

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

Date of Decision: 20.01.2014

+ **RC.REV. 36/2014**

SHRI RAVINDER BAGGA Petitioner

Through: Rajnish Kumar Gaind and Mr. Hemant
Kaushik, Advocates

Versus

SHRI VED PRAKASH TYAGI Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. This petition challenges an eviction order dated 28.10.2013 which rejected the petitioner's (tenant's) application seeking leave to defend in an eviction petition filed under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (*hereinafter referred to as 'the Act'*). The tenant has been directed to be evicted from the ground floor shop of property identified as WZ-47, Bundela Market, Vikas Puri, New Delhi (*hereinafter referred to as 'the tenanted premises'*). The property was let out by the respondent (landlord) to the tenant's father in the year 1986, who started an electrical shop in the tenanted premises and the present tenant has inherited the tenancy after the demise of his father.

2. Landlord's case was that the aforesaid property being an ancestral

property devolved upon him through the inheritance. It was owned by his grandfather Shri Badlu Ram Tyagi. He had four sons namely Jai Prakash, Mahavir, Ved Prakash and Shri Krishan (the respondent herein). Jai Prakash was survived by his wife Smt. Krishna who was remarried to Mahavir. The later had let out the premises in and about 1986 to the late father of the tenant tenant Shri A.C. Bagga. The tenanted shop fell into the share of the landlord in pursuant to a family settlement in 1990. Shri Mahavir gave a letter-cum-receipt dated 13.05.1990 in favour of Ved Prakash (respondent-landlord) declaring that the tenanted shop had fallen into his share. Pursuant to this family settlement, the respondent became the owner of the tenanted premises and the tenant's father had started paying rent to the landlord.

3. The eviction was sought on the ground that there was a bonafide need of the landlord for the tenanted premises for starting a tea shop since his family consisting of his wife and five children required additional income for their upkeep. It was stated in the eviction petition that the petitioner being a heart patient required extra income to maintain his health; that due to shortage of funds his daughter Ms. Chandni was unable to continue her studies; that he was working as Chowkidar in a government school on temporary basis and was getting salary of Rs.6,000/- p.m.; that due to heart

illness doctor had advised him to take rest and so he was planning to leave his present job where his working hour was more than 12 hours; that he had no other suitable accommodation for starting his tea stall business except the tenanted premises.

4. The tenant sought to contest the claim of bonafide need on the grounds that the landlord had optimum property which were suitable for establishing his own business; that the tenanted shop was taken on a Pagri of Rs.1,00,000/- in the year 1983; that property No. WZ-47, Budella Market is a big property having three floors where the petitioner has constructed three shops over the roof of the Malik Tailor and Unique Paints; that the petitioner has also constructed six shops on the third floor of the said premises out of which three had been let out by him and other three shops were lying vacant; that the petitioner is the owner of another property bearing No. B-336, Vikas Vihar, Uttam Nagar, Delhi which property is more suitable for commercial purpose and for the alleged bonafide need; that the petitioner was a permanent employee in a government school and was earning monthly salary of Rs.12,000/-; that in addition to his salary of Rs.12,000/-, the petitioner is having rental income of more than Rs.60,000/- .

5. In reply, the landlord denied the defences taken by the tenant stating

that he was a permanent employee of a government school earning the salary as alleged or he was earning the rental income as alleged; that he was a poor person doing a temporary job of a Chowkidar on monthly salary of Rs.6,000/- per month; that he was a heart patient and required the tenanted premises for his own use. He admitted the ownership of the property bearing No. B-336, Vikas Vihar, Uttam Nagar, Delhi but, submitted that the same was residential in nature consisting of two rooms on the ground floor which were occupied by a tenant @ Rs.1,200/- p.m. and therefore, the landlord submitted that since the property was residential in nature and occupied by a tenant, it could not be used for commercial activities and hence it could not be considered as suitable accommodation for the bonafide need. He denied that the tenanted premises was given to the tenant on a *pagri* of Rs.1,00,000/-.

6. The Trial Court was of the view that since the tenant had failed to file the receipt or any document evidencing that a sum of Rs.1,00,000/- was paid as *pagri*, the said argument could not be countenanced. The landlord further denied that property bearing No. WZ-47, Bundela Market, Vikaspuri, Delhi was a big property. He submitted that the roof over the first floor i.e. over the shops of Malik Tailors and Unique Paints had fallen in the share of the

petitioner and that the tenants have themselves constructed the portions over the roof. He further denied that there were six shops on the third floor out of which three had been let out and three had been lying vacant. He stated that there was no shop on the third floor.

7. Considering the view settled by the Supreme Court in *Satyawati Sharma v. Union of India*, AIR 2008 SC 3148 that covered premises let out for commercial purposes also within the scope and ambit of a petition under section 14(1)(e) of the Act, the Trial Court concluded that in view of denial of the landlord of receipt of any *pagri* apropos the tenanted premises and since no proof of *pagri* was placed on record acknowledging that the *pagri* was given, the contention of *pagri* was fallacious and have to be rejected. In the face of denial of any shop on the third floor of property No. WZ-47, Budella Market, Vikaspuri, nothing further required to be ascertained. The Court was further of the view that the landlord had disclosed in the petition that the shops in possession of Malik Tailors and Unique Paints came to the share of Mahavir and his brother had sold the said portion to the said tenants. Thus, the sale of the said portion of the property by the brother of the petitioner did not render the requirement of the petitioner malafide. The Trial Court also noted that the respondent/tenant had failed to place any

document to show that the petitioner had recently sold any portion of the property so as to cast a doubt on the bonafide requirement of the petitioner. The Court concluded that the need was bonafide as the petitioner had shown that he had no other suitable alternative accommodation; that he wanted to leave his hectic job of Chowkidar and wanted to start his own business near his residence as he was a heart patient; that even if he had sold any property 2-3 years ago that would not render his requirement malafide. In any case, assuming that the landlord had some shops vacant on the third floor, it could not be considered suitable for starting a business of tea stall. The Trial Court relied upon the judgments in *Kishan Lal v. R.N. Bakshi*, 2010 (1) RCR 550; *Viranwali v. Kuldeep Rai Kochhar* 174 (2010) DLT 328 and *Udai Shankar Upadhyay v. Naveen Maheshwari*, VIII (2009) SLT 429 to conclude that the landlord is the best judge for the suitability and use of premises and the tenant cannot compel the landlord to shrink his needs or alter them for the benefit of the tenant. In the later judgment aforementioned, the Supreme Court observed that:

“In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the Courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The

Court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the Courts below that the sons of plaintiff No. 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained.”

The Court further concluded that property bearing No. B-336, Vikas Vihar, Uttam Nagar, Delhi being a residential property and in the possession of a tenant it could not be taken into consideration as a triable issue. The contention of the tenant that the petitioner had filed a wrong site plan was found to be vague, incorrect and baseless by the Trial Court. The Court referred to the judgment of this Court in ***V.S. Sachdeva v. M.L. Grover, 67 (1997) DLT 737*** which observed that if a tenant failed to file any site plan then the site plan filed by the landlord should be accepted. The Court concluded that the tenant had prima facie failed to show that the rental income of the landlord was Rs.60,000/- p.m. or that he was employed as a permanent employee in a government school at a monthly salary of Rs.12,000/-. There was a denial on both of these allegations by the landlord who had otherwise contended that he was having a temporary job of a Chowkidar in a government school on a salary of Rs.6,000/- per month and hence he wanted to open a tea shop in the tenanted premises establishment of which did not require neither much expenditure nor any qualification and

furthermore that there was no other tea shop in the market. Hence, the business of tea shop would be profitable. The Court further relied upon the judgment in ***Rajender Kumar Sharma & Ors. v. Leela Wati & Ors.***, 155 (2008) DLT 383 to conclude that:

“only those averments in the affidavit are to be considered by the Rent Controller which have some substance in it and are supported by some material.”

The Trial Court further relied on ***Hari Shanker v. Madan Mohan Gupta***, 111 (2004) DLT 534 to observe that frivolous and vague allegations cannot defeat the summary procedure as envisaged under Section 25-B of the Act. The Court had held as under:

“summary procedure in Section 25-B of Delhi Rent Control Act, 1958 cannot be defeated by merely making frivolous and vague allegations which can never be substantiated.”

The Court also relied upon ***Sarwan Dass Bange v. Ram Prakash***, 167 (2010) DLT 80 and ***Baldev Singh Bajwa v. Monish Saini***, (2005) 12 SCC 778 on the law settled that:

“ it was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bonafide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine.”

The Court found that there were no triable issues raised in the application seeking leave to defend which could disentitle the landlord to seek eviction order. Accordingly, the said application was dismissed and the eviction order was passed.

8. This Court is of the view that the tenant had failed on each count to show a prima facie case which could disentitle the landlord to seek eviction in a summary procedure on a prima facie examination of the grounds raised in the application. That the even if a property had been sold by the landlord, as alleged in the leave to defend 2-3 years earlier; personal and family circumstances changes on a day-to-day basis and 2 to 3 years is a long time during which children could have grown and the needs of the family in a city like Delhi too would alter. The requirement for augmenting the income of a family specially of the nature of the landlord who was a chowkidar, his family consisted of five members, was in a temporary job at a monthly salary of Rs.6,000/- p.m., cannot be questioned. His need for the tenanted shop to open a tea stall which neither required a big investment nor any qualification, was clearly made out.

9. On the issue of the landlord not disclosing the existence of alternate property was contented by the counsel for the tenant, in an eviction petition,

the landlord is required to show that (i) he is the owner of the property; (ii) the need for the tenanted premises is born out of a genuine reason; and (iii) there is no suitable alternate accommodation. When the Trial Court is satisfied of these three ingredients being met, the eviction petition is allowed. It is not sufficient if the tenant, in his application for leave to defend, shows the Court the existence of alternative accommodation available with the landlord. Mere existence of an alternative property will not result in allowing he leave to defend. The counsel for the tenant, in the present petition, has contended that the landlord owns another property which can be put to use as it is more viable to run a business from the said property and that it is vacant. It is well settled law that what requires to be seen in an eviction petition is that the tenanted premises is most suited for the landlord for his own use and not merely the existence of alternate property. When the landlord shows that the alternate property available is unsuitable for his own use, the ownership of such other property becomes immaterial. The Supreme Court in *Ram Narain Arora v. Asha Rani*, (1999) 1 SCC 141 explained how non-disclosure of alternative property in the eviction petition by the landlord is not fatal to an eviction petition. The Court held:

“10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises:”

10. The learned ARC in the impugned order has held that the landlord not disclosing the existence of the property at another location is inconsequential as the need for the tenanted premises is commercial in nature, while the alternate property with tenants occupying it is in residential use. This Court agrees with the impugned order that since the need for the premises is different from what the alternate property being used for, it is not required for the landlord to have disclosed this fact. The tenant has been unable to show the existence of the alternate commercial property that is lying vacant and this Court finds no merit in this argument to allow leave to

defend.

For the reasons mentioned above, this Court finds that the tenant has not raised any triable issue which would warrant the leave to defend be granted. Holding that the impugned order does not suffer from any infirmity, the petition is dismissed.

NAJMI WAZIRI
(JUDGE)

JANUARY 20, 2014/acm