

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

+ **RC REV. No.101/2013**

% **12th August, 2014**

MOHD. UMAR & ANR. Petitioners

Through Ms.Kumkum Jain, Advocate.
versus

MOHD. ISLAM & ORS. Respondents

Through Mr.Vijay Tandon, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment dated 05.9.2012 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioners/tenants and has decreed the eviction petition for *bonafide* necessity under Section 14(1)(e) of the Act with respect to the tenanted premises comprising of one room dalan on the ground floor along with a tin shed and one tin shed in the first floor of property no.2648, Mohalla Niarian,

Behind G.B.Road, Delhi as shown in red and yellow colour in the site plan annexed along with the eviction petition.

2(i) The facts as pleaded by the respondents/landlords are that the property 2648 was purchased by the respondent no.1 and one Husan Ara Begum (sister-in-law of respondent no.1) by registered sale deed dated 13.8.1993 from the previous owner Smt.Zamarud Begum. It was pleaded that Husan Ara Begum died leaving behind the respondent nos. 2 to 9 as her legal heirs. It was further pleaded that the suit property stands mutated in the name of the respondents after the purchase of the same by the registered sale deed.

(ii) Ms.Rabia was said to be an original tenant and after her death, the present petitioners, the sons of Ms.Rabia became tenants by operation of law. Petitioners are using the tenanted portion for residential use, which is shown in red and yellow colour in the site plan.

(iii) Respondents pleaded that respondent no.1 in his family has besides himself his wife, three unmarried daughters, two married daughters and one son who is of marriageable age. The respondent no.1 was stated to have only three rooms with the amenities of kitchen, bathroom etc which

accommodation is pleaded to be insufficient and consequently the *bonafide* necessity petition was filed for eviction of the petitioners.

3. The main contest between the parties and the only issue which is urged before this Court on behalf of the petitioners/tenants is that the respondents are not the owners/landlords of the suit premises. Reliance is placed upon by the petitioners/tenants upon the sale certificate dated 08.2.1963 as per which there were various co-owners of the property no. 2648, and out of which, Wahiduddin (predecessor-in-interest of respondents) was only one co-owner, and consequently it is argued that Wahiduddin could not have gifted the entire property 2648 to Smt.Zamarud Begum by the registered gift deed dated 06.5.1961 ie it is argued that once Wahiduddin was only a co-owner of the property 2648, that did not arise any issue of him gifting the entire property 2648 to Smt.Zamarud Begum from whom the respondent no.1 and Husan Ara Begum had purchased the suit property. In sum and substance, ie it is argued that if Smt.Zamarud Begum was not the owner of the suit property, then the petitioners cannot be the owners of the suit property simply because Smt.Zamarud Begum had executed a registered sale deed in favour of respondent no.1 and Husan Ara Begum.

4. With respect to the issue of the respondents being the owners/landlords of the suit property, the Additional Rent Controller has dealt with this aspect in para 7 of the impugned judgment, and which reads as under:-

“ 7. The first objection of the respondents is that there exists no relationship of owner/landlord and tenants between the petitioners and respondents as petitioners are in possession of same in the capacity of tenant and the actual owner of the premises in question was Mohd.Wahiduddin.

The petitioners admitted that they were tenants in the property in question but submitted that vide sale deed dated 13.08.1993, they had purchased the entire property in question from its erstwhile owner Smt.Zamarud Begum. The respondents contended that said sale deed is a sham document as they have tendered regularly without default the rent earlier to Mohd.Wahiduddin and thereafter, the rent was tendered through Ms.Zamarud Begumas per the direction of Mohd.Wahiduddin and their death, the rent till date has been tendered to Naseer-ul-naq. The respondents have placed on record certain rent receipts in Urdu with their translated copies in English language. The said rent receipts pertaining to the period from 1946 to 1978. The last rent receipt of the year 1978 which the respondents have placed on record clearly shows that they lastly tendered the rent to Smt.Zamarud Begum. The petitioners have purchased the property in the year 1993 from said Smt.Zamarud Begum. No rent receipt or any other document has been placed on record by respondents which shows that they have tendered the rent to alleged Naseer-ul-naq after 1993 when petitioners have purchased the property in question. I also feel that after execution of sale deed 13.08.1993 in favour of the petitioners, the petitioners have become the title holder of the tenanted premises to file the petition u/s 14(1)(e) of DRC Act. It has

been held by the Hon'ble High Court of Delhi in **Rajender Kumar Sharma & Ors. vs. Leela Wati & Ors., 155 (2008) DLT 383** that *in a rent petition for bonafide requirement*, the petitioners should be more than the tenant. In this case, petitioners are more than tenants and the ground raised by the respondents are not a triable issue.

The respondents also contended that civil litigation pending between the petitioners and the legal heirs of Mohd.Wahiduddin wherein legal heirs of Mohd.Wahiduddin have claimed themselves to be the owner of the suit property. I feel that this litigation does not affect the present case of the petitioner as till date the said suit has not been decided against the petitioners and as of today, petitioners are the owner of the property in question by virtue of sale deed dated 13.08.1993.

In view of the above, both the contentions of the respondents are dismissed.” (underlining added)

5(i) I agree with the reasoning given in para 7 of the impugned judgment because once the admitted fact is that the petitioners were tendering rent to Smt.Zamarud Begum, and it is from Smt.Zamarud Begum that the respondent no.1 and Husan Ara Begum had purchased the suit property, consequently, the petitioners are estopped from disputing the title of Smt.Zamarud Begum and who has sold the suit property to the respondent no.1 and Husan Ara Begum. The Additional Rent Controller rightly records that in the various rent receipts including the last one issued in the year 1978; and which rent receipts have been filed by the petitioners herein

themselves; shows that the rent was being tendered to Smt.Zamarud Begum and who, therefore, was the landlady of the suit property.

(ii) The Additional Rent Controller rightly notes that merely because a civil litigation is pending between the respondents and the legal heirs of Mohd.Wahiduddin will not make any difference unless that civil litigation finally concludes in favour of the legal heirs of Mohd.Wahiduddin holding them to be owners of the suit property and not Smt.Zamarud Begum. Also, the petitioners/tenants have no *locus standi* to challenge the aspect of the said disputed ownership, and in law, if legal heirs of Mohd.Wahiduddin succeed in claiming the ownership of the property, they will at that stage be entitled to possession of the suit property from the present respondents. Further, I may note that the property has been mutated in the name of the respondents, and which is another aspect for this Court to hold that the petitioners cannot dispute the ownership of the respondents of the suit property.

6. The argument urged on behalf of the petitioners that Smt.Zamarud Begum was not the sole owner of the suit property pursuant to the registered gift deed dated 06.5.1961 executed by Mohd.Wahiduddin inasmuch as

Mohd.Wahiduddin admittedly was only one of the co-owners of the suit property under the sale certificate dated 08.2.1963 and therefore respondents are not the owners of the complete property, is not a valid argument because Mohd.Wahiduddin could have at least sold his share of the suit property to Smt.Zamarud Begum from whom the respondent no.1 and Husan Ara Begum purchased the suit property. Respondent no.1 and Husan Ara Begum, therefore are at least the co-owners of the suit property, and therefore are entitled as co-owners of the suit property to file an eviction petition against the petitioners/tenants.

7. No other issue is argued or urged before this Court.

8. In view of the above, I do not find any illegality in the impugned order, and the petition is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

AUGUST 12, 2014
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