner which consists of two married sons namely Sh. Virender Bakshi having his wife and two sons namely Sh. Himanshu Bakshi aged about 19 years and Gaurav Bakshi aged about 14 years and Sh. Sanjay Bakshi having his wife and one son namely Akshit Bakshi aged about 10 years and one daughter namely Yamini aged about 9 years and two married daughters namely Smt. Chander Prabha and Smt. Renu Grover who often visit the petitioner but due to paucity of accommodation cannot stay with the petitioner, the petitioner requires at least one room for herself, one room for her elder son Sh. Virender Bakshi and his wife, one room for his younger son Sh. Sanjay Bakshi and his family, one room for his grandson Sh. Himanshu Bakshi, one room for his other grand children, one guest room, at least two study rooms for her grand children apart from drawing cum dining room, kitchen, bathroom, latrine. Hence, the accommodation presently available with the petitioner i.e. two rooms, one drawing room, one bathroom and one WC toilet, two kitchens, one verandah and balcony is highly insufficient keeping in view the family size of the petitioner. It is also case of the petitioner that in addition to the tenanted premises, there are 2 more rooms, portion of hall and attached open verandah on the ground floor which is in possession of another tenant and the petitioner has already initiated eviction proceedings against the said tenant also because tenanted premises alone does not fulfill the requirement of the petitioner...”

12. The question before this Court is, whether the findings of the learned trial Court in the impugned order 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.”

13. 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**.

14. 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 ejectment 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.”

15. Thus, I am of the considered view that the respondent is able to establish the case of bonafide requirement within the four corners of the provisions under which the eviction petition has been filed.

16. 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 is granted six months time from today to hand over the peaceful and vacant possession of the tenanted premises, i.e. half portion of big hall on the ground floor (North-East Side) in the property bearing No.18/1, (Old No.948/2, Ward No.1), Mehrauli, New Delhi-110030, shown in red colour in site plan Ex.C-1. During this period, the petitioner shall not sublet or create third party interest in the suit premises and the petitioner shall also pay the user charges fixed by this Court in terms of the order dated 19th October, 2011.

(MANMOHAN SINGH)
JUDGE

OCTOBER 21, 2013