

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

+ **RC.REV.No.539/2012 & C.M.No.18708/2012 (Stay)**

% **25<sup>th</sup> November, 2014**

SH. SURAJ BAJAJ .....Petitioner  
Through: Mr.Amit Sethi with Mr.Sachin Aneja,  
Advocates.

VERSUS

SH. SWADESH KUMAR GUPTA ..... Respondent  
Through: Mr.Jayant K.Sud with Mr.Bonita  
Singh and Mr.Chirag Khurana,  
Advocates.

**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 DRC Act') impugning the judgment of the Additional Rent Controller (ARC) dated 31.7.2012 by which the ARC has dismissed the leave to defend application and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to one room i.e garage in the ground floor of

the property bearing no.4/29, West Patel Nagar, New Delhi as shown in red colour in the site plan annexed with the eviction petition.

2. Learned counsel for the petitioner very vehemently argued before this Court that in the entire impugned judgment, the ARC only deals with the residential requirement of the respondent/landlord and not with the issue as to whether the respondent/landlord has the need of the garage to park the car, and therefore it is urged that the impugned judgment be set aside and the matter be remanded for a fresh decision before the ARC as to whether the respondent/landlord needs the subject room/garage for parking the car.

3. Firstly, I must note that though partially the counsel for the petitioner is correct in arguing that the impugned judgment does not adequately discuss the need of the respondent/landlord for the said tenanted room/garage for the requirement of parking of a car of his son, but at internal pages 2 to 5 of the impugned judgment, there is a reference as averred in the eviction petition for the requirement of the tenanted room/garage for parking of a car by /of the son of the respondent/landlord being Wagon-R car bearing registration no.DL-2CA-C2302, and which garage is required because the car is unnecessarily being parked on the road. Not only the ARC has made a passing reference to this aspect in the impugned judgment, even in para

18(a) of the eviction petition the details with respect to requirement of the tenanted room/garage is mentioned for the purpose of parking of a Wagon-R car for/ by the son of the respondent/landlord.

4. No doubt, it is correct that the ARC has not specifically dealt with the issue of requirement of the tenanted room/garage for parking of a car, and has generally gone on to discuss the requirement of the family of the respondent/landlord, however, this Court is not bound to remand the matter to the trial court and this court can instead apply the spirit of the provision of Order XLI Rule 24 of the Code of Civil Procedure, 1908 (CPC) which states that the higher court need not remand the matter to the lower court for a fresh decision if the judgment of the court below can be sustained on the basis of other facts and aspects which appear on the record.

5. Learned counsel for the petitioner therefore sought to argue that the respondent/landlord has alternative suitable accommodation on the first floor, however, this issue obviously could not be very seriously pressed once the need was not for the respondent/landlord or his family, but for the purpose of parking of a car, and surely a car could not be parked on the first floor.

6. A learned Single Judge of this Court in the case of ***Krishan Lal Vs. R.N.Bakshi 169 (2010) DLT 769*** has specifically dealt with the aspect of requirement of a garage in Delhi for the landlord to park his car. While confirming the decree in the eviction petition for a garage, the learned Single Judge of this Court in the case of ***Krishan Lal (supra)*** has made the following salient observations:-

“9. In the present case, the question of testing the *bona fides* of the landlord merely on the ground raised by the petitioner/tenant that the space available to him and being put to use for parking his vehicle, can be utilized for running a shop, does not arise. The foundation on which this argument has been laid, is itself fallacious. The petitioner/tenant is under a misconceived conception that it is for him to choose as to how the respondent/landlord ought to live and put to use his premises. The submission of the Counsel for the petitioner/tenant that the drive way can be put to permanent use by the respondent/landlord as a garage, is held to be devoid of merits. Merely because the respondent/landlord has on some occasions used the drive way to park his vehicle, cannot be a ground to urge that he should park his car in the drive way on a permanent basis.

10. It is a matter of common knowledge that the roads in Delhi are spilling over with vehicular traffic. While vehicles on the road are ever increasing in numbers, the parking space available on the roads has shrunk on account of development work and road expansion activities undertaken by the civic authorities. Thus, the stress and strain of living in a metropolitan city is most visible on the roads, where competing claims are often sought to be resolved by use of muscle power. Every other day there are reports of altercations and ugly disputes, sometimes resulting in physical assault and murder, sparked off from paucity of parking space for vehicles. In such circumstance, the insistence on the part of the petitioner/tenant that the respondent/landlord, who is a senior citizen, aged 82 years, ought not to use the space available as a garage in his own premises, for purposes of parking his car, and instead, put it to use for running a shop, is wholly untenable and cannot be sustained.

In today's day and time, parking of the car by the respondent/landlord in a portion of his residence facing the road, which he has designated as a garage, cannot be called a luxury, but a sheer necessity, particularly, when even the civic authorities have woken up to the need of imposing road tax on users of public space for the purposes of parking private vehicles." (underlining added)

7. In my opinion, it cannot be said that if the landlord wants to park his car in a garage which is owned by him, the same will not be a *bonafide* need for the respondent/landlord. Once it is found that the respondent/landlord has no other space on the ground floor, except the suit/tenanted room/garage, the impugned judgment will have to be sustained with respect to the *bonafide* requirement of the respondent/landlord for parking of a car of his family being Wagon-R with registration no.DL-2CA-C2302, by adopting and accepting the ratio as laid down by the learned Single Judge of this Court in the case of *Krishan Lal (supra)*.

8. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

**VALMIKI J. MEHTA, J**

**NOVEMBER 25, 2014**  
**KA**