

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

+ **C.M.(M) No.900/2014 and C.M.No.16352/2014 (stay)**

% **29th September, 2014**

JAGDISH CHANDRA LEKHA Petitioner

Through: Mr. Chetan Sharma, Senior Advocate
with Mr. Rajesh Narula, Advocate.

VERSUS

ALL INDIA BLIND RELIEF SOCIETY (REGD.) Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Respondent/landlord is All India Blind Relief Society, a society registered under the Societies Registration Act, 1860. Respondent-society filed a *bonafide* necessity eviction petition under Section 22 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') against the petitioner/tenant pleading that it is running a charitable hospital under the name of Model Eye Hospital and it requires the tenanted premises with the petitioner for the purpose of carrying on its various activities as there is a grave shortage with the respondent/society for rooms for a Pathological lab,

ENT Department, Ayurvedic department, waiting room etc. In the eviction petition, it is pleaded that neither the petitioner nor any of his family members reside in the tenanted premises which is lying locked and therefore eviction, besides for *bonafide* necessity of the respondent-society, was also sought under Section 14(1)(d) of the Act for non-residence of the petitioner and/or his family members in the premises, but eviction on that ground has been dismissed. The eviction petition for *bonafide* necessity under Section 22 of the Act was however decreed.

2. The factual matrix with respect to the requirement for *bonafide* necessity is encapsulated by the trial court/Additional Rent Controller in paras 2 to 2.5 of its judgment dated 23.7.2013 and which read as under:-

“2. The facts as averred in the petition are that the petitioner runs a charitable hospital in the name of Model Eye Hospital, providing for eye care and treatment of eye ailments. A large numbers of doctors, nurses and other staff for providing services to the public have been employed. The petitioner provides accommodation to the doctors, nurses and other staff working at the hospital. The premises are residential which have been rented out in October, 1965 to the respondent at the monthly rate of rent of Rs.172.50/- (Rupees One Hundred Seventy Two and Fifty Paise only) excluding water and electricity charges which are to be paid to the authorities according to the consumption as both the connections are in the name of the tenant. However, no written agreement was executed.

2.1 It has further been submitted by the petitioner that neither the respondent nor any of his family members are residing in the premises over last four years and the premises are lying locked since then. The respondent does not need the premises under his occupation and has kept it locked for about four years and has also removed all his belongings from the premises. Whereas, the petitioner is a public institution and requires the premises in dispute for the furtherance of its activities.

2.2 Then again, the petitioner is running a Pathological Lab and due to paucity of accommodation is forced to carry the work of Pathological lab in only one room. Though the actual requirement is of one room for extraction of samples, one room for testing the samples and one room is required for pathologist. Consequently, two additional rooms are required for the pathological department.

2.3 The petitioner has also averred that it is running an ENT Department which requires one room for the examination of patients, one as dressing room, one waiting room for patients and one room for the doctor to be used as retiring room. The department is functioning from one room only. The petitioner requires three additional rooms for the purpose.

2.4 The hospital also does not have any waiting room for the patients and patients with eye ailments requires proper waiting hall so as to save themselves from dust/wind and other pollution.

2.5 The petitioner has an Ayurvedic department which requires one room for examination by Vaid, one dispensing room, one store for medicines, one Panchkarm room and waiting room where the patients could wait. Consequently, there is a requirement of five rooms whereas the department is functioning from one room and one kothri.”

3. With regard to this issue of *bonafide* necessity, the Additional Rent Controller has given the necessary findings and conclusions from paras 10 to 13 of its judgment dated 23.7.2013, and these paras read as under:-

“(i) Under Section 22 of the DRC Act

10. The bare provision of Section 22 of the DRC Act provides that if the landlord is a public institution and the premises are required for the use of employees or for the furtherance of the activities of the public institution then notwithstanding the provision of Section 14 the landlord may be placed in vacant possession by eviction of the tenant. Further clause (d) of Section 22 provides that the same can be done if the premises are required bona fide by the public institution for the furtherance of its activities. In the explanation clause, the provision clearly mentions that public institution includes hospitals.

11. Applying the same to the present case, it can be clearly observed that the petitioner is running an Eye Hospital at the suit premises for the public welfare as a charitable institution. This has not been denied or disputed by the respondent. The petitioner has claimed for bona fide requirement of the premises in furtherance of the activities and has also enlisted the details of the rooms required and for what purposes. In light of the pleadings of the petitioner as well as the evidence adduced it can be noted that the petitioner is in requirement of accommodation so as to proliferate the cause of public welfare in treating the ailments of the patients visiting the hospital.

11.1 To ascertain the need of extent of the bona fide requirement as put forth, the pleadings have been demonstrating the extent of accommodation presently available to the petitioner in its various departments i.e. Pathological Lab; ENT department; waiting hall for the hospital; Ayurvedic department and canteen. Amended petition also clearly reflect the state of the rooms that stood vacant after the cessation of their occupation by Sh. Ganju and Smt. Raj Madhok. In contrast to these pleadings, the respondent did try to set up a different case by saying that the present accommodation available with the petitioner is more than sufficient and thus the petitioner is passing of its present need despite the fact that it is merely sham. **The said pleadings have not been supported with the evidence as the witness of the respondent did not turn up for cross-examination. The respondent eventually stopped participating in the trial and thus proceeded exparte.** At the same time, the previous counsel of the petitioner Sh. O.P. Hans, Advocate did cross-examine Sh. Ghanshyam Singh/PW1

and Sh. S.C. Gupta/PW2. The respondent did try to take advantage of the said cross-examination of PW1 recorded on 25.08.2004 by setting up a case that none of the office bearers of the petitioner had given in writing to him that there was shortage of accommodation. However, the witness Sh. Ghanshyam Singh put forth a cogent and reliable reason in that regard. He submitted that being Chairman of the petitioner's society the issue of shortage of accommodation was discussed with the office bearers. It is also in the cross-examination that the property in question was never surrendered to Dr. Bhagwan Das Memorial Trust despite resolution to that effect and reason for not acting upon the said resolution is stated to be the judgment passed by Sh. Z.S. Lohat, the then Sub Judge according to which the property in question was to vest in the petitioner only. The respondent also tried to put up a case that Dr. Bhagwan Das Memorial Trust had been receiving rent from the tenants however no material in this regard has been produced. The witness was never confronted with rent receipts in this regard, if any. The issue under consideration i.e. availability of suitable accommodation with the petitioner has not been touched in the cross-examination of PW1 which gives an impression that the said stand has been probably abandoned by the respondent.

12. The PW2, Accountant of the petitioner, deposed to the effect that the respondent is its tenant in regard to which rent receipts Ex.PW2/1 to Ex.PW2/7 were relied. In his cross-examination, the respondent did touch on the issue under consideration to some extent. What comes out from the cross-examination dated 18.12.2005 is that the entire premises in which the demised premises is situate consists of a total land measuring 1.05 acres of which no rooms are lying vacant except for the rooms vacated by Sh. Ganju which was vacant as its roof was dismantled. In the cross-examination of this witness conducted on 25.07.2007, the witness gave further explanations regarding the other rooms. He categorically stated that the three rooms stood vacated by Sh. Ganju are being utilized by the petitioner. One X Ray machine is kept in one room and other rooms are being used as storage space for broken articles. The rooms vacated by Smt. Raj Rani and Sh. Hari are also under the possession and occupation of the petitioner. It further comes out from the cross-examination that none of the doctors are residing in the petitioner's premises and the reason assigned for it is

shortage of accommodation. So much so is the extent of shortage of appropriate accommodation is that on the date of the cross-examination of PW2 i.e. 25.07.2007 the petitioner was using the canteen as a Pathological Lab after having it renovated.

13. Since no material in documented form was produced for confrontation of the witness of the petitioner mere offering of suggestions in regard to the respondent's defence will not displace the onus which would stand shifted by virtue of its burden to prove on the respondent. Absence of evidence in support of the respondent's defence is another factor that tilts in favour of the petitioner. There is nothing on the file to suggest that that requirement is not bona fide. The pleadings taken by the respondent have not been supported by any evidence and hence remain completely bald. It is settled law that pleadings not supported by evidence are barren and do not produce any fruits. Therefore, this Court maintains that the requirement of the petitioner is bona fide and therefore the petitioner being a public institution is entitled to the vacant possession of the premises for furtherance of its activities."

(underlining added)

4(i) A reading of the aforesaid paras, and more particularly para 11 shows that the fact that the respondent-society is running an eye hospital at the suit premises for public welfare as a charitable institution has not been denied or disputed by the present petitioner. Because of the fact that there is no dispute that the respondent-society is running an eye hospital and it is engaged in public welfare as a charitable institution was not denied that the most of the discussion in the judgment of the Additional Rent Controller pertains to the availability of the accommodation that whether the

respondent-society requires the accommodation with the petitioner for its activities or not. This I am observing so because before this Court learned senior counsel for the petitioner has sought to argue that the respondent-society is not carrying on any activity of running an eye hospital for public welfare as a charitable institution. I cannot allow such an argument to be raised in view of the specific admission of the petitioner as recorded in para 11 of the judgment of the Additional Rent Controller and which judicial record has to be taken as final in view of the judgment of the Supreme Court in the case of *State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr. AIR 1982 SC 1249* which holds that courts have to take as final what is recorded in judicial proceedings and if what is factually recorded in a judicial order is not correct, then, the person who states that the factual statement is incorrectly recorded in the order must move to that court which recorded that factual statement at the earliest stage when the matter is fresh in the mind of the court, and if that is not done, the matter rests there and thereafter such a factual statement made in the judgment of the lower court cannot be challenged in an appeal filed in the appellate court.

(ii) Therefore, in my opinion, it is mischievous and *malafide* for the petitioner to take up for the first time the argument in this petition under

Article 227 of the Constitution of India, and which is effectively a second appeal against the judgment of the Additional Rent Controller decreeing the *bonafide* necessity eviction petition for the respondent-society.

(iii) The reliance placed upon on behalf of the petitioner on the judgments in the cases reported as ***Birdhi Chand Jain Charitable Vs. Kanhaiya Lal Sham Lal (1973) ILR 1 Delhi 144*** and ***M.D. Oswal Hosier Vs. Swami Krishna Nand Govinda Nand Bhagwat Dham 1982 (3) DRJ 122*** need not be considered by this Court in view of the admitted case of the petitioner that the respondent-society, is a public charitable institution and as so recorded in para 11 of the judgment of the Additional Rent Controller. However, even if I consider these judgments it is found that in the judgment in the case of ***Birdhi Chand Jain Charitable (supra)*** there was the position emerging on record that the alleged trust had never carried out any charitable activity and therefore it was held that the public trust was not a public institution as envisaged under Section 22 of the Act. I may state that in para 8 of ***Birdhi Chand Jain Charitable's*** case (*supra*) it is clarified that a registered society can be a public institution as envisaged under Section 22 of the Act.

5. At this stage, I would like to refer to explanation to Section 22 of the Act and which reads as under:-

“Explanation.- For the purposes of this section, “public institution” includes any educational institution, library, hospital and charitable dispensary (but does not include any such institution set up by any private trust).”

Clearly therefore, an institution which is running a hospital or a charitable dispensary is included in the expression “public institution” as found under Section 22 of the Act.

6. The judgment which is relied upon on behalf of the petitioner in the case of *M.D. Oswal Hosiery (supra)* is only to show that the judgment in the case of *Birdhi Chand Jain Charitable (supra)* has been followed in the case of *M.D. Oswal Hosiery (supra)*. There is however no dispute to the legal proposition that the landlord must be a public institution before it invokes Section 22 of the Act, but, the issue is not a legal issue in the present case but is actually a factual issue and which factual issue, as already stated above, has been admitted on behalf of the petitioner as recorded in para 11 of the judgment of the Additional Rent Controller.

7. A reading of the judgment of the first appellate court/Rent Control Tribunal shows that the only argument which has been raised was that the respondent is not a public institution within the meaning of Section

22 of the Act, and this argument has been rejected by the impugned judgment by referring to the explanation to Section 22 of the Act that the respondent-society in the facts of the present case which is running a hospital would be covered as a public institution as per Section 22 of the Act. Once again, I would like to note that during the course of arguments, when I put to learned senior counsel for the petitioner that the judgment of the first appellate court does not record any of the arguments which are now raised by him before this Court, and to which aspect learned senior counsel for the petitioner states that arguments were raised before the first appellate court. I however refuse to accept this statement because as stated by the Supreme Court in the case of *State of Maharashtra (supra)* that factual aspects recorded in the judgment is final, and the impugned judgment of the first appellate court does not record the arguments which are being addressed before this Court, and consequently if according to the petitioner, arguments were raised by him before the Rent Control Tribunal/First Appellate Court but have not been dealt with, the petitioner had to necessarily approach the Rent Control Tribunal, but that has not been done.

8. As noted in the judgment of the Additional Rent Controller/trial court, the petitioner has led no evidence, and therefore for this reason itself

the case of the respondent/landlord in the facts of the present case can be decreed as per the evidence led on behalf of the respondent-society.

9. A resume of the aforesaid shows the following:-

(i) The respondent-society is running a hospital in the same very premises in which the tenanted premises of four rooms, one kitchen etc are situated.

(ii) It is totally false for the petitioner to plead before this Court that the respondent should be held not to be carrying out a charitable activity because the petitioner had not disputed this position and as so duly recorded by the court of Additional Rent Controller and consequently it is *malafide* on behalf of the petitioner to urge that the respondent is not carrying on any activity for it to be a public charitable institution.

(iii) Petitioner is time and again taking pleas which are not found in any of the impugned judgments of the courts below, and consequently showing that for the first time pleas are being raised before this Court in the Article 227 of the Constitution of India petition, and thus which pleas therefore really do not require examination by this Court.

(iv) In spite of the fact that the respondent is carrying on the activities as a public institution by running a hospital for blind people,

petitioner is most unfairly holding on to the tenanted premises although the case of *bonafide* necessity factually has been duly established before the Additional Rent Controller and which findings with respect to the *bonafide* necessity were not challenged before the Rent Control Tribunal inasmuch as such arguments were not raised before the Rent Control Tribunal and accordingly the Rent Control Tribunal has only decided which was argued before it as to whether the respondent can be said to be a public institution covered within the meaning of the expression in Section 22 of the Act or not.

(v) Petitioner has led no evidence and hence the case of the respondent has to be believed in the facts of this case.

10. I may note that there was a provision of second appeal being Section 39 in the Act. This provision of second appeal was repealed way back in the year 1988. Therefore, once there is no provision of second appeal, petitions under Article 227 of the Constitution of India cannot be filed by taking the same as a provision for filing of a second appeal and which second appeal provision was a provision for only challenging the judgments on a limited ground of substantial question of law. Not only no substantial question of law arises, but also there is no illegality or perversity

in the impugned judgments of courts below allowing/decreeing the *bonafide* necessity eviction petition for the respondent-society.

11. I may state that at the conclusion of arguments, I put to the counsel for the petitioner as to whether the petitioner wanted time to vacate the tenanted premises, but the petitioner insists that he would not vacate the premises and a judgment should be passed. Obviously, this is because the tenanted premises are situated in Lajpat Nagar and which is a very valuable area in the city of Delhi.

12. In view of the above, and which facts show that the petitioner is obdurately blocking the need of a public institution being the Blind Relief Society by not vacating the premises, this petition is accordingly dismissed with costs of Rs.50,000/- and which costs shall be paid to the respondent-society. Costs be paid within a period of four weeks from today. If costs are not paid within four weeks, respondent can recover the same in accordance with law.

VALMIKI J. MEHTA, J

SEPTEMBER 29, 2014

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