

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

+ RC. REV. No. 423/2011

% **28th July, 2014**

DEVKI NANDAN & ANR. Petitioner
Through: Mr. Rahul Rohtagi and Mr. Hemant
Kumar, Advocates.

VERSUS

RAVI KANT Respondent
Through: Mr. B.L.Chawla, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25(B)(8) of the Delhi Rent Control Act, 1958 (in short 'the Act') is filed challenging the impugned judgment of the Additional Rent Controller dated 5.5.2011 by which the Additional Rent Controller has after trial decreed the eviction petition for *bona fide* necessity under Section 14(1)(e) of the Act in favour of the respondent herein/landlord and against the petitioners/tenants with respect to first floor and second floor of the property bearing no. 387(386-D), Bagh Kare Khan, Delhi. The

tenanted premises comprises of two rooms, kitchen, latrine and bathroom as shown in red colour in the site plan attached to the petition.

2. Respondent/landlord claimed the tenanted premises for *bona fide* residential use of his family which comprised of himself, his wife, one son Sandeep aged 20 years and two daughters namely Shikha, aged about 23 years and Poonam, aged about 21 years respectively. Respondent stated that he was living in property no. 388, Gali no. 5, Bagh Kare Khan, Delhi-7 which belonged to his mother Smt. Vidyawanti having been purchased by her vide sale deed Ex.PW1/7. Not only that this property belonging to the mother was not available to the respondent and his family as of right, but also the fact of the matter is that the respondent was having in the property of his mother only one room besides kitchen and common bath, latrine on the ground floor shown 'X' and in yellow colour in site plan, and which accommodation was grossly insufficient for needs of the respondent and his family. The other portion of the property of the mother was occupied by the mother herself (marked as 'X-1'), three other sons and three daughters. Portion marked as 'X-2' in the site plan was with one son Pawan and his family members whereas the portion marked 'X-3' and 'X-4' situated on the first floor was in the possession of Sh. Anil Kumar (another son) and his

family members. Portions 'X-5' and 'X-6' were with another brother of the respondent namely Lalit and which portions were on the second floor. The married sisters of the respondent also visited and stayed with the mother of the respondent in the property. The respondent therefore had been in need of the tenanted premises not only because the premises in which he was staying he had no right but also the accommodation was grossly insufficient for the respondent and his family because each of the child of the respondent needed separate rooms including for their studies.

3. The eviction petition was contested by the petitioners/tenants denying the relationship of landlord and tenant. It was also contended that the property no. 388 (belonging to the mother), belonged to the respondent and was an alternative suitable accommodation. It was also claimed by the petitioner that there is difference and confusion in the numbering of the tenanted premises as to whether the same is numbered 386-D or is numbered 387, and therefore, eviction petition could not be filed. Another ground of defence was that without obtaining permission under Section 19 of the Slum Areas(Improvement and Clearance) Act, 1956, eviction petition could not be filed because the tenanted premises were situated in slum area.

4. A reading of the impugned judgment shows that the Additional Rent Controller has rightly arrived at the finding of relationship of landlord and

tenant because the petitioners admitted that the suit premises were let out by the respondent herein. Even in the earlier petition the witness of the petitioners RW-1 on cross-examination admitted that petitioner was paid the rent. In any case, in law once the respondent was admitted to be a landlord of the suit property, and petitioners were tenants, as per Section 116 of the Evidence Act, 1872 petitioners were estopped from challenging the ownership of the respondent. This aspect has been rightly dealt with by the court below in para 8(A) of the impugned judgment and which reads as under:-

“8(A). The first ground taken is that the petitioner is not the owner of the suit premises and property no. 386-D, Bagh Kare Khan, Delhi-110006 belongs to M/s. Hansraj and the property bearing no. 387 belongs to Slums and J.J. Department and are two different properties and, thus, petitioner has no locus-standi to file the present petition, However, in the W.S., in replay of para 3-A and B, respondent has not denied the relationship of landlord and tenant and even has admitted that the suit premises was let out by the petitioner and even in the earlier petition, RW-1 has admitted in his cross examination that nobody else except the petitioner has claimed the rent of the tenanted premises and though the documents are placed on behalf of the respondent on record pertaining to information obtained under Right to information Act, but none of the documents have been proved as per Law and being the tenant, respondents have no right to challenge the ownership of the petitioner in view of the provision under Sec. 116 of the Evidence Act and on the other hand, petitioner has shown himself more than tenant and, thus, it can be safely held that for the purpose of present petition, petitioner has been able to prove his ownership qua the present respondents and respondents

have failed to prove that property no. 386-D and 387 are different properties or anybody else is the owner of suit property.”

5. On the aspect of the property no. 388 belonging to the mother being an alternative premises is concerned, the Additional Rent Controller notes that the property is not owned by the respondent but is owned by his mother and which is proved from the sale deed in favour of the mother Ex.PW1/7 and thus it could not be said that the property no. 388 was owned by the respondent. Even if the property no. 388 was available to respondent/landlord, such property had inadequate accommodation to house the respondent and his family members in view of the large number of children of the mother of the respondent who lived alongwith their families in different portions of the property no.388. These aspects have been dealt with by the Additional Rent Controller in Para 8(C) and 8(D) of the impugned judgment and which read as under:-

“8 (C). So far as the property no. 388, Bagh Kare Khan, Delhi is concerned, the site plan Ex. pW-1/8 of the said property makes it clear that the said property is consisting of three rooms along with Kitchen, Bathroom and latrine at ground floor, two rooms and one big hall at the first floor and two halls at the second floor and though the said property is alleged to be owned by the petitioner but there is nothing on record to prove that the petitioner is the owner of the said property and on the other hand, petitioner has provide vide Sale Deed Ex. PW-1/7 that the said property is owned by the mother

of the petitioner Ms. Vidyawati Devi and in the cross examination, respondent himself has admitted that the petitioners are four brothers and they are married and are having grown up children and even no counter site plan has been filed on behalf of the respondent of the property no. 388 and otherwise also, it is settled Law that every person has right to reside in his own property and in this regard reliance may be placed upon the judgment reported in 172 (2010) DLT 2004 and, thus, from the above discussion it is clear that it can be safely held that premises no. 388, Gali no. 5, Bagh Kare Khan, Delhi can not be considered to be the alternative suitable accommodation available with the petitioner.

8(D). So far as number of the family members are concerned, petitioner has proved vide his Ration Card Ex. PW-1/9 that his family consists of himself, his wife and three grown up children and there is no specific denial of the number of the family members, but there is bald denial that there is no bonafide requirement as the petitioner is having sufficient alternative accommodation and from the number of family members it is clear that they at least require four bed rooms, one for the petitioner and his wife and one bedroom each for three grown up children and even if for the sake of arguments it is assumed that there is no strained relations between wife of petitioner and his mother but from the bare perusal of the suit plan as well as testimony led on behalf of the parties, it is clear that only six rooms are available in the said property and atleast from the admission of RW-1, it is clear that petitioners are four brothers and there is nothing on record to show that two brothers and mother are not residing in the said property as alleged by respondents, thus, it can not be said that the petitioner is having possession of sufficient accommodation in the said property and, thus, it can be safely held that the requirement of the petitioner is bonafide as he is having no alternative suitable accommodation available with him.” (underlining added)

6. So far as the argument that there is discrepancy as to the property number, the Additional Rent Controller has rightly rejected this argument by

observing that once the tenanted portion is shown in the site plan Ex.PW1/6 and RW-1 in cross-examination has himself admitted that the tenanted portion was one shown in red colour in the site plan, identity of the tenanted premises stood established, and hence the contention of the petitioners with respect to confusion in the property number was misconceived for the same to be used as a basis to dismiss the petition. Para-8 (E) of the impugned judgment which discusses this aspect reads as under:-

“8(E). One ground taken is that the actual number of property is 386-D, bagh Kare Khan, Delhi and not House No. 387, Bagh Kare Khan, Delhi but in the cross examination RW-1 himself has admitted that he is in occupation of portion shown in red colour in the site plan attached with the petition which is Ex. PW-1/6 and, thus, identity of the suit property has been clearly established and proved by the petitioner and in this regard reliance may be placed upon the judgment reported in 2007(1) RCR 414.”

7. So far as the aspect that prior permission was to be taken under Section 19 of the Slum Areas Act, the Additional Rent Controller rightly notes that since the petition is for *bona fide* necessity, no prior permission was required before filing the petition for *bona fide* necessity, in view of catena of judgments of this Court which hold that since there is non-obstante clause with respect to the procedure for eviction for *bona fide* necessity under Section 14(1)(e) read with Section 25(B) of the Act, no prior

permission is required of the Slum Authority under the Slum Areas Act even if the tenanted premises are situated in a slum area.

8. All the arguments which were raised before this Court were the same arguments which were raised before the Additional Rent Controller and Additional Rent Controller with the correct reasoning has rejected those arguments of the petitioner/tenants. I completely agree with and adopt as already reproduced above the reasoning and conclusions of the Additional Rent Controller, and therefore, I do not find any fault in the impugned judgment decreeing the case for *bona fide* necessity.

9. In the present case, eviction order was passed over three years back on 5.5.2011. Today we are in the end of July, 2014. Statutorily only six months are granted for vacating the suit premises ie till 5.11.2011, but, petitioner has continued to stay in the suit premises well beyond the statutory period of six months, and therefore, the present petition is dismissed with costs of Rs.50,000/-. I may note that the Supreme Court in the judgment in the case of ***Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249*** has held that it is high time that in frivolous litigations, exemplary costs be imposed. I am empowered to impose costs in terms of ***Volume V*** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI***

Part I Rule 15. In the facts of the present case, interim order with respect to payment of interim user charges at the rate of Rs.4000/- per month passed on 1.2.2012 is also confirmed subject to the right of the respondent to claim further and additional mesne profits in accordance with law.

JULY 28, 2014
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VALMIKI J. MEHTA, J