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HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 594/2000

Pronounced on: 19th April, 2016

RAHISA BEGUM & ORS.

.....Petitioners

Through: Mr. T.S. Upadhyay, Advocate.

Versus

VED PRAKASH & ORS.

.....Respondents

Through: Respondents in person.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a revision petition filed by Smt. Rahisa Begum and Others against Ved Prakash (since deceased) and others against the order dated 7th January, 2000 passed in Eviction Petition No.291/1987 titled Ved Prakash & Ors. vs. Rahisa Begum & Ors., under Section 14 (1) (e) of the Delhi Rent Control Act, 1958.
2. The present revision petition has been filed by the petitioners/tenants who are the legal heirs of the original tenant under Section 25-B of the Delhi Rent Control Act, 1958. It is really very sad that despite the eviction order having been passed on 7th January, 2000 and the present revision petition having been taken up on 25th May, 2000 for the first time, it continued to remain on Board for final disposal to see the legality, propriety or jurisdictional error in the eviction order. During the pendency of

the present petition the operation of the eviction order had been stayed. The very fact that the order of eviction remained under stay for almost more than 15 years has completely changed the parties to the present litigation who have over a period of time died and their legal successors have been brought on record. Thus, as on date on the one hand so far as the petitioners/tenants are concerned they are almost six in number while as respondents/landlords are ten in number.

3. Coming back to the facts of the present case a petition under Section 14 (1) (e) read with Section 25-B of the Delhi Rent Control Act, 1958 was filed in respect of ground floor of the premises bearing No.6499, Idgah Road, Ward No.16, Delhi consisting of two rooms with *varandah*, courtyard, two store rooms, latrine more particularly shown in red in the site plan attached to the petition. The respondents Ved Prakash, Kumari Bimla, Suraj Prakash, Kumari Sudesh and Kumari Veena all sons and daughters of Shri Diwan Chand claimed themselves to be the owners of the suit property. It was claimed by them that the aforesaid property No.6499, Ward No.16, Idgah Road, Delhi was an evacuee property which was purchased by one Shri Nirmal Chand from Govt. of India vide Conveyance Deed dated 24th December, 1963 which was duly registered. One Mian Papu was in occupation of the ground floor of the suit property and by virtue of fiction of law under the statute he became tenant under Nirmal Chand. Nirmal Chand died and he had bequeathed the aforesaid property to Smt. Sunila Chugh

which is also not in dispute. Smt. Sunila Chugh is purported to have sold the suit property to Suraj Prakash/ Respondent No.3 and Indra Wati his mother on 12.11.1982. Smt. Indra Wati is stated to have died on 09.12.1984 and respondents No.1 to 5 are stated to be the legal heirs of the share of Smt. Indra Wati. Thus, all the five respondents, i.e. Ved Prakash, Kumari Bimla, Suraj Prakash, Kumari Sudesh and Kumari Veena brother and sisters were claiming themselves to be the owner of the suit property. It was further alleged by them that they are in occupation of only two rooms, store, kitchen, bath, WC on the first floor and a small tin shed on the top floor which accommodation is not sufficient to meet their requirement for residence. It was also stated by them that since they were purchasers of the property, they had to wait for a period of five years mandatorily before they could file an eviction petition against Mian Papu i.e. original tenant. It was also stated by them that they have no other alternative suitable residential accommodation available to them.

4. Mian Papu filed his written statement after leave to defend having been granted and he challenged the ownership of Nirmal Chand and stated that an application for cancellation of documents of ownership drawn in favour of Nirmal Chand is pending before the Settlement Commissioner and therefore, if Nirmal Chand is not the owner, the subsequent persons could not claim themselves to be owners of the suit property.

5. With regard to purpose of letting it was denied by Mian Papu that the premises were let out to him for residential purposes. It was contended by him that the premises were let out for residential-cum-commercial purposes and he was dealing in sale and purchase of sheep and goats on commission basis which business was being carried out even after the death of Mian Papu from the suit property.
6. As regards the accommodation available to the respondents/landlords, it was stated that they had sufficient accommodation available to them. It was also averred that respondent No.1 Ved Prakash was not living in the suit property, since after the death of their parents and Suraj Prakash/ respondent no.3 had constructed a property bearing No.191, Block C, Prashant Vihar, Pitam Pura, Delhi on a land measuring 100 sq. yds. which was lying vacant and thus apart from availability of alternative accommodation, the number of family members of respondents/landlords had also got reduced and thus, the *bona fide* need for additional accommodation as set up in the eviction petition by the petitioners/ respondents-landlords was also not justified.
7. Mian Papu also disputed the accommodation which was under his occupation. He stated that the site plan filled by respondents/ landlords was not he was in possession of three rooms apart from verandah, two store rooms, latrine and a courtyard on the ground floor and a tin shed on the first floor.

8. The respondent/landlords contested the averments made in the written statement and reaffirmed the averments made in the eviction petition. Ved Prakash, respondent no.1 died in 1995 and his share was stated to be inherited by respondents No.3 to 5, who are brother and sisters of Ved Prakash. Subsequent thereto, an application under Order 1 Rule 10 CPC was also allowed on behalf of Smt. Usha Rani and her children, who were made as respondents No.7 to 11 in the eviction petition. She had claimed herself to be the wife and the children of deceased Ved Prakash. They were permitted to be joined as proforma respondents. That was an internal dispute as to who would inherit the share of Ved Prakash, whether it would be his brothers and sisters or his widow and children. For the adjudication of present petition this fact is not very material. The respondent/landlords in support of their case examined one P.D. Dua as AW-1 who proved Sale Deed Ex.AW-1/1. He has testified that he was a witness to the aforesaid Sale Deed Ex.AW-1/1 which was executed by the seller in respect of the suit property in favour of Suraj Prakash, and his mother Smt. Indra Wati (since deceased). Another witness AW-2 Ramesh Kumar, Constable from Police Station Sadar Bazar, who proved DD No.11-A dated 06.03.1989 as Ex.AW-2/1. Respondent No.1, Ved Prakash was examined as AW-3.
9. As regards the petitioners/tenants they examined RW-1 Mirazuddin and RW-2 Nawabuddin, both so-called independent witnesses. Apart from this, RW-3 Harun Alvi, Clerk Bombay Merchantile

Bank and RW-4 H.C. Kaushal, Office In-charge, Food and Supply Office, Circle No.7, Delhi. Apart from these, no other witness was examined.

10. The learned trial Court after hearing the arguments and analysing the evidence adduced by the parties passed the order of eviction against the petitioners/tenants holding that not only the requirement of the respondents/landlords was *bona fide* keeping in view the number of family members but also that the premises in question were let out for only residential purposes and not for residential-cum-commercial as claimed by the petitioners/tenants.
11. The learned counsel for the petitioners/tenants have stated that the finding returned by the learned Rent Controller both with regard to the purpose of letting and the *bona fide* requirement of the respondents/landlords is totally arbitrary, illegal, unwarranted and the Court has not taken into consideration the fact that the premises are situated in a commercial area and therefore, it was bound to be used for commercial activity by the petitioners/tenants as was claimed by them. It was also contended that the *bona fide* requirement of the respondents/landlords does not get established in as much as not only the number of family members of the petitioners has got reduced on account of unfortunate demises but also on account of the fact that respondent no.3 Suraj Prakash has built a house in Pitam Pura, Delhi which was lying vacant at the time when the witness was examined. In addition to this the correct accommodation under the possession of petitioners/ tenants in the

suit property was also not reflected before the Court. Instead of two rooms along with a tin shed on the first floor of suit property and in this way only partial eviction was sought by the respondents/landlords claimed by the respondents/landlords they were in possession of three rooms which was sufficient to meet their requirement.

12. These submissions made by the learned counsel for the petitioners/tenants was contested by the respondents/landlord's counsel and it was stated that the requirement of the respondents/landlords has in fact increased with the passage of time due to the increase in the number of family members. Moreover, it was stated that the premises were let out only for residential purpose and the so-called commercial user of selling goats and sheep from the suit property was only a false plea set up by them.
13. I have carefully considered the submissions made by the respective sides. I have also gone through the impugned order.
14. There is no dispute about the fact that this is a revision petition which has been filed by the petitioners/tenants against the eviction order dated 07.01.2000 which has been passed on merits. The scope of interference in revision matter is not as wide as in the case of appeal where the appellate Court has the opportunity to re-appreciate the entire evidence and come to its own finding which may be at variance with the finding returned by the trial Court. But, in the case of revision, all that the Court has to see is whether there

is any illegality, impropriety or jurisdictional error which has been committed by the learned trial Court in passing the impugned order. Meaning thereby that in revision merely because the revisionist court is a superior court and it may on the basis of appreciation of evidence hold a different view but it cannot substitute its opinion or a view in place of the view expressed by the trial Court if that is also a probable and plausible opinion arrived at. Meaning thereby, that unless and until there is a gross mis-appreciation of evidence or it is a case where an order has been passed which is not supported by any evidence at all it cannot be set aside in pursuance of revisionary powers under section 25(B).

15. Coming back to the submissions, so far as the ownership of the suit property is concerned, the learned Additional Rent Controller (ARC) has rightly observed that one Nirmal Chand was the owner of the suit property and his Sale Deed Ex.AW-1/1 has been duly proved. AW-1 P.D. Gupta who has proved this Sale Deed was cross-examined but there is no cross-examination with regard to the Sale Deed. All that has been stated by him is that the present petitioners/tenants or somebody else has made a complaint to the Settlement Commissioner seeking revocation of the Sale Deed which as on date, when the testimony of the witnesses was recorded was in existence and was duly executed in favour of Nirmal Chand. But, no further evidence has been produced by the petitioners/tenants to show that said sale deed was forged or disputed during the course of trial.

16. A perusal of the evidence with regard to proof of Sale Deed shows that the onus of dislodging the Sale Deed executed by the Govt. of India in favour of Nirmal Chand had shifted on to the petitioners/tenants therefore, they ought to have adduced some evidence to create a doubt regarding the ownership of the suit property. But this has not been done. The witness proving the sale deed has withstood the test of cross-examination. No evidence in this regard has been produced by the Petitioners/tenants which would counter the evidence produced by the Respondents/landlords and therefore, this has been rightly concluded by the learned ARC that Nirmal Chand was the owner of the suit property. When it is established that Nirmal Chand was the lawful owner of the suit property ownership of all other subsequent owners also stands established as the successors either by way of a Will or by way of a Sale Deed as has been claimed in the petition. Therefore, this analysis of evidence arrived at by the learned ARC cannot be found fault with.
17. The second submission which has been made is with regard to the purpose of letting out. Though the case of the petitioners/ tenants is that the purpose of letting is residential-cum- commercial which is claimed by them in the evidence, the respondents/landlords have claimed the purpose of letting as residential. What has been stated is that Mian Papu was dealing in the business of sale and purchase of goats and sheeps from the suit property. Sale and purchase of any livestock including goats and sheeps cannot not be done from a

closed room. It will be done in an open field and in the instant case since the property was situated very near to *Idgah* in the walled city where the goats and sheeps are normally traded during the period of *Eid* it is well possible that a courtyard was being used by Mian Papu just to keep his live stock for overnight. But, by doing so that would not change the purpose of letting from residential to commercial. One witness RW-1 Mirazuddin has been examined by the petitioners/tenants who has also stated in his cheif- examination that he used to go to Mian Papu for the sale and purchase of goats and sheeps to his office but the office number which he had furnished in his examination was wrong while as in cross-examination. He had stated that he had not maintained any account with Mian Papu and no sale- purchase of livestock was being done at suit premises. Therefore, he seems to be a procured witness and the learned ARC has rightly not given any weight to me . Similar is the case of witness RW-2 Nawabuddin, who also seems to be testifying falsely that he knew Mian Papu and that he used to go and purchase goats and sheeps from his office i.e. suit property. Besides, the petitioners/tenants did not examine him selves in order to substantiate his plea of commercial user of the tenanted premises.

18. The learned trial Court has for want of evidence and for want of cross-examination of the witnesses of the petitioner/ tenants arrived at a conclusion that the petitioners/tenants have failed to discharge the onus that the respondents/ landlords were not the owners or that

the suit property was let out to them for residential-cum-commercial purpose and therefore he has held that the second ingredient of the claim petition is also satisfied.

19. With regard to the bona fide requirement, no evidence whatsoever has been produced by the predecessor-in-interest of the tenants to show that the accommodation with the respondents/landlords is more than two rooms and is therefore sufficient. There is only a tin shed on the second floor owned by them. Admittedly at the time when the petition was filed they were five in number and now their number is much more and therefore, they were well within their right to have the present tenants evicted from the suit property.
20. So far as the availability of alternative accommodation is concerned, this fact is also not proved by the petitioners/tenants in any manner whatsoever by adducing any evidence and therefore this plea of availability of alternative accommodation is also not fatal to the case of the Respondents/landlords.
21. I have already observed that the petitioners/tenants in order to succeed have to show any illegality, impropriety or the lack of jurisdiction but they have miserably failed to do so. Therefore, the only irresistible conclusion which could be drawn by this Court is that the premises in question were being used for residential purposes only, however, the respondents/tenants are not vacating the premises despite the fact that the order of stay has remained in abeyance from 25.05.2000. The aforesaid pendency for a period of 15 years is really disturbing since a bona fide requirement petition

deserves to be decided expeditiously, preferably within six to eight months otherwise it loses its significance as has happened in the present case that the eviction order on merits is being considered after a lapse of 15 years while as ground situation has considerably changed.

22. For the aforesaid reasons, I am of the considered view that the Respondents/landlords have been able to establish that they require the premises bona fide under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 as they have satisfied all the ingredients and therefore, the present revision petition deserves to be dismissed.
23. Since the operation of the eviction order remained stayed during all these years and the petitioners/tenants to be granted six months time to vacate the premises as they have enjoyed the premises since 15 years, therefore they are given three months more time to vacate the premises after that the respondents/landlords shall be free to execute the decree.
24. Ordered accordingly.
25. Pending applications also stand disposed of.

V.K. SHALI, J.

APRIL 19, 2016

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