

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

% *Judgment pronounced on: October 28, 2013*

+ **RC. Rev. No.485/2011**

AMAR SINGH Petitioner
Through Mr.Ashesh Lal, Adv. with
Mr.Raghav Parwatiyar, Adv.

versus

MOHAMMAD SAYEED Respondent
Through Mr.Abhinay Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner Amar Singh has filed the present revision petition under Section 25-B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “DRC Act”) against the judgment dated 5th October, 2011 passed by the Addl. Rent Controller, North-West, Rohini, Delhi in eviction petition bearing No.E-84/2009 filed by the petitioner under Section 14(1)(e) of the DRC Act.

2. By the impugned judgment, the eviction petition was dismissed. The prayer is made in the present revision petition for setting-aside and reversing the impugned judgment.

3. The case of the petitioner before the learned Trial Court was that the petitioner is the owner of the property bearing No.939, Dr. Mukherjee Nagar, Delhi-110009 (hereinafter referred to as the “Suit Property”). The respondent is a tenant on Barsati Floor (second floor) consisting of one big

hall, latrine, bathroom and kitchen in the suit property as shown in red colour in the site plan (hereinafter referred to as the “Tenanted Premises”), let out for residential purposes at the rent of ₹2000/- per month exclusive of water and electricity charges.

4. The eviction petition was filed by the petitioner on the ground of bonafide requirement for himself and his family members, dependent upon him. It was stated in the petition that neither the petitioner nor his family members have any other reasonably suitable residential accommodation available with them in Delhi. The petitioner has two married sons and both the sons have one child each besides their wives. The petitioner at the time of filing of the petition was about 70 years of age (now 74 years) and so was his wife. The married sons of the petitioner along with their respective family members are living with the petitioner and are dependent upon the petitioner for the purpose of residence. It was stated in the petition that the accommodation available with the petitioner and his family members is insufficient. Therefore, the said petition was filed.

5. Prior to the filing of the eviction petition, the petitioner filed a suit for possession against the respondent after terminating his tenancy by stating that the rent was ₹4000/- per month. Since the rent claimed was disputed by the respondent who claimed that the same was ₹2000/- per month, in the absence of any documentary evidence, the petitioner had to concede to the averments of the respondent. Thereafter, the eviction petition was filed by the petitioner.

6. The case of the respondent before the learned Trial Court was that there is no cause of action in favour of the petitioner. The petitioner had not come to the Court with clean hands, as he had not filed the correct site plan.

He had concealed the number of rooms available with him. The suit property is a built up property consisting of ground floor, first floor, second floor and third floor. On the ground floor, there are four rooms, one verandah, kitchen, lobby, bathroom and latrine. On the first floor, there are five rooms, kitchen, bathroom, lobby, verandah and latrine, whereas on the second floor, there are two rooms, kitchen, latrine and bathroom, out of which one room is in possession of the respondent.

It was also stated that on the third floor, there is one room, kitchen, bathroom which was got vacated by the petitioner from one tenant. As per the respondent, the petitioner is in possession of 11 rooms, three kitchen, three latrine, three bathrooms, two lobbies and two verandahs. Therefore, the need of the petitioner was not genuine. There is no valid ground whatsoever available with the petitioner for bonafide requirement as the family of the petitioner is consisting of petitioner himself, his wife, two sons and wives of the two sons having one child each. There are 7 extra rooms vacant with the petitioner.

7. In evidence, the petitioner as PW-1 admitted that there are two small rooms along with latrine on the third floor of the suit property and on the second floor, there are two bed rooms, one drawing room, bathroom and kitchen and there is another small room to be used for servant. He further stated that on the ground floor, there are two bedrooms, one drawing room, bathroom and verandah as on the all floors.

8. PW-2 Sh.Rohit Choudhary, who filed his evidence by way of affidavit Ex.PW-2/A, deposed that he is living with his father/petitioner since last 30 years along with his wife and son. His other brother Surenpdarpal Singh is also married and his wife and child are also dependent for residence on his

father/petitioner. He admitted that on the third floor, there is one room, kitchen alongwith toilet and bathroom and on the second floor, there are two rooms alongwith bathroom and kitchen. He also admitted that on the first floor, there are four rooms and on the ground floor, there are two bed rooms, one big hall along with verandah and front court yard.

PW-3 Sh.Vikas Malhotra who filed his evidence by way of affidavit Ex.PW-3/A, deposed that the petitioner is his neighbour and the petitioner is in dire need of accommodation which is in the occupation of the respondent. He almost confirmed the statement of PW-1 and PW-2.

9. The respondent also filed his evidence by way of affidavit Ex.RW-1/A and deposed in terms of his written statement. He reiterated the same statements as were in the written statement.

During the cross-examination, RW-1 admitted that he is staying in India for the last 20 years and he is a refugee from Afghanistan. He admitted that the petitioner is the owner of the suit property. He also admitted the number of family members disclosed in the eviction petition.

10. The eviction petition was dismissed by the learned Addl. Rent Controller, mainly, on the reason that the petitioner has sufficient accommodation and in view of evidence produced, his requirement is not bonafide requirement and is not genuine.

11. 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, style of living, habits and background. Landlord is the best judge of his residential requirement.

12. In *Prativa Devi (Smt) vs. T.V. Krishnan*, (1996) 5 SCC 353, this Court has held that in considering the availability of alternative accommodation, not availability merely but also whether the landlord has the legal right to such accommodation has to be considered.

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.

13. In *Sarla Ahuja vs. United India Insurance Co. Ltd.*, 1998 (8) SCC 119, this Court has held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bonafide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bonafide is available to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. 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.

14. It is not disputed by the respondent that the petitioner and his sons consisting of three families with their children residing in the suit property. Looking at the size of the family, availability of rooms in which the landlord is living is, no doubt, not fulfilling even though basic need of the landlord. Hence, requirement of the petitioner in the tenanted premises could not have been doubted as each family requires atleast two bed rooms in view of size of family members.

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. In view of well settled law, I hold that accommodation available with the petitioner is insufficient as against total family members. Hence, the petitioner has made out a case under Section 14(1)(e) of the DRC Act and is entitled for the relief claimed.

15. During the course of hearing of the present petition, learned counsel for the respondent has made a specific statement that the respondent has no intention to reside at the tenanted premises. Even, the respondent who was present in Court, has made the statement that he is staying in India as a refugee from Afghanistan and he has applied for visa and submitted various papers in order to complete his all formalities in order to leave the country and he shall hand over the peaceful and vacant possession of the tenanted premises to the petitioner as soon as the said formalities are completed, however, he is not aware when these formalities would be completed. Therefore, he under these circumstances is not able to vacate the tenanted property. As the petitioner is not ready to accept his said proposal. Thus, the matter be decided on merit.

16. From the statement of the respondent, it appears to this Court that the respondent is ready to vacate the tenanted premises but he is not inclined to vacate the same in the absence of visa and other papers. He has no other alternative accommodation being a refugee from Afghanistan.

As far as the requirement of the sufficient accommodation by the petitioner is concerned, it appears to this Court that a strong case was made out by the petitioner for bonafide requirement as there were insufficient accommodation with the petitioner in order to reside their families. The findings of the learned Trial Court are perverse and contrary to law as

despite of evidence produced, the learned Trial Court without considering the genuine requirement of petitioner dismissed the petition without application of mind.

17. Considering the overall facts and circumstances of the case, I am of the considered opinion that the impugned order does suffer from infirmities. The same is hereby set-aside/quashed on the grounds made in the eviction petition. The present petition is accordingly allowed. An order for eviction is passed against the respondent with regard to the tenanted premises, i.e. Barsati Floor (second floor) consisting of one big hall, latrine, bathroom and kitchen in the property bearing No.939, Dr. Mukherjee Nagar, Delhi-110009, as shown in red colour in the site plan.

However, the eviction order shall not be executed against the respondent up to 30th June, 2014. During this period, the respondent shall not part with possession of the tenanted premises in favour of any third party or cause any damages to the same and also continue to make regular payment of rent etc. to the petitioner.

18. As agreed by the respondent before the Court that in case he leaves the country prior to the said period, he shall hand over the vacant and peaceful possession of the tenanted premises immediately to the petitioner.

19. The petition is accordingly disposed of.

20. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 28, 2013