

\$~

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

%

Date of decision: February 08, 2017

+ RC.REV. 18/2017

MADHU SUDAN KAKKAR Petitioner
Through Mr.Gaurav Gaur, Advocate.

versus

JAWAHAR LAL Respondent
Through Mr.Rajat Aneja and Ms.Shifa Nagar,
Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) seeking to challenge the eviction order dated 06.10.2016 passed by the Additional Rent Controller (hereinafter referred to as ARC) under Section 14(1)(e) of the DRC Act. The application of the petitioner seeking leave defend was also dismissed.

2. The respondent/landlord filed an eviction petition for Shop No. 243/1, Post Office Street, Sadar Bazar, Delhi. It is contended by the respondent that he along with three co-owners had purchased the entire property comprising of building No. 219-226, Jawahar Hosiery Market and 239-244, Post Office Street, Sadar Bazar, Delhi by virtue of sale deed dated 20.11.1978. At that time, the property was in occupation of various tenants, one of whom was Sh.Hari Ram Kakkar and his son i.e. the petitioner. Subsequently by means

of a suit for partition which resulted in a final decree of partition, a portion came to the ownership of the respondent which includes the tenanted shop. It is urged that the respondent requires the shop bona fide for himself and his other family members dependent on him, more particularly, his son Sh.Gagan Chugh. The respondent has four sons, namely, Sh.Gagan Chugh, Sh.Jitender Chugh, Sh.Hitesh Chugh and Sh.Girish Chugh. The respondent along with his three sons, Sh. Gagan Chug, Sh.Jitender Chugh and Sh.Girish Chugh is carrying on business together by virtue of a partnership under the name and style of M/s. K.P. Enterprises from the premises No.146, Ground Floor, Jawahar Hosiery Market, Sadar Bazar, Delhi. It is urged that with the passage of time, the sons want to start their own independent business. Details of other properties which are available with the respondent is stated. Apart from M/s. K.P.Enterprises, the respondent is also carrying on an independent business in the name of M/s. Jawahar Leather House from Shop No. 6425/1, Factory Road, Nabi Karim, New Delhi in which none of his sons are involved. The properties owned by the respondent which do not constitute suitable alternative accommodation have been mentioned including property being (i) No. 146, Ground Floor, Jawahar Hosiery Market, Sadar Bazar, Delhi, (ii) Shops No. 219-220, Jawahar Hosiery Market, Sadar Bazar, Delhi, (iii) property No. 6425/1, Factory Road, Nabi Karim, New Delhi, (iv) First Floor Godown bearing No. 240, Jawahar Hosiery Market, Sadar Bazar, Delhi. There are other tenanted properties where the respondent is a tenant are also available with the respondent but these shops are not suitable apart from the fact that they are tenanted. The respondent has also filed an eviction petition regarding shop Nos.219-220, Jawahar Hosiery Market, Sadar Bazar, New Delhi for the bona fide need of

his other son Sh.Girish Chugh. An eviction order has been passed in favour of the respondent. However, the revision petition was said to be pending before this court. The same was subsequently dismissed and the said premises is now occupied by the respondent's son Sh.Girish Chugh.

3. The ARC by the impugned order noted the various grounds raised by the petitioner in his application seeking leave to defend. The ARC noted the submissions of the petitioner as made in the leave to defend application that the respondent has falsely claimed that the firm M/s K.P.Enterprises is carrying on its business from Shop No. 146, Ground Floor, Jawahar Hosiery Market, Sadar Bazar, Delhi. It was the contention of the petitioner that Sh.Gagan Chugh is actually occupying the said premises and that the business of M/s K.P.Enterprises is being carried out from the premises bearing No.240, Jawahar Hosiery Market, Sadar Bazar, Delhi. The ARC rejected the said contention noting that as per the income tax returns of M/s. K.P. Enterprises, its address is 146, Jawahar Hosiery Market, Sadar Bazar, Delhi. Similarly, the telephone bill and Form ST-8 of the proprietorship business under the name of "Jawahar Leather House" mention its address as property No. 6425/1, Factory Road, Nabi Karim, New Delhi. The contention of the petitioner was bereft of any details.

The ARC also noted the contention of the petitioner about Shop No. 244, Towel Market (also Known as Post Office Street), Sadar Bazar, Delhi which as per the petitioner was lying vacant. The ARC noted that the same as per the respondent is occupied by the tenants, namely, Smt. Sushma Kumar and Sh.Harish Kumar against whom an eviction petition has been filed before the ARC. This fact of filing of an eviction petition is admitted by the petitioner in his application seeking leave to defend.

The ARC also noted the contention of the petitioner that the respondent has deliberately clubbed two shops bearing No. 219/220, Jawahar Hosiery Market, Sadar Bazar, Delhi by claiming them as only one shop being shop No. 220 in order to mislead the court. The ARC noted that it is the case of the respondent that the ARC has already passed an eviction order in respect of these two shops which eviction order has been upheld by this Court in revision. These shops have been occupied by the other son of the respondent, namely, Sh.Girish Chugh.

On the issue of landlord/tenant relationship, the ARC noted about the sale deed in favour of the respondent and other co-owners and subsequent partition and held that the relationship of landlord and tenant subsists between the parties.

It also noted that the premises whose eviction is sought for by the respondent is for settling his son Sh.Gagan Chugh in an independent business apart from the family business. This was held to be genuine, honest and bona fide requirement. Accordingly, the application for leave to defend of the petitioner was dismissed and an eviction order was passed against the petitioner.

4. I have heard the learned counsel for the parties. The learned counsel for the petitioner has stressed the following arguments:-

- (i) The respondent has concealed about property No. 6425/1, Factory Road, Nabi Karim, New Delhi which is a four-storey property available with the respondent.
- (ii) Property No. 146, Ground Floor, Jawahar Hosiery Market, Sadar Bazar, Delhi is occupied by Sh.Gagan Chugh. The partnership business i.e. M/s. K.P.Enterprises is being run from property No. 240, Post Office Street,

Jawahar Hosiery Market, Sadar Bazar, Delhi. Hence, there is no requirement for the tenanted premises for Sh.Gagan Chugh.

(iii) The respondent is not the landlord of the premises. He has accepted that he has not received any rent from the petitioner.

(iv) The respondent has moved three separate eviction petitions. For property No. 219-220, Jawahar Hosiery Market, Sadar Bazar, Delhi, the ARC dismissed the application for leave to defend and passed an eviction order. This Court in the revision petition has dismissed the petition of the tenant and the property is now in possession of the respondent. He also submits that another eviction petition has been filed for property No. 244, Ground Floor, Post Office Street, Sadar Bazar, Delhi which was filed for the son Sh.Jitender Chugh to start a new business away from the partnership business. In the said eviction petition, the ARC by order dated 21.03.2015 granted leave to defend to the tenant. In the revision petition filed by the respondent before this court, the same was disposed of directing the trial court to expedite the trial and dispose of the matter within 10 months. It is urged by the parties that the said eviction petition is also ripe for final arguments.

Learned counsel for the petitioner submits that in view of the order passed by the ARC on 21.03.2015 granting leave to defend to the tenant, on the same reasoning the petitioner is also entitled to grant of leave to defend.

5. 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/(MANU/SC/0132/1999)* 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..."

6. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

7. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of

possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

XXXXX

(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

8. The above provisions would in view of the judgment of the Supreme Court in *Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* apply to commercial premises also.

9. 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.

10. In the present case the trial court declined to grant leave to defend to the petitioners. The parameters for granting leave to defend are well known.

11. The Supreme Court in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal, AIR 1982 SC 1518* in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

12. This court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

13. Keeping in view the above parameters, I may see as to whether the ARC has rightly dismissed the petitioner’s leave to defend application.

14. Coming to the first submission of the petitioner regarding property No. 6425/1 Factory Road, Nabi Karim, New Delhi which is a four storey commercial building used by the respondent. It is submitted by the Petitioner that the upper floors of the property are lying vacant and can be used by the

respondent. It has been claimed by the respondent that the Ground Floor of the premises is occupied by him from where he is carrying his business under the name of “Jawahar Leather House”. This submission was accepted by the ARC from the telephone bills and Form ST-8 of the said business. It is further claimed by the respondent that the upper floors are very old and dilapidated and can only be used for storage purpose. This is especially so as the upper floors are accessible through the passage on the ground floor which cannot be used for business as it will not attract customers. In any case the petitioner cannot dictate to the landlord from which premises he should start his business. The tenanted premises being on the ground floor would be more suitable for the respondent.

15. Coming to the second contention of the petitioner regarding property No. 146, Jawahar Hosiery Market, Sadar Bazar, Delhi, it is claimed by the petitioner that Sh. Gagan Chugh is in possession of the said property and not the partnership Firm. The ARC rightly noted that as per the income tax returns of the said firm, the firm is operating from the said property i.e. 146, Jawahar Hosiery Market, Sadar Bazar, Delhi. Hence, the submission of the petitioner that the partnership business is being carried out from Shop No. 240 is a mere bald averment based on no facts.

16. Regarding the third contention of the petitioner that the respondent is not the landlord, the argument has rightly been rejected by the ARC. It has been clearly explained in the eviction petition that the respondent has bought the building where the tenanted premises is situated along with other co-owners via registered sale deed dated 20.11.1978 from the previous owner, namely, Sethani Indermani Jatia Charitable Trust, Khurja, U.P. At that time, when the property was purchased, it was in occupation of various tenants

including Sh.Hari Ram Kakkar and his son, the petitioner Sh.Madhu Sudan Kakkar. Thereafter, pursuant to the partition suit and the decree of partition, the property in question has fallen to the share of the respondent. In the light of these facts, it is manifest that the ARC has rightly held the existence of landlord and tenant relationship.

17. 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 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.....”

18. In the light of the above legal position, the respondent was not expected to prove absolute ownership to the tenanted premises but only a title better than the tenant. There is hence no merit in the contentions of the petitioner.

19. Coming to the last submission of the learned counsel for the petitioner, namely, about the fact that his case is at par with the eviction petition for property No.244, Ground Floor, Post Office Street, Sadar Bazar, Delhi where leave to defend was granted to the tenant by the ARC vide order dated 21.03.2015. However, I am not convinced with this submission. The first eviction petition was regarding property No. 219-220, Jawahar Hosiery Market, Sadar Bazar, Delhi where an eviction order was passed by the ARC dismissing the application for leave to defend of the tenant therein. The said order has been upheld by this court in the revision petition against the tenant and the respondent has obtained vacant physical possession of the suit property. The said property is for the use of Sh.Girish Chug. The petitioner has not produced the copies of these orders i.e. which were passed by the

ARC and by this court in the said rent revision. This court has already approved the eviction order of the other son of the respondent. In view of the above, in my opinion, there is no merit in the submissions being made by the petitioner.

20. The son of the petitioner, Sh. Gagan Chugh seeks to establish his own independent business away from the family business which is being run in the family as a partnership concern. This appears to be reasonable and bona fide requirement.

21. 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.

22. 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.”

23. In the light of the settled legal position, there are no reasons to interfere with the impugned order passed by the ARC. The petition is accordingly dismissed. All pending applications also stand dismissed.

(JAYANT NATH)
JUDGE

FEBRUARY 08, 2017/rb