

\$~A-38

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

%

Date of decision: 08.02.2017

+ RC.REV. 55/2017

SOUTH DELHI MUNICIPAL CORPORATION Petitioner
Through Ms. Vandana Sehgal & Ms. Anisha
Mahajan, Advocates

versus

MR. SURJEET SINGH SAINI Respondent
Through Mr.Lalit Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present Revision Petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the 'DRC Act'*) seeking to challenge an eviction order dated 03.11.2016 passed by the Additional Rent Controller (*hereinafter referred to as the 'ARC'*) in the eviction petition filed by the respondent under Section 14(1)(e) of the DRC Act.

2. The respondent filed an eviction petition under Section 14(1)(e) of the DRC Act in respect of the property situated at Khasra No.299(Part), Sukhdev Nagar, Kotla Mubarakpur, New Delhi- 110 033. The property is said to comprise of four rooms, one bathroom and open space measuring 300 sq.yds. approximately. It was urged that the property was let out by the original landlord Sh.Nathu Singh, grandfather of the respondent in 1967-68. Sh.Nathu Singh expired on 02.08.1980. The father of the respondent Sh.Jaswant Singh also expired on 05.08.1989. Partition proceedings between the legal heirs of late Nathu Singh were initiated vide Civil Suit

No.902/1980, titled as “Smt. Dayawati & Ors. v. Jaswant Singh & Ors.”. The suit property came to be jointly owned by Sh.Jaswant Singh Saini- father of the respondent and his brothers, Sh.Narain Singh Saini & Sh.Ratan Singh Saini. Hence, the respondent claims to be co-owner and landlord of the said property. It is further stated that the respondent is residing at 377, 3rd Floor, Sant Nagar, East of Kailash, New Delhi, which is not owned by the respondent. There is no amenity of lift available in the said building at Sant Nagar. The respondent’s wife is said to be a chronic patient of Arthritis for the last more than ten years. She also suffering from diabetes and due to these problems she has become extremely weak in climbing stairs. She is under regular treatment from the Indian Spinal Injuries Centre. The respondent also claims to have been suffering from various diseases, like hernia, diabetes etc. It is further stated that accommodation on 3rd Floor consists of only two rooms, one dawning room and one kitchen and that it is not sufficient for the respondent and his family. The respondent has a married son staying with him. He also has a married daughter who frequently visits him. The respondent needs one room for himself and his wife, one drawing-cum-dining room, one pooja room and one guest room as the family of the respondent is quite big and visitors keep coming. The respondent’s married son and daughter-in-law and grandson are also staying with them who also need a separate accommodation i.e. one room + one study room as the daughter-in-law is doing her MBA and also appearing in competitive exams. He also has one married daughter who frequently visits alongwith husband and her two sons.

3. The respondent filed the leave to defend application. The salient defence raised as in the leave to defend application is (i) The respondent is

not the landlord of the property. (ii) The respondent is lawful owner and occupant of various other immovable properties. (iii) The respondent is running a school with approximately 130 students and four teachers which is an important school for primary education of those children. (iv) The requirement of the property by the respondent is not bona fide but is falsely created. (v) The respondent has concealed material fact from this court that the respondent has filed an eviction petition for the adjoining part of the property.

4. The ARC by the impugned order concluded that on the issue of landlord tenanted relationship there is no real dispute which has been raised. The dispute has been raised, if any, for the sake of it. It also noted existence of document filed by the petitioner written by Deputy Director, Education which shows that the premises is rented since 1967. It also noted that the document corroborates the claim of the respondent that the tenanted premises is not being used for the purpose, it was let out for school purposes, on account of the building being dilapidated and in dangerous condition. The building is said to be lying vacant and abandoned.

On the bona fide requirement, the order noted that the respondent is staying on 3rd Floor of the premises, i.e. No.377, Sant Nagar, East Kailash, New Delhi, and the respondent has been suffering from various ailments. It also noted that the respondent and his wife are 60 years old and cannot be expected to climb up and down the stairs from a 3rd Floor accommodation at this juncture of their life. It also noted that the accommodation available with the respondent is not sufficient and held that the need expressed by the respondent is bona fide.

On the issue of alternative accommodation being available to the respondent, it noted that the respondent has stated that there is no other reasonable suitable accommodation available with him. It also noted that the petitioner has failed to give any details of other properties, which as per the petitioner are owned by the respondent and available as suitable alternative accommodation. There is nothing on record to show that the respondent owns any other property. Accordingly, the ARC allowed the eviction petition.

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

6. The learned counsel for the petitioner has stressed that the respondent is not the owner of the property and that no rent has ever been paid to the respondent or has been claimed by the respondent. It is argued that the petitioner at best owns 140 sq.yds but is now also illegally include the suit property as his property. Reliance was placed on a connected matter being RC.REV. 54/2017 where the petitioner has claimed possession of 140 sq.yds., which eviction petition has already been allowed. Hence, it was urged that the respondent is seeking to grab additional space.

7. 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...”

8. 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.

9. 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.”

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.

10. 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.

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

12. 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.”

13. So far as the submissions that the respondent is seeking to grab additional space is concerned, a perusal of the application for leave to defend would show that no such plea was raised that the respondent is seeking to grab additional space in excess of ownership. In fact, a perusal of the leave to defend application would show that there is a clear admission that the rent was being paid initially to Sh.Nathu Singh Saini in 1980. After the demise of Sh.Nathu Singh Saini, the rent was received by Sh.Narain Singh Saini, S/o Sh.Nathu Singh Saini. Sh.Narain Singh Saini is said to have died in 2010. It is stated that at no time either the respondent or his father ever received rent after the death of Sh.Narain Singh. It was urged that there is a dispute pending between the legal heirs of Sh.Narain Singh Saini. It is

manifest from the above admission that the respondent is admittedly a co-owner of the property being the grandson of Nathu Singh Saini. Being the co-owner of the property, he is entitled to file the present eviction petition. Even otherwise, the respondent has placed on record a copy of the original sale deed executed on 20.09.1928 in favour of Sh.Nathu Singh, the original owner of the property. He has also placed on record a compromise application under Order 23 Rule 3 CPC which was signed by the respondent which includes the present property as one of the properties which was the subject matter of the compromise. Hence, the ARC rightly held that there is an existence of relationship of landlord and tenant between the parties.

14. 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.....”

15. On the bonafide need of the respondent, it is clear that given the size of the family of the respondent the present rented accommodation of three rooms on the third floor is quite inadequate for the respondent and his family. In any case the respondent is entitled to stay in his own house.

16. 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.”

17. Similarly, the Supreme Court in *Dinesh Kumar vs. Yusuf Ali, (2010) 12 SCC 740* held as follows:-

“9. In *Prativa Devi v. T.V.Krishnan* (1996) 5 SCC 353, this Court held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live.

10. However, in *Ram Dass v. Ishwar Chander & Ors.*, AIR 1988 SC 1422, this Court held that ‘bona fide need’ should be genuine, honest and conceived in good faith. Landlord’s desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The “desire” to become “requirement” must have the objective element of a “need” which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to tenant is not rendered illusory or whittled down. The tenant cannot be evicted on a false plea of requirement or “feigned requirement”. (See also *Rahabhar Productions Pvt.Ltd. v. Rajendra K.Tandon*, AIR 1998 SC 1639: (1998 AIR SCW 1387); and *Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta* (AIR 1999 SC 2507) : (1999 AIR SCW 2666).”

18. There are no reasons to interfere with the impugned order. The present petition is dismissed. All the pending applications are also dismissed.

FEBRUARY 08, 2017

JAYANT NATH, J.

v