

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

% Judgment pronounced on: January 06, 2014

+ RC. Rev. No.22/2013 & C.M. No.719/2013

MAHTAB & ORS Petitioners

Through Mr.R.L. Kohli, Sr.Adv. with
Mr.Varun Yadav and Ms.Shikha
Goyal, Advs.

versus

ABDUL WAHID Respondent

Through Mr.Vijay Tandon, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners by way of the present petition under Section 25B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) have assailed the eviction order dated 29th September 2012 passed by Additional Rent Controller, Central, Delhi.
2. Brief facts of the case are that the respondent herein filed an eviction petition against the petitioners in respect of the first floor of the property bearing No.2390, Kucha Mir Hashim, Turkman Gate, Delhi (hereinafter referred to as the “tenanted property”).
3. In the eviction petition, it was averred that the respondent is the owner of the property bearing No.2390, Kucha Mir Hashim, Turkman Gate, Delhi (hereinafter referred to as the “suit property”) as he purchased the suit property by registered sale deed dated 28th February, 1994. It was further stated in the petition that the tenanted property was let out to the Qazim Ali,

father-in-law of the petitioner No.1 at monthly rent of ₹10/-. After his death, his sons, Sh.Akhlaq and Sh.Asaf Ali became the tenants thereof. Later on, Sh.Akhlaq and Sh.Asaf Ali also expired. The petitioners are the legal heirs of Sh.Akhlaq and Sh.Asaf Ali, who are in possession of the tenanted property. They failed to pay rent since 1st March 1994. The respondent has four sons who have children. All are residing on the ground floor of the suit property and they have been facing great difficulty due to paucity of accommodation. Even, the respondent had been compelled to sleep in Mosque. The prayer was made for eviction of the petitioners from the tenanted property for bonafide requirement of the respondent qua residence for himself and his sons who are dependent upon him.

4. Petitioners No.2 to 5 being minors were sued through their mother petitioner No.1. The leave to defend application was filed by petitioner No.1 only.

5. In the leave to defend application, the petitioner No.1 denied that the respondent is the owner or landlord of the tenanted property. It was contended that the father-in-law of the petitioner No.1 took the tenanted property from one Sh.Abdul Karim about 100 years ago, who left for Pakistan in 1947 and since then no one claimed any rent till the death of the father-in-law of the petitioner No.1 for the last 40 years. After the death of the father-in-law of the petitioner No.1 his sons and daughters became the tenants. After the death of the husband of the petitioner No.1, the petitioner No.1 has been residing in the tenanted property in her own right. It was further averred that the respondent has more than sufficient accommodation with him. His sons are residing separately. They do not depend upon the respondent. On the ground floor of the suit property, there are 5 rooms, latrine, bathroom, courtyard etc which are in use and occupation of the sons

of the respondent. It was further stated that the relations are severe between the respondent and his sons.

6. It was averred that the respondent has been residing in property bearing No.2263, Katra Chandni Wala, Kucha Mir Hashim Turkman Gate, Delhi consisting of two room, latrine and bathroom. It was stated that the respondent is a barber by profession and has a shop in Gali Takhat Wali, Suiwalan, Chandni Mahal, Delhi. It was further averred that the wife of the respondent was the owner of the property No.2229, Gali Chamre Wali, Turkman Gate, Delhi and after her death the respondent became the owner thereof. It was contended that the respondent had not shown the accommodation in his possession correctly in the site plan as well as the tenanted property.

7. In the reply to the leave to defend application, it was stated that earlier the respondent had filed a suit against the husband of the petitioner No.1 where the husband of the petitioner No.1 had admitted the relationship of landlord and tenant between them. Thus, now the petitioner No.1 could not challenge the said relationship between the parties. The respondent denied that his wife was the owner of the said property as alleged by the petitioner No.1 and it was stated that the said property belonged to the parents of his wife. All other averments made by the petitioner No.1 were denied by the respondent.

8. The learned trial Court while dismissing the leave to defend application of the petitioner No.1 observed that considering the sale deed in respect of the suit property in favour of the respondent and that it was not in dispute that the predecessors of the petitioners were tenants in the tenanted property, therefore, it was established that there existed the relationship of landlord-tenant between the parties.

9. The learned trial Court further observed that though the petitioner No.1 had stated that the respondent is in possession of two other properties, details of which were given, however, the petitioner No.1 did not file anything on record to prima facie show that the respondent is in possession of the said properties. It was opined by the learned trial Court that mere assertions made by the petitioner No.1 regarding properties in possession of the respondent or owned by the respondent were not sufficient.

10. The petitioner No.1 had not disputed that the respondent is having four sons and they are all married and have children. The petitioner No.1 also stated that all the four sons of the respondent have been residing on the ground floor of the suit property. According to the respondent, there is only one room, one store, verandah, latrine and open courtyard therein, as shown in the site plan filed by the respondent. The petitioner No.1 did not file any site plan, therefore, her contention with regard to the number of rooms was not considered as correct in the absence of any document.

11. The learned trial Court further observed that the area of the entire suit property is only 63 sq. yards as mentioned in the sale deed. It was opined that it is beyond imagination that there can be five living rooms in a property measuring 63 sq. yards. The four married sons of the respondent have been residing on the ground floor of the suit property having one room, one store, veranda and open courtyard. This much accommodation in opinion of the learned trial Court is highly insufficient for four married couple having children.

12. With these observations, the learned trial Court passed the impugned order dismissing the leave to defend application of the petitioner No.1 in respect of the tenanted property and aggrieved thereof the petitioners filed the present petition before this Court.

13. The issue before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that the revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. In other words, this Court has only to see whether the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity would have reached on the material available before him. The Apex Court in ***Sarla Ahuja vs. United India Insurance Company Ltd.***, reported in AIR (1999) SC 100 held as under:-

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

14. In the case of (i) *Meenakshi vs. Ramesh Khanna & Anr.*, 60 (1995) DLT 524, it was held that:-

“Mere denial of ownership is no denial at all. It has to be something more. For this, first and foremost thing which has always been considered as a good guide is does that tenant say who else is the owner of the premises if not the petitioner? In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the petitioner is not the owner, the tenant is trying to ensure that the case drags on for years for trial. If leave is granted on the basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of persons raising them.”

(ii) In *Ramesh Chand vs. Uganti Devi*, 157 (2009) DLT 450, this Court has specifically held that:-

“It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14 (1) (e) of the D.R.C. Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppel against such tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly. I, therefore, find that there was no infirmity in the order of learned ARC in this respect”.

(iii) In *Shanti Sharma and Ors. vs. Ved Prabha & Ors.*, (1987) 4 SCC 193, the Supreme Court has held that:

“In application for eviction on ground of bonafide requirement tenant contended that such landlord cannot be considered to be owner within meaning of Section 14 (1) (e) but contention was turned down & held expression 'owner' does not indicate absolute ownership and the same to be 7/13 Janak Rani Sawhney Vs. Satish Kumar & Another RC no.03/12 interpreted in broader sense and held such landlord come within meaning of 'owner' under Section 14 (1) (e).”

15. In the present case, it has come on record that the husband of the petitioner No.1 had admitted the relationship between the tenant and landlord in other proceeding filed against the husband of petitioner No.1.

16. The learned counsel for the respondent argued that the premises No.2263, Katra Chandiwali, Turkman Gate, Delhi is not owned by the respondent. It was a property of Custodian of Evacuee managed by MCD. It comprises of one room as per site plan filed. It is submitted by him that there is no door, no window, no latrine, bath and this premises is in highly dangerous condition. This premises is lying locked for decades and unfit for residence. Therefore, the said premises was not disclosed in the eviction petition. Further, the said ground was not raised before the Controller. He placed reliance on *M.L. Prabhakar vs. Rajiv Singhal*, AIR 2001 SC 522 wherein it was laid down that the landlord need not disclose premises which are not reasonably suitable.

17. As regards the premises No.2263, Katra Chandni Wala, Kucha Mir Hashim Turkman Gate, Delhi, the learned counsel for the respondent submits that the same is not fit for use of residential purposes. In case, the relief sought by the petitioners in the present case is granted, it will cause great hardship to the respondent since he has 27 family members living in a miserable condition. It is submitted that the respondent has no other alternative but to sleep in the mosque.

18. The petitioner has not disputed the fact that the respondent is having four sons and they are married and having children. They are residing with the respondent in the ground floor of the property No.2390, Kucha Mir Hashim, Turkman Gate, Delhi. According to the petitioners, there are five rooms on the ground floor in property No.2390, Kucha Mir Hashim, Turkman Gate, Delhi, but as per the respondent, there is only one room one store, verandah, latrine and open courtyard on the ground floor which have been shown in the site plan filed by the respondent before the learned trial Court.

19. It is also a matter of fact that area of the entire suit property is 63 sq. yards as shown in the sale deed filed by the respondent. Even otherwise, it is not possible that in the said area there can be five living rooms where four sons with their children can be adjusted on the ground floor of the suit property consisting of one room, one store, verandah and open courtyard as per the case of the respondent. It is apparent that the accommodation available with the respondent is insufficient for four married couples having large number of children. The present case is also not a case of alternative accommodation as alleged by the petitioners. Thus, this Court is of the considered view that no triable issues are raised by the petitioners.

20. The present petition is accordingly dismissed along with pending application in view of the reasons given above. However, in the interest of justice, equity and fair play, the petitioners are granted six months' time from today to vacate the tenanted premises of property bearing No.2390, Kucha Mir Hashim, Turkman Gate, Delhi, more specifically shown in red colour in site plan Ex.C-1. During this period, the petitioners shall not sublet or create any third party interest in the tenanted premises.

21. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 06, 2014