

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Revision No.372/2015 & C.M. No.13012/2015**

Decided on : 3rd November, 2015

PIYARE LAL & ANR. Petitioner

Through: Mr. R.S. Mahla, Advocate.

Versus

PAWAN KUMAR Respondent

Through: Mr. Shiv Gupta & Mr. Anoop Kandari,
Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioners against the order dated 9.3.2015 passed by the learned Additional Rent Controller (South), Saket Courts, New Delhi in case titled *Pawan Kumar vs. Piyare Lal & Anr.* bearing E. No.70/13 by virtue of which the leave to defend application was rejected and order of eviction was passed against them.

2. The revision petition has been filed under Section 25-B (8) of the Delhi Rent Control Act, 1958 which reads as under :-

“25B Special procedure for the disposal of applications for eviction on the ground of bona fide requirement. –

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."

3. I have heard the learned counsel for the petitioners and have also gone through the impugned order. The contention of the learned counsel for the petitioners is that the order of eviction after rejection of the leave to defend application, by virtue of which the petitioners have raised triable issues is erroneous and therefore, the same deserves to be set aside and leave to defend be granted to them.

4. Before dealing with the submission made by the learned counsel for the petitioners, it may be pertinent here to give brief background of the case.

5. The respondent/landlord filed an eviction petition under Section 14 (1) (e) read with Section 25-B of the Delhi Rent Control Act against the present petitioners/tenants in respect of property bearing No.5-A, DDA Janta Flats, Shahpur-Jat, New Delhi-110049. The case which was set up by the respondent was that he was the owner/landlord of the petitioners/tenants in respect of the aforesaid flat and he required the possession of the said flat for his *bona fide* requirement, as his son is of marriageable age and because of the paucity of accommodation, he is not able to get him married. The respondent/landlord had stated that at the time when the petition was filed, he was residing in House No.373, Shahpur-Jat, New Delhi, which is situated in the same locality on the fourth floor; however, the said property was a joint family property in which he was feeling suffocated on account of the fact that it was in a crowded area inside the locality. He also very fairly stated that a House No.72-B, Shahpur-Jat, which is in the same locality, is in the name of his wife but that was also located in the same congested area, where it was difficult to breathe fresh air and consequently, they would like to shift to their own flat which was in a better location though in the same area.

6. The petitioners/tenants filed their leave to defend application and contested the claim of *bona fide* requirement of the respondent/landlord. He stated that so far as the respondent/landlord is concerned, he is not the owner of the property. As a matter of fact, it was stated by them that the flat in question belonged to one Piyare Lal s/o Kandai Ram from whom the respondent/landlord is purported to have purchased the flat. The petitioners/tenants had stated that it was they who were paying the installments to the DDA because the flat in question seem to be allotted originally on hire-purchase basis. However, when they paid the entire hire-purchase charges and wanted the flat to be registered in their name, the DDA raised an objection. It is stated that because of these reasons, the respondent/landlord could not be considered to be the owner of the property.

7. So far as the *bona fides* of the respondent/landlord are concerned, they were also assailed stating that he had two other residential properties having an area of 250 square yards built upto four floors which had 48 rooms and this information was concealed by the respondent/landlord as being alternative suitable accommodations and therefore, his *bona fides* were suspect. It was also denied by the petitioners/tenants that the

respondent/landlord was not living on the third floor as claimed by him but he was living on the ground floor and the plea set up by him that he was not able to climb on to the third floor was also not correct. The averments made by the petitioners/tenants in the leave to defend application were denied by the respondent/landlord and he reiterated his case that the suit property was purchased by him from erstwhile owner on the basis of an agreement to sell and the Will which was purportedly executed by the owner in his favour.

8. The learned ARC, after hearing the arguments, rejected the leave to defend application of the petitioners/tenants on the ground that it does not raise any triable issue and passed an order of eviction.

9. I have gone through the impugned order which runs into 14 pages and deals with each and every aspect which has been raised by the learned counsel for the petitioners before not only the trial court but repeated before this court also. I do not find that there is any illegality or impropriety or jurisdictional error in the finding returned by the learned ARC on any of the counts by observing that none of the points raised by the petitioners/tenants raises a triable issue.

10. So far as the question of ownership is concerned, it is not in dispute that the petitioner/tenant has been paying the rent to the respondent/landlord. Once this fact of relationship of landlord-tenant between the parties is not denied by the petitioner, he is estopped from challenging the question of ownership of the respondent/landlord howsoever imperfect it may be. Admittedly, in the instant case, the respondent/landlord has a better title to the suit property although it cannot be said to be perfect one but it was not in dispute that it was the respondent/landlord who had inducted the petitioner as a tenant and the later, that is, the tenant started paying the rent to him originally and thereafter was paying the rent by way of depositing installments with the DDA for and on behalf of the respondent. If that be so, then obviously this question of now challenging the ownership of the respondent/landlord cannot be said to be raising a triable issue because he is estopped from raising this issue. It has been rightly rejected by the learned ARC.

11. As regards the availability of alternative accommodation of having two houses of 250 square yards is concerned, this is a mere bald allegation. This allegation is bald and unbelievable more so when he

makes a specific allegation that these two properties have 48 rooms. A property of 250 square yards cannot have more than 10-12 rooms even if it is fully built-up upto three floors. If two properties are considered to be such properties owned by the respondent/landlord then obviously the maximum number of rooms which may be available would be at best 20 or so while as the petitioner/tenant is talking about 48 rooms which seem to be figment of his imagination. The petitioner has not placed any specific *prima facie* evidence with regard to these properties either by way of sale deed, photographs or any documentary evidence to show that these properties are owned by the respondent/landlord and therefore, this plea was also brushed aside by the learned ARC.

12. So far as the *bona fides* of the respondent/landlord are concerned, the learned ARC has rightly observed, no doubt that he is presently living on the third floor of House No.373, Shahpur-Jat and there is no property bearing No.72-B in Shahpur-Jat which is owned by his wife but the respondent/landlord has taken a specific plea that these two properties are situated in a congested area where it is very difficult to breathe fresh air. This is on account of the fact that Shahpur-Jat is essentially an old village. These properties must be in the village itself where, in course of

time, municipality has given municipal numbers and obviously because of the high density of population, quality of air in the said pocket would not be as fresh and clean as would be in the periphery where the DDA flats are built. The DDA must have taken into consideration the density of population and other considerations and therefore, the possibility of population in that area where the flats are built must be much less.

13. The learned ARC has rightly observed that the right to breathe fresh and clean air is a fundamental right which has been read into Article 21 by the Supreme Court. Keeping that background in view, if a landlord wants to shift to his own premises where he is expecting to breathe a fresh and clean air and his family is also going to stay with him then obviously it will be a bit of luxury which he must be permitted to enjoy and exercise his right. The learned ARC has rightly referred to catena of judgments in its order where the Supreme Court time and again has reiterated the principle that it is not for the tenant to dictate the terms to the landlord as to how he is to live. The object of the court or the learned ARC is only to see that the desire of the respondent/landlord seeking eviction of his tenant on the ground of *bona fide* requirement should not be malicious or *mala fide* with a view to sale, let out the property or

ulterior considerations. Though the court does not have a foolproof system of ensuring 100 per cent eviction on the ground of *bona fide* requirement but Section 19 of the DRC Act provides a sanction for such obdurate persons, who try to dislodge the tenants maliciously on ulterior considerations by not occupying the premises within a period of two months from the date of eviction which will invite an action to be initiated by the court for restoring back the possession to the tenant.

14. Having regard to the aforesaid totality of circumstances, I feel that there is no illegality or impropriety or jurisdictional error in arriving at the conclusion which has been done by the learned ARC by detailed and a reasoned order. I, accordingly, uphold the impugned order dated 9.3.2015 rejecting the leave to defend as not raising any triable issue and the consequent passing of the eviction order. Accordingly, the petition for revision under Section 25-B (8) of the DRC Act is without any merit and the same is dismissed.

V.K. SHALI, J.

NOVEMBER 03, 2015
‘AA’