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

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Date of Decision: 17.10.2016

+ RC.REV. 495/2016

GHANSHYAM DASS Petitioner
Through Mr.V.K. Khurana, Advocate.

versus

RAJENDER KUMAR KALRA & ORS. Respondents
Through Mr. Ratan K. Singh, Mr.Nikhilesh
Krishnan, Mr. Abhishek Iyer,
Mr.Aishwarya Tiwari and Mr.
Nishank Tyagi, Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CAVEAT No. 897/2016

Since the counsel for the respondent has entered appearance, the caveat stands discharged.

CM No. 38030-31/2016 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 495/2016 and CM No. 38029/2016 (stay)

1. The present petition is filed under Section 25 B(8) of the Delhi Rent Control Act seeking to impugn the order of eviction passed by the Additional Rent Controller (ARC) dated 13.07.2016 against the petitioner and dismissing the application for leave to defend.

2. The respondents No. 1 and 2 filed the present eviction petition under Section 14(1) (e) read with Section 25B of the Delhi Rent Control Act (DRC). It is the case of respondents No. 1 and 2 (landlord) that the property bearing No. 18/1(new Municipal Number) (Old No. 948/2, Ward No. 1), Mehrauli New Delhi was originally purchased by the father of respondents No. 1 and 2, namely, late Sh. Ram Dayal. Late Sh. Ram Dayal sold the vertical half portion of the property and remained the owner of the balance portion. It is the case of respondents No. 1 and 2 that respondent No.3- Mehrauli Dehat Transport Company Pvt. Ltd. was the tenant of the tenanted premises and that one Sh. Ram Kumar Sharma, the Managing Director of respondent No. 3 was using the tenanted premises. Respondent No. 3 is said to have acknowledged late Sh. Ram Dayal to be the owner/landlord and was paying rent @ Rs.9/- per month which was subsequently enhanced to Rs. 15/- per month. It is stated that Sh. Ram Kumar Sharma expired on 11.04.1990 and thereafter, the petitioner and respondent No. 4 continued to occupy one room. Reliance was placed on the original rent receipts bearing the signatures of the petitioner.

3. Sh. Ram Dayal expired on 05.12.2004 leaving behind a registered Will dated 04.12.2001 whereby he bequeathed the said property in favour of respondents No. 1 and 2. As per respondents No. 1 and 2, the tenancy comprises two rooms on the front side of the ground floor with open court yard/porch as described in the site plan. The petitioner is occupying one room of tenanted premises and the other room of the tenanted premises is in occupancy of respondent No. 4 but the same has always remained locked.

4. It was pleaded in the eviction petition that the family of respondents No. 1 and 2 comprises of respondents No. 1 and 2 themselves and two

children of respondent No. 2 who is a widower. Respondent No. 1 is unmarried. At the time of filing of the eviction petition, the mother of respondents No. 1 and 2 was alive. Based on the requirement of this family, the eviction petition was filed. It was pleaded that the ground floor comprises two rooms on the front side with open court yard/porch which is in possession of the tenants against whom the present petition is filed. There is one big hall which is under possession of another tenant i.e. Arya Samaj against which an eviction petition is pending and another room which is in possession of another tenant Mr. Om Prakash Mehta. There is also an additional small store room on the ground floor possession of which is with respondents No. 1 and 2. The store room is used by respondent No.2 to store his goods which in the daytime he sells from the pattri. The first floor comprises one drawing-cum-dining room, two bed rooms, one store room, kitchen, bathroom with open terrace. Second floor is a barasati floor which comprises two rooms with the height of 9ft. and all are having ACC/asbestos sheets and is stated to be in a dilapidated condition. The second floor rooms are said to be kutcha rooms not fit for habitation. Based on the above requirement, the present eviction petition was filed for bona fide residential needs of respondents No. 1 and 2 and their family.

5. During the pendency of the eviction petition, one more room on the ground floor was made available to respondents No. 1 and 2 as the eviction petition filed against Sh. Om Prakash Mehta was allowed and the said respondents No. 1 and 2 received vacant and physical possession of the said room in terms of the order dated 07.05.2014. Another fact was that the mother of respondents No. 1 and 2 expired on 17.04.2015.

6. Regarding, the relationship of landlord and tenant, the ARC

concluded that the petitioner nowhere claimed to be the owner of the tenanted premises. It is also not in dispute that late Sh. Ram Dayal, the father of respondents No. 1 and 2 was the owner of the property having bought the same by way of a public auction from the Government in 1958. Noting the requirement of law that the ownership in terms of Section 14(1)(e) of the DRC is not understood as absolute ownership, but only a title better than the tenant, in view of the admission of the petitioner about the title of late Sh. Ram Dayal, the father of respondents No.1 and 2, the court concluded there exists a relationship of landlord and tenant between the parties.

7. On the issue of bona fide requirement, the ARC drew a chart depicting the requirement claimed by respondents No. 1 and 2 and the accommodation available with them which is as follows:

*Note: Petitioner here refers to petitioner in the eviction petition. The petitioners are respondents No.1 and 2 in this petition.

Requirement claimed by petitioners	Accommodation available/lying in possession of petitioners
Bedrooms: (i) One bedroom for petitioner No.1; (ii) One bedroom for petitioner No.2; (iii) One bedroom for the grown up son of petitioner No.2; (iv) One bedroom for the grown up daughter of petitioner No.2 (who is presently residing with her bua) Study Rooms: (v) Two study rooms (one each for the grown up children of petitioner No.2) (vi) One Drawing Room; (vii) One Dining Room; (viii) One Pooja Ghar; (ix) One Store room (x) One room for guests;	Ground Floor: One room (recently vacated by erstwhile tenant) + (other two rooms already in possession of other tenants) + one room admeasuring 10.9 x 17.1/2 being used by the petitioners as “store room” + Back small portion being used by petitioner No.2 for his business of selling school bags. First Floor: One drawing-cum-dining Room + two bedrooms + one small sitting area + two bathrooms + toilet. (NB: Entire first floor presently being used by petitioners & their families for residential purpose). Second Floor: Stated to be barsati floor consisting of two kuccha rooms + one kuccha store + Bathroom all having sheds of

(xi) One big room in front side of the house with courtyard/porch on the ground floor for carrying and expanding the business being currently run by petitioner No.2; (xii) Two kitchens; (xiii) Three toilets and; (xiv) Three Bathrooms	ACC/asbestos sheets
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8. The ARC noted that even in the present scenario, respondent No. 1, respondent No.2 and the two children need one room each i.e. four rooms in all. It also noted that the requirement of a guest room cannot be said to be unreasonable as respondents No.1 and 2 have two more brothers and a sister, who all are residing somewhere else and being siblings, on some occasion, they would like to visit respondents No. 1 and 2 in the premises in question. The ARC also noted that the requirement for a pooja room cannot be viewed to be improper. The ARC rejected the contention of the petitioner about the availability of the second floor noting that nothing has been placed on record by the petitioner to rebut the contention and argument of respondents No.1 and 2 that the second floor merely consists rooms with asbestos sheets inasmuch as neither site plan nor photographs to substantiate the contentions were placed on record by the petitioner. On the other hand, respondents No. 1 and 2 had filed on record photographs of the barsati floor which was not disputed by the petitioner. Hence, the ARC came to the conclusion that the requirements of respondents No. 1 and 2 are bona fide and cannot be said to be fanciful and dismissed the application for leave to contest the petition and passed an eviction order.

9. Learned counsel appearing for the petitioner has impugned the order on the following grounds:-

(i) That the family of respondents No.1 and 2 merely comprises of two

brothers, one of whom is unmarried and the second one is a widower, and two children. It is submitted that the said respondents have a limited requirement and the projected requirement of the mother of the respondents in the eviction petition is no more as the mother passed away. It is further urged that one room has become available to the said respondents subsequent to the eviction of one tenant on the ground floor. It is further stated that for the one room on the ground floor, which is occupied by Arya Samaj as a tenant, an eviction order has also been passed. Based on the above, it is stated that the projected requirements of respondents No. 1 and 2 are not bona fide.

(ii) It is stressed that respondents No. 1 and 2 are wrongly not including the store room on the ground floor as a room whereas it is actually a complete room. The room is being used for storage purposes by respondents No. 1 and 2 mischievously, whereas it is a full room as shown in the site plan.

(iii) It is stated that there is no relationship of landlord and tenant between the parties. The original tenant is admitted to be respondent No.3-Mehrauli Dehat Transport Company Pvt. Ltd. of which the father of the petitioner was the Managing Director and hence, as respondents No. 1 and 2 themselves do not admit the petitioner to be a tenant and no eviction order can be passed against the petitioner.

10. I have heard the learned counsel for the parties.

11. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC 222* described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced

hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. 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 re-appraisal 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 could have reached that conclusion on the material available..."

12. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

13. The relationship of landlord and tenant has been vehemently denied by the learned counsel for the petitioner. In the course of arguments, learned

counsel for the petitioner admitted that the original tenant of the premises was Mehrauli Dehat Transport Company Pvt. Ltd. and that late Sh.Ram Kumar Sharma who was then the Managing Director of respondent No.3 was residing in the tenanted premises. After his death, the petitioner has started residing therein. Hence, the admitted position is that Mehrauli Dehat Transport Company Pvt. Ltd. was the tenant, his father was the Managing Director and he occupied the premises in that capacity. On the death of his father, petitioner claims to have occupied the tenanted premises. He does not claim title to the said property. His rights are derived from his father. The Supreme Court in the case of ***Shanti Sharma and Ors. vs. Ved Prabha and Ors., AIR 1987 SC 2028*** noted that the ownership is not to be understood as absolute ownership but only a title better than the tenant. The court in para 14 held as follows:

“14. The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the

same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase 'owner' thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term 'owner' is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term 'owner' as is contemplated under this Section.....”

14. In fact there is a clear averment by respondents No. 1 and 2 in the eviction petition that in the initial stage, after the death of Sh. Ram Kumar Sharma, the father of the petitioner, for same time the petitioner has paid rent for the premises in question. This contention has not been duly rebutted by the petitioner. In view of the above, there are no reasons to interfere with the findings recorded by the trial court that there exists a relationship of landlord and tenant between the parties. The matter can be looked at from another aspect. The petitioners claim that respondent No.3 Mehrauli Dehat Transport Company Private Limited is the original tenant. None appeared for the said respondent No.3 before the ARC and nor was any application seeking leave to defend filed. Consequentially, the Eviction Order against the said original tenant i.e. respondent No.3 in any case is bound to follow. Hence, in any case the petitioners cannot raise the issue about no

relationship of landlord and tenant.

15. On bona fide requirement, in my opinion the submissions of the learned counsel for the petitioner are completely without merits. The chart prepared by the ARC clearly shows that respondents No. 1 and 2 are in occupation of only two bed rooms and one drawing-cum-dining room on the first floor. On the ground floor, there is one additional room available in view of the eviction of the tenant Om Prakash Mehta. A small store room also exists which even as per the petitioner who has placed on record a site plan before this court measures about 10 ft. X 17 ft. i.e. 170 sq. ft. Respondent No. 2 has explained that respondent No. 2 is earning his livelihood by selling school bags and carry bags and for storing these bags he uses the small store room situated on the right hand side of the premises in question. The actual sale is conducted by respondent No. 2 from the *patri*. The store is basically used for storing school bags, carry bags, etc. The usage of the room on the ground floor obviously cannot be said to be an unreasonable requirement for the livelihood of respondent No.2.

16. Regarding the second floor, the space available is basically a kutchra room having asbestos sheets as roof tops. These cannot be considered as proper rooms.

17. It is manifest from the said facts that respondents No. 1 and 2 despite availability of the additional room on the ground floor on the eviction of the tenant Om Prakash Mehta and on the demise of the mother of respondents No. 1 and 2 suffer from paucity of accommodation. The finding of the ARC that the requirement of respondents No. 1 and 2 is bona fide cannot be defaulted. There are no reason to interfere with the said findings.

18. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

19. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.*: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

20. It is clear that the tenanted premises in question is required bona fide by the respondent for his own personal use and he has no other reasonably suitable accommodation.

21. In the light of the above, the requirements of the respondent/landlord are bona fide, the defence raised by the tenant/petitioner is moonshine, and no triable issue is raised. The application for leave to defend was rightly dismissed. There are no reasons to differ with the view of the ARC. Petition is without any merit and is dismissed.

JAYANT NATH, J

OCTOBER 17, 2016/rb