

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

Reserved on: 06.02.2014
Date of Decision: 27.08.2014

+ RC. REV. No.526 of 2011 & CM No.22675 of 2011

PAWAN KUMAR & ANR. Petitioners
Through: Mr. R.K. Mittal, Adv.

versus

SAT NARAIN KAUSHIK (Deceased) through LRs & ORS..... Respondents
Through: Mr. Vivek Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an order dated 10.6.2011, whereby the eviction-petition of the respondent/landlord under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “ Act”) was allowed and an eviction order was passed on the ground of *bona fide* requirement with respect to the tenanted premises, i.e. one room admeasuring 10ft. X 8ft. on the ground floor of premises bearing No.2236, Gali Anar, Kinari Bazar, Chandni Chowk, Delhi-110006 (for short ‘tenanted premises’). The respondents/landlords had sought eviction of the tenant on the ground that the premises were required for their *bona fide* use since they neither had sufficient nor suitable accommodation to satisfy the residential needs of their dependent family members. They had contended that for a family of nineteen (19) members living in the suit property, in addition to five married sisters and one married daughter each of petitioner Nos.1, 2 & 3 along with

their respective children and husbands, who would often visit the petitioners in the suit property, the space available was woefully insufficient to meet their requirements. They had submitted that apart from the aforesaid property they had no other residential accommodation in Delhi. The Trial Court took into account the details of accommodation on the ground, first and second floors of the suit property. On the ground floor a room admeasuring 20.3ft. X 8ft and two stores admeasuring 10ft. X 4ft and 10ft. X 5 ft. inside the said room was shown in the site plan filed by the landlords. On the first floor one room admeasuring 13.6ft. x 9ft. and another room admeasuring 20.3ft. X 8ft. with two stores admeasuring 10ft. x 4ft. and 10ft. x 5ft. and a kitchen and a bathroom were shown in possession of the eviction-petitioners. On the second floor one room admeasuring 13.6ft. x 9ft. and a tin shed admeasuring 7.6ft. x 12ft. along with a toilet was shown in the site plan. The site plan showed a shop on the ground floor in the possession of a tenant Manohar Lal, which was required for the residential purposes of the family of the petitioners.

2. The case was put to trial and after appreciation of evidence led by the parties, the eviction order was passed. The Trial Court found that the landlord-tenant relationship existed between the parties; that a case for *bona fide* requirement was made out, because although the tenant had refuted the landlords' arguments that their family comprised 19 members living in the suit property in addition to five married daughters of petitioner Nos.1, 2 & 3 and visits by married sisters of the petitioners, but the tenant's having admitted that at least eight adult members were residing in the property, the Trial Court found that even for eight adult

members, the accommodation available to the petitioners in the suit property was insufficient to meet their requirements. The Trial Court was further of the view that even for family of petitioner No.1 and his wife, his two sons with their wives and four grand children and petitioner No.2 his daughter and two children the accommodation available with the eviction-petitioners was insufficient. In the aforesaid circumstances, the Trial Court found that the case for *bona fide* requirement was made out and an eviction order with respect to the tenanted premises was passed.

3. The tenant had argued that the three rooms on the ground floor were big enough to be converted for the purposes of residence; that two separate rooms on the ground floor admeasuring 10ft. x 8ft. each were conjoined into one big room of 20ft. x 8ft., therefore, thereby creating an artificial paucity of accommodation. However, the Trial Court took into account the cross-examination of RW-1 in which the latter had admitted that this conversion was done about 15-20 years ago, hence it would have no bearing upon the eviction proceedings. Furthermore, the room admeasuring 10ft. x 8ft. having an area of less than 100 sq.ft. could not have been used as a living room, accordingly it was held that the petitioners had rightly converted the two rooms into one decent size room having habitable area. The site plan filed by the petitioners was admitted by the tenant to be correct. The tenant did not file any counter site plan. Accordingly the accommodation contended by the landlords, to be available to them was found to be correct.
4. It was also admitted by the tenant that the shop on the ground floor was always used as a shop and was never used for residential purposes and

that there was no other tenant in the suit premises except him. The Trial Court was of the view that since the respondents had used the premises for residence they could not possibly argue that the suit premises could not be used for the same purpose.

5. The learned counsel for the petitioners has argued: that the room of 7ft. x 10ft. is not good enough in view of the latter's improved social and economic circumstances; that the landlords' family size has reduced and some family members have shifted to other places such as Rohtak; that many rooms were joined into one room to create scarcity; that the site plan was incorrect; and finally that there was no *bona fide* requirement and the eviction petition was only to harass the tenant.
6. Learned counsel for the respondent submitted that the room on the ground floor could be used for the purpose it was sought, since there was severe shortage for residential space for the eviction-petitioners. He submitted that insofar as the landlords' site plan had been admitted and not been controverted by any other site plan of the tenant, the paucity of space set out stood duly established hence the *bona fide* requirement was clearly made out. He also submits that the sizes of the rooms given in the site plan were too small and were required to be enlarged to an appropriate size, for them to be rendered habitable. He submitted that the accommodation available to the landlords on the ground, first and second floors were merely six rooms which were extremely insufficient by any standards for the eight adult members of the petitioners' families, as already admitted by the tenants themselves. He submits that there is no reason why the landlords should suffer such hardship when the tenanted premises could be made available to them for their *bona fide*

need and use. He further submits that the petitioners were already in possession of an alternate accommodation which was disclosed during trial proceedings but the tenants have deliberately not shifted to those premises. It is also denied that the family member, Hemant, had permanently shifted out of the suit premises.

7. This Court notes that each of the arguments made by the learned counsel for the petitioners has been duly dealt with in the impugned order. As regards the improved economic and social circumstances of the petitioners, this argument too goes against the tenant because with improvement in economic and social circumstances, the petitioners would require a little more space for themselves, their daughters and their growing grandchildren. In addition the visits by the married daughters as well as their families and by the married sisters and their respective families, would obviously require additional space for them also.
8. This Court is of the view that when it is clearly admitted by the tenants that there were eight adult members *de hors* the children, in the families of the landlords whereas the rooms available to them were only six, therefore, the Trial Court rightly concluded there was clearly a shortage of space hence *bona fide* requirement was made out. The site plan filed by the landlord was admitted hence the paucity of space was also established. No other suitable alternate accommodation was established in favour of the landlords. The eviction order was passed after the parties led their evidence in full trial. No case was made out which could deny the landlords, the relief they had sought on the ground of *bona fide* need. Therefore, the logical conclusion was that the eviction

order be passed. The impugned order was passed on the basis of the records. It suffers from no material irregularity.

9. The petition is without any merit and is accordingly dismissed.

AUGUST 27, 2014
b'nesh

NAJMI WAZIRI, J.