

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

% *Judgment pronounced on: July 24, 2013*

+ **RC. Rev. No.445/2012 & C.M.No.15240/2012**

ANIL KUMAR Petitioner
Through Mr.Rajesh Ranjan, Adv.

versus

SARDARI LAL Respondent
Through Mr.Ajay Khatana, Adv. with
Mr.Kuldeep Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition is filed by the Petitioner under Section 25(8) of the Delhi Rent Control Act, 1958 for an order or a direction thereby setting aside the order and judgment dated 15th May 2012 passed by Shri. Devender Kumar Jangala, Additional Rent Controller (North-West), Rohini Courts, Delhi in E No. 75 of 2011 whereby the ARC dismissed the leave to defend application of the Petitioner and allowed the eviction petition of the Respondent under Section 14(1) of the Delhi Rent Control Act, 1958.

2. The Respondent, aged 83, is the owner of Property bearing No. 1864, Gali No. 19, (Old Gali No. 139), Shanti Nagar, Tri Nagar, New Delhi-110035 and the Petitioner is the tenant in the said premises in respect of one room, kitchen, bathroom alongwith laterine at the third floor which was let out to the Petitioner for residential purposes only. The Petitioner was inducted as tenant in respect of the said premises in 2006.

3. The Petitioner filed an application for the deposit of rent before the Rent Controller which the Respondent Landlord refused to accept. The said application was allowed by the Court. The Petitioner then filed a suit for permanent injunction as the Respondent tried to dispossess him illegally. The suit was disposed vide order dated 29th March, 2011 passed by the Ld. Trial Court with the direction to not to dispossess the Petitioner from the tenanted premises as the Respondent made statement in the Court that he would not dispossess the Petitioner from the tenanted premises.
4. The Respondent filed an eviction Petition against the Petitioner on the ground of bonafide requirement of the third floor. To contest the said petition, the Petitioner filed leave to defend application alongwith affidavit denying the claims of the Respondent and raised several triable issues. However, the leave to defend application was dismissed by the ARC and hence the present petition.
5. The case of the petitioner/tenant before the trial court was that the respondent had filed the eviction petition prompted by illegal design and ulterior motive to evict the petitioner as he wanted to increase the rent. From the month of October, 2010 the respondent started creating trouble in the peaceful occupation and possession of the Petitioner in respect of the tenanted premises and started pressurizing him by asking either to pay rent of ₹2000/- per month or vacate the premises.
6. Having no other option, the Petitioner approached Court of Sr. Civil Judge, Rohini Courts, Delhi for his grievances against the Respondent by way of civil suit for permanent injunction. The Respondent gave statement that he would not create hindrance in the peaceful possession of the deponent in respect of the suit property and would not dispossess the tenant

without due process of law. The suit was disposed of by the Sr. Civil Judge Sh. Ashutosh Kumar vide order dated 29th March, 2011.

7. It is also alleged that the Petitioner and his wife filed a complaint under Section 200 of Cr.PC and application under Section 156(3) Cr.PC which was pending in the court of A.C.M.M. Delhi. The Petitioner also filed a petition under Section 27 of Delhi Rent Control Act for depositing rent of the tenanted premises, as the Respondent was deliberately refusing to accept the rent from the Petitioner, just to create a false and frivolous cause of action for eviction of the deponent from the tenanted premises. The Respondent filed the eviction petition as a counter blast to the proceedings filed by the Petitioner pressurizing Petitioner towards withdrawing the criminal complaint filed by him and the Respondent and his grandson are liable to be punished under Indian Penal Code.

8. It was also averred in the application for leave to defend that the Petitioner deliberately concealed the fact that he is the absolute owner of two premises, i.e. one being the tenanted premises and other one bearing no. 1385/94, Talab Road, Tri Nagar, Delhi. In the first one, there are total 14 tenants including the Petitioner himself. The said premises is built upto third floor. In the other property, there are 6 floors and thirteen other tenants. These facts have been concealed by the Respondent just to take advantage. The Respondent also has a shop i.e. shop bearing No. 92-A, Near Hanuman Mandir Campus, Connaught Place, New Delhi. The share given by the Respondent to his two sons was sold by his sons which again is indication of the fact that the Respondent has sufficient accommodation.

9. It is contended that the order of the Rent Controller suffers from legal infirmities and therefore, liable to be set aside. The said order is erroneous, perverse, mechanical, arbitrary, illegal, without jurisdiction and contrary to

the facts of the case and the law. It is based upon the conjectures and surmises and not upon the material placed on record.

10. On merit, the main contention of the petitioner is that the respondent is having sufficient alternative accommodation available, therefore, the petition has not been filed with bonafide intention.

11. The landlord/respondent in the petition has stated that he is having only two rooms in the suit premises, which is not sufficient to accommodate his other family members to look after him. The respondent is admittedly 84 years old and is the absolute owner of the suit property, i.e. 1864/19, Shanti Nagar, Kanhiya Nagar, Tri Nagar, Delhi-110035. The petitioner is the tenant in the suit premises at the rate of ₹2,000/- per month, excluding electricity charges. The respondent is not medically fit and suffering from serious diseases. He is living alone in two rooms at first floor of the suit property as alleged by him in the petition. He has no supporting hand to care about him.

12. The respondent has also alleged that he is having eight rooms in the premises and out of said rooms, five rooms have been partitioned by small wooden structures and occupied by the tenants. Out of the same, one room shown in red colour in the site plan is occupied by the petitioner as tenanted premises. The respondent has one son, namely, Suraj Kumar who along with his family is residing at B-4/46-A, Keshav Puram, Delhi-110035 under the tenancy of S.K.Sharma and the tenancy was expired in August, 2011 when the present petition was filed. At this stage, the respondent requires his son and his family to look after him, to prepare food for him along with other household work so that he would live peacefully with his family, grand-children, son and daughter-in-law in his last years. His son requires two rooms for his family to reside with the respondent. It is also stated that

the son-in-law of the respondent, namely, Subhash Chander also used to visit the respondent and stays with him. The respondent requires one extra room for his two daughters, one son, grand-children and other relatives who often visit him to see and look after him. As per respondent, the total plot area of the premises is 50 Sq.Yards. The respondent has specifically denied having two other properties as alleged by the petitioner. It is a matter of fact that no proof of any nature was furnished by the petitioner in the trial court.

13. The petitioner has not disputed the relationship of the landlord and tenant between him and the respondent. The ownership of the premises is also not disputed by the petitioner. The only ground raised by the petitioner is that the respondent is not required any further accommodation, as three rooms are available to him and the same are sufficient for the respondent and for his family members to look after him. The petitioner has also stated that there are various rooms with the respondent. However, admittedly, three rooms are available with the respondent and the rest are occupied by the tenants.

14. In the impugned order, the Addl. Rent Controller after considering the application for leave to defend has come to the conclusion that from the pleadings and documents, it appears that no vacant accommodation is available to the respondent in the premises. The petitioner has failed to place on record any proof in support of his submissions that any other alternative accommodation is available to the respondent. The shop at Connaught Place, New Delhi, as alleged by the petitioner, is also denied by the respondent. Even otherwise, the respondent requires the accommodation for the residential purposes. The shop at Connaught Place, if any, cannot be considered as reasonable and suitable alternative accommodation available to the respondent.

15. It is not in dispute that the respondent/landlord is the master of his choice. He cannot be compelled to vacate the other particular tenants who are occupying the other parts of the premises. It is for the respondent to choose as to which tenant he wants to get vacated. The respondent/landlord cannot be dictated that he should get vacate the other tenant instead of the petitioner.

16. 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.

17. Present petition has been filed under Section 25B(8) of the Act. 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.”

18. 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.”

19. The Supreme Court in another case titled as *Chaman Prakash Puri vs. Ishwar Dass Rajput and Another*, 1995 Supp (4) SCC 445 has held 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.

20. The impugned order passed by the Addl. Rent Controller is legally correct and cannot be interfered with. There is no merit in the petition. The same is hereby dismissed. The interim order as granted on 3rd September, 2012 stands vacated. Pending application also stands disposed of. The petitioner is granted six months time to vacate the suit property i.e. one room, kitchen alongwith common latrine bathroom at third floor of the property bearing No.1864 Gali No.19 (old Gali No.139) Shanti Nagar, Tri Nagar, Delhi-1100 35. During this period the petitioner shall not sub-let the or create third party interest in any manner at the suit property and handover the peaceful possession to the respondent.

21. The present petition is accordingly dismissed. No costs.

(MANMOHAN SINGH)
JUDGE

JULY 24, 2013