

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

+ **RC. REV.Nos.379/2014 & 381/2014**

% **26th November, 2014**

1. **RC. REV. No.379/2014**

MS. KUSUM RANI

..... Petitioner

Through: Mr. Ashutosh Lohia, Advocate with
Mr. Ajay Kumar, Advocate, Mr. Shiv
Gupta, Advocate and Mr. Soumya
Kumar, Advocate.

Versus

SMT. UMA VATI

..... Respondent

Through:

2. **RC. REV. No.381/2014**

SH. MOTI RAM

..... Petitioner

Through: Mr. Ajay Kumar, Advocate with Mr.
Shiv Gupta, Advocate.

Versus

SMT. UMA VATI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Both these petitions can be disposed of by this common judgment inasmuch as the impugned judgment of the Rent Controller is same in both the cases. The landlady being the respondent is same in both the cases and the need which has been projected for eviction of the petitioners/tenants is the same viz of opening of a computer institute by both her sons in the entire ground floor of the premises bearing no.21, Shaheed Bhagat Singh Marg, New Delhi. There are a total of eight shops with seven tenants inasmuch as one shop is with the respondent/landlady and all the seven tenants are sought to be evicted through separate eviction petitions. Two litigations being the present cases are against two tenants in two shops out of the seven shops. *Bonafide* necessity eviction petitions were filed because the family of the respondent/landlady being her sons, and grand-daughters etc want to open a computer institute in the entire ground floor of the property. The need is also projected with respect to opening of a clinic for requirement of the grand-daughter who is a doctor.

2(i) The facts of the case are that the respondent/landlady filed the subject eviction petitions with respect to two shops bearing no.21/4 (RCR No.379/2014) and 21/2 (RCR No.381/2014), Shaheed Bhagat Singh Marg, New Delhi inasmuch as the elder son of the respondent/landlady Sh. Naveen

Prakash was employed as a Director Principal at Manav Rachna College of Engineering, Faridabad and who has done his Ph.D. in computer science from IIT Delhi. Sh. Naveen Prakash therefore has 40 years experience in teaching and research. Sh. Naveen Prakash is due to retire in the year 2015 and Sh. Naveen Prakash after his retirement wants to lead an active academic life and have an economic activity by opening of a computer institute in the entire ground floor including the subject two shops. Respondent's/landlady's other son Sh. Ajay Prakash was aged about 57 years and who has done MA (Economics) and has obtained certificate in COBOL programming from IIT Delhi in the year 1977. Sh. Ajay Prakash was working but he left his job in the year 1996 and thereafter started the business of computer maintenance which could not be continued for want of commercial space and therefore he had to close the computer maintenance business and start the work of consultancy in computers. Sh. Ajay Prakash does not want to continue with the business of consultancy in computers because he is not earning much and therefore he wants to join hands with his brother Sh. Naveen Prakash for opening of a computer training institute in the subject properties. With the eviction petitions, the respondent/landlady annexed the entire proposed plan for the computer training institute stating that two rooms were required for lectures, two rooms for laboratory, one

room for reception-cum-office, one room as staff room for teachers, separate toilets for boys and girls and one room each for the offices of both the sons who are professors.

(ii) In the eviction petition, it was also stated that Sh. Naveen Prakash's daughter Ms. Deepika Prakash has completed her M. Tech in Information Technology from IIT, Bangalore and is now pursuing Ph.D from Delhi College of Engineering. She having been specialized in computer science also intends to join her father and assist him in the institute of computer training proposed to be opened in the ground floor seven shops. Ms. Akanksha Prakash, daughter of Mr. Ajay Prakash, has done Bachelor of Computer Application from IP Universtiy and also intends to join her father.

(iii) Ms. Kelika Prakash, the other daughter of Mr. Naveen Prakash, has done MBBS from Maulana Azad Medical College and has also obtained an MD degree. She wants to start her independent medical practice and for which a shop is also required on the ground floor for opening of a clinic.

(iv) The respondent/landlady has thus filed the eviction petitions against all the tenants for the requirements of her sons and grand-daughters who want to start a computer training institute as also a clinic.

3. Petitioners contested the eviction petitions by filing leave to defend applications which have been dismissed by the impugned judgments and hence the present petitions.

4. In a *bonafide* necessity eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') three ingredients are required to be seen for allowing of the eviction petition. Firstly, there has to be a relationship of landlord and tenant between the parties and that the landlord must be the owner of the property. Secondly, the *bonafide* need has to exist for the landlord/landlady and/or his/her family members. The third aspect to be seen is that whether the landlord/landlady has any other alternative suitable accommodation.

5. In the present case, there is no dispute with respect to the relationship of landlord and tenant and that the respondent is the owner of the premises. Petitioners only dispute the aspect that the respondent/landlady does not need the premises for *bonafide* purpose of the computer training institute and the clinic.

6. I have already noted above in para 2(i) and which aspect has also been noted by the Rent Controller below, that, the respondent/landlady has filed the entire plan with respect to the computer training institute showing

the requirement of the seven shops and how they will be put to use for the different requirements/rooms of the computer institute. The factum with respect to respondent/landlady having two sons namely Sh. Naveen Prakash and Sh. Ajay Prakash is not disputed in the leave to defend application and similarly also the other family members of the landlady are not disputed. Similarly, the present petitioners/tenants have remained silent in their leave to defend applications with respect to educational qualifications of both the sons of the respondent and the grand-daughters i.e effectively these aspects also were not denied. Once that is so, I fail to understand that as to how there cannot exist the pleaded *bonafide* need. The *bonafide* necessity aspect has been correctly dealt with by the Rent Controller in paras 11.4, 17.3 and 18 of the impugned judgment and the same read as under:-

“11.4 The fact that petitioner is having two sons is not disputed. The fact that the younger son of the petitioner Sh. Ajay Prakash along with his family is residing on the first floor of the property where the tenanted premises is located is also not disputed. The respondent has remained silent regarding the educational qualification of both the sons of petitioner and her grand daughters. Petitioner in her petition has categorically stated that her son Sh. Ajay Prakash has done MA Economic and has obtained certificate in COBOL programming from IIT Delhi. Respondent has merely stated that he has no knowledge about the same and further refuted the claim on the ground that the COBOL Programming is outdated and the son of petitioner Sh. Ajay Prakash is not competent to call himself as Professor or impart any computer training. Petitioner in order to support her contentions regarding the

qualification of her son Ajay Prakash has placed on record the photocopy of certificate issued by IIT Delhi wherein it is certified that he has done data processing and COBOL short term course from 17.10.1997 to 20.11.1997. She has further placed on record the certificate from Centre for Development of Instructional technology that Mr. Ajay Prakash has worked as computer programmer from 01.06.1980 to 31.10.1983. She has further stated that her elder son Dr. Naveen Prakash has done Ph. D in computer science from IIT Delhi in the year 1980 and he has about 40 years of experience in teaching and research and has also placed on record the photocopy of his experience certificate and his appointment letter in order to support her contentions. It is further stated that at present he is Director Principal at Manav Rachna College of Engineering and his age of superannuation is 65 years which he will attain in the year 2015. She has also placed on record the photocopy of the degree of Deepika Prakash ie the daughter of Dr. Naveen Prakash that she has obtained the degree of Master of Technology in Information Technology from Bangalore and the approval letter from Delhi Technological University in respect of the thesis pertaining to the course of Computer Engineering opted by her. Thus from the said documents it is evident that both the sons of petitioner and her grand daughter are well qualified in the field of computer science and have also obtained requisite degrees in this regard. Thus the argument of Ld. counsel for respondent that the requirement of opening the computer Training Institute by petitioner and her sons is flimsy and frivolous is untenable.

17.3 In the present case, no particular alternate property has been described or brought to the notice of the court by the respondent in the entire leave to defend. Petitioner has categorically denied of any other suitable property in her possession or in possession of her sons or grand children except the property in question. She in her petitioner has categorically stated that her both sons and grand daughters have no accommodation of their own, suitable to carry out the business of proposed Institute and clinic and as such they are totally dependent on her for the purpose of accommodation. Admittedly, the other shops in the property in question are rented out to several

other tenants and simultaneous petitions have been filed by the petitioner against them also. Merely by saying that petitioner owns several properties at Pahar Ganj and Dariba Kalan, it cannot be said that respondent has raised any triable issue in this regard or has raised adverse bearing as to the bona fide requirement of petitioner that she has unreasonably refused to occupy the other available premises to satisfy her need.

18. It is settled law that landlord is the best judge of his requirement and has complete freedom in the manner of beneficial enjoyment of his property, once it is not disputed that his requirement is bonafide. The petitioner has specifically pleaded that she needs the tenanted premises for starting the Computer Institute for her sons and grand daughters and the tenanted premises is required for Lecture hall and Reading room. In the layout plan it has been specifically described that the tenanted premises shall be used for the said purpose. From the documents placed on record, it is prima facie evident that both her sons and grand daughter are well qualified in the field of computer science and have obtained requisite expertise and degrees. She has specifically stated that her elder son is about to retire in July 2015 and her younger son is not settled till date and now both of them along with their children want to settle in their own business of computers and want to open Computer Training Institute. She has specifically stated that she has no other suitable commercial accommodation for the same. From the above discussion, this court is satisfied that need of petitioner is bonafide and appears to be sincere and honest and not a mere pretext to evict the respondent/tenant.”
(underlining added)

7. Learned counsel for the petitioners argued that the respondent/landlady had received a pagri/premium of Rs.10 lacs (in RCR 379/2014) and therefore eviction petition cannot be filed. Besides the fact that the impugned judgment notes that the petitioners have not filed any

documentary proof of this alleged payment, even if for the sake of arguments it is taken as correct, the remedy to a tenant against premium collected is provided under Section 13 of the Act and which states that in case the landlord has received any premium, then, within one year the tenant has to file a case for recovery of the premium illegally paid. If no case is filed till now, surely, the case of recovery will become time barred. Therefore, besides the fact that payment of premium has not been shown to credibly exist because the same is only a bald assertion, even if for the sake of arguments it is taken as correct that will not disentitle the decree in the *bonafide* necessity eviction petitions. Any alleged legal entitlement of the petitioners was only in terms of Section 13 of the Act and which too has been lost way back as the tenancies commenced in the years 1991/1960.

8. In view of the above, I do not find any merits in the petitions and the same are therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 26, 2014

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