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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: October 18, 2016

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CM(M) 1222/2015 & CM No. 30313/2015

SHAKUNTALA KATHPALIA

..... Petitioner

Through

Mr. Rajiv Bakshi and Mr. Ayush
Chaurasia, Advocates.

versus

GURUDWARA SRI GURU SINGH SABHA

..... Respondent

Through

Mr. J.K.Chawla, Mr. Vinay Chadda and
Mr.T.P.Ravi, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. For order see, CM(M) 1121/2015, titled 'Manoj Khorana v. Gurudwara Sri Guru Singh Sabha',
2. For the reasons stated in the above cited petition, there is no merit in the present petition and the same is dismissed. All pending applications, if any, also stand disposed of.



**(JAYANT NATH)
JUDGE**

OCTOBER 18, 2016/n

corrected and signed on 03.07.2017

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: October 18, 2016

+ CM(M) 1121/2015 and CM Nos. 26887/2015 & 158/2016

MANOJ KHURANA

..... Petitioner

Through Mr. Rajiv Bakshi and Mr. Ayush
Chaurasia, Advocates.

versus

GURUDWARA SRI GURU SINGH SABHA Respondent

Through Mr. J.K.Chawla, Mr. Vinay Chadda and
Mr. T.P. Ravi, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This petition is filed under Article 227 of the Constitution of India seeking to impugn the order of eviction confirmed by the Rent Control Tribunal (hereinafter referred to as RCT) dated 12.10.2015 under section 22 of the Delhi Rent Control Act, 1958 (hereinafter referred to as The DRC Act).
2. The brief facts which led to filing of the eviction petition under section 22 of the Act are that the respondent is said to be running a Homeopathic dispensary for the general public without any distinction on the basis of any caste, creed or religion. It is averred in the Eviction Petition that there are

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three doctors attending to patients in the dispensary. Two of the doctors are rendering free services in the dispensary whereas the third one is paid a monthly salary. It is averred that on account of success and popularity of the dispensary there are roughly 200 patients visiting the dispensary for treatment daily. The dispensary is presently being run in a room measuring 15 feet x 11 feet and on account of shortage of space great inconvenience is being felt by doctors, patients and dispensary staff. It is stated that the respondent also seeks to run an Allopathic dispensary but due to lack of space is unable to do it. It is stated that there are seven tenants including the respondent in the eight shops. It is planned that in the eventuality of eviction taking place three shops would be used for attending to the patients by three doctors in separate rooms. Two shops will be used for running an Allopathic dispensary. One shop will be used for attending to female patients by a lady doctor. One room shall be used for storing medicine and other stores.

3. Before the Additional Rent Controller (hereinafter referred to as The ARC) the parties led their evidence. The petitioner examined himself as RW1 whereas Shri Kuldip Singh member of the Gurudwara was examined on behalf of the respondent as PW-1.

4. The ARC gave his finding on three different issues. Regarding maintainability of the case under section 22 of the DRC Act, the ARC noted the contention of the petitioner that the respondent is not a public institution within the meaning of Section 22 of the DRC Act. The impugned order held that the respondent in view of the averments made in the Eviction Petition claims itself to be a public institution as it is stated that it is running a dispensary for charitable purposes. The impugned order based on the averments in the petition and the evidence concluded that the respondent is a

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public institution within the meaning of section 22 of the DRC Act as it is a Gurudwara open to all public. It is also admitted that the Gurudwara offers langar (food) to the general public. It was also an admitted fact that the respondent is running a dispensary with the help of some doctors which fact is admitted by the petitioner in the site plan filed where the location of the dispensary is stated. Medical services are being rendered free/cost basis. Hence, the ARC came to the conclusion that the respondent is a public institution within the meaning of section 22 of the DRC Act.

5. The impugned order passed by the ARC also noted that no particulars or names of the doctors are placed on record but it noted that there is an admission of the petitioner in the written statement and cross-examination that there is a dispensary in existence and few doctors especially Dr.Thapa was rendering services to a few patients who used to come. Hence, an organised activity, may not be of a large scale, was in existence. The impugned order also noted the plea of the respondent that they wanted to start a public library, and satsang bhawan in the premises. The impugned order also noted the bona fide requirement of the respondent. It recorded that from the evidence produced on record it is clear that the respondent has proved the need to the extent of expanding the scope of the dispensary. It noted that the respondent is facing difficulties as the space where the dispensary is being run is only a room of 15 x 11 feet. It concluded that the need of the respondent is bona fide.

On the issue of existence of alternative suitable accommodation it noted the plea of the petitioner that the respondent has ample space in the basement, ground floor, first floor and second floor. The shops in question are situated on the ground floor. The existing dispensary is situated on the

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ground floor. As the dispensary is being run from the ground floor itself, the ARC concluded that the respondent has every right to chose a place keeping in view the proposed activity. Accordingly, the Eviction Petition was allowed.

6. The petitioner filed an appeal under section 38 of the DRC Act before the Rent Control Tribunal (RCT). By the impugned order the RCT dismissed the appeal. Some of the salient points noted by the RCT in the impugned order is that firstly the order of the ARC is based on material evidence available with the trial court and the conclusions drawn are based on sound principles of law. Secondly, it was concluded that the reasoning of the ARC regarding the plea of the petitioner for alternative accommodation being the other floors in the same Gurudwara was rightly rejected by the ARC. Further, the RCT noted the two contentions of the petitioner that the respondent is not a public institution. The plea was rejected. On the issue of bona fide requirement, the RCT held that the impugned order has exhaustively and elaborately dealt with the issue in question.

7. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently argued as follows:-

- (i) That section 22 of the DRC Act is not applicable to facts of this case.
- (ii) That PW-1 the witness of the respondent was not authorised to appear. He also was not aware of the facts and circumstances of the case as is evident from his testimony where he has stated that he has no knowledge about the terms and conditions on which the said shop was let out to the petitioner and hence his testimony was wrongly taken into account.

8. Section 22 of the DRC Act reads as follows:-

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“22.Special provision for recovery of possession in certain cases.- Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance activities, then, notwithstanding anything contained in section 14 or any other law, the Controller may, on an application made to him in his behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied-

(a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or

(b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any other person is in unauthorised occupation of such premises; or

(d) that the premises are required bona fide by the public institution for the furtherance of its activities.

Explanation.- For the purposes of this section, "public institution" includes any educational institution, library, hospital and charitable dispensary but does not include any such institution set up by any private trust”

9. Hence, where the landlord is a public institution and the premises are required bona fide by public institution for furtherance of its activities the ARC can pass the eviction order.

10. In *M/s. M.D.Oswal Hosiery (Regd.) vs. Swami Krishna Nand*

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Govinda Nand Bhagwat Dham Ashram Trust, ILR (1982) I Delhi 820 this

Court held as follows:-

“7... A trust under the deed is different from a public institution within Section 22 of the Act. The trust deed no doubt brings into existence a charitable trust but the main dispute is whether the respondent is a public institution. In Corpus Jurisdiction Secundum Vol. 44, page 416 "Public Institution" has been described as any organized activity created or established by law or public authority.....

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In Messrs Gulab Rai Kishori Lal vs. Shri Benarsidas Chandiwalla Seva Smarak Trust, Delhi 1964 P. L. R. 731 (9) it was observed that before a landlord can take advantage of Section 17(d) of the Delhi and Ajmer Rent Control Act it must be an existing public institution and not an institution which wants to become a public institution. It was also observed that in order to take advantage of that section a charitable trust must be of the nature mentioned in the Explanation i.e. an educational institution, library, hospital or charitable dispensary. It was also held that it was not sufficient that the society should require the premises to start a hospital and library and in order to attract the provisions of the Section the landlord must already be a public institution and that the landlord must be running a hospital or a library for extending the scope of which it requires the premises in suit. Similar observations were made by this court in Birdhi Chand Jain Charitable Trust vs. Kanhaiya Lal Sham Lal, ILR (1973) I Del 144 (10).”

11. The ARC by the impugned order has recorded a finding of fact that

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though the respondent has failed to prove the scale of activities on which free medical facilities are being provided to the public, but the admitted fact by the parties is that the charitable dispensary does exist in the premises of Gurudwara. This fact is admitted by the petitioner in his written statement and also in the site plan that was filed. The Gurudwara/respondent wishes to expand its activities as elaborated in the petition. The ARC has on the basis of these pleas and evidence on record recorded a finding that the respondent is a public institution within the meaning of section 22 of the DRC Act and that the premises are required bona fide by the respondent.

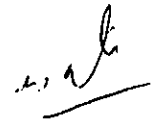
12. I may deal with the contentions of the learned counsel for the petitioner. As far as the plea that Section 22 of the DRC Act is not applicable is concerned as pointed out the admitted fact is that the respondent is running a free public charitable dispensary which is open to the public. Doctors do come regularly to give free medical advise to various patients who visit the dispensary. The only dispute was regarding the scale of such activities. Hence, it is clear that the respondent is established by law and is indulging in an organised activity for charitable purposes for the general public. It is hence a public institution and is entitled to file the Eviction Petition under section 22 of the DRC Act.

13. As far as the argument that the witness of the respondent PW-1 was not authorised to appear in person is concerned, the same is without any basis. It may be noted that no such plea has been raised before the ARC or the RCT. This plea is raised before this Court for the first time. Even otherwise, the said witness is a member of the respondent's society. He deposed in detail about the activities of the respondent and the bona fide need of the respondent. Any person who has personal knowledge of the

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facts of the case is entitled to depose for a party. The ARC has also heavily relied upon the admissions of the petitioner in the written statement, documents and evidence to come to a conclusion. In the light of the above fact that the plea that PW-1 was not authorised to appear/represent is misplaced.

14. There is no merit in the present petition and the same is dismissed. All pending applications, if any, also stand disposed of.



(JAYANT NATH)
JUDGE

OCTOBER 18, 2016/n

corrected and signed on 03.07.2017