

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Pronounced on: 10.10.2017

+

RC.REV. 116/2016

M/S SETH & SONS PRIVATE LIMITED Petitioner

Through Mr. Sunil Dalal and Ms. Payal Juneja,
Advocates.

versus

ARJUN UPPAL & ANR Respondents

Through Mr. Nikhil Singhvi, Mr. Nakul and
Ms. Nikita Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

CM No.38827/2016

This is an application filed under Order 41 Rule 27 CPC to bring on record additional documents. It is stated in the present application that certain documents which were not on record earlier have come to the knowledge of the petitioner regarding ownership of the property. It is stated that based on information obtained it has emerged that the Delhi Waqf Board is the owner of the suit property and not the respondents. One Gurcharan Singh is stated to have filed an RTI whereby a reply was received allegedly stating that the tenanted properties are owned by the Waqf Board.

The admitted fact is that the petitioner has been a tenant of the property for more than 60 years and has been paying rent to the respondents. Now, six years after filing of the Eviction Petition the petitioner seeks to argue that the actual owner of the property is Waqf Board and not the respondent. It is manifest that the application is nothing but a dilatory tactic devoid of merit. In view of section 116 of the Evidence Act the respondent is estopped from challenging the title of the respondent.

Application is dismissed.

RC.REV. 116/2016

1. This 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 impugn the order/decreed dated 27.08.2015 passed by the Additional Rent Controller (hereinafter referred to as The ARC) under section 14(1)(e) of the DRC Act. The respondent/landlord filed an Eviction Petition against the petitioner/tenant under section 14(1)(e) of the DRC Act for property being a shop measuring 1208.4 sq.ft. bearing Municipal Number 1647, Shyama Parshad Mukherjee Marg, Delhi-110006. The rent being paid by the petitioner is stated to be Rs.208.63 per month. The respondents are joint owners of the property. It is urged that the respondent No.2 is a hotelier and is running a hotel under the name and style of M/s.New Royal Hotel from the first and upward floors of the property in question. The Eviction Petition is filed for the need of respondent No.1 who is said to be very ambitious person keen on starting his own independent business after completing his studies. He has completed his MBA from a University in Australia and has come to India in 2008 with a motive of starting his own independent business. He has decided to open a plush restaurant for which he has got a

project report prepared. It is urged that there are about 50 hotels in the vicinity of the tenanted property but there is no posh restaurant in the area. The respondent is said to require an area of approximately 5000 sq.ft. to open his restaurant and hence requires the entire ground floor portion to complete his project. Respondent No.1 is said to have sufficient knowledge and experience of working at the family hotel business since he has returned from Australia. It is pointed out that earlier also an Eviction Petition was filed but the same was withdrawn as it had been filed prematurely before the expiry of five years from the date of respondent No.1 having become the owner by virtue of Gift Deed in his favour by Smt.Raj Rani Uppal which was executed on 23.12.2004.

2. Pursuant to the present Eviction Petition the respondents filed their application for leave to defend. The ARC by his order dated 22.10.2011 noted that the petitioners have raised triable issues and hence allowed the application for leave to defend and permitted the petitioners to file their written statement. Against the said order of the ARC dated 22.10.2011 the respondent preferred a Revision Petition before this Court being RC.Rev. 28/2012. The same was dismissed by this court on 4.9.2012. Against the said order of this Court dated 4.9.2012 a Special Leave Petition being SLP(C)33549/2012 was filed before the Supreme Court which was also dismissed on 1.9.2014.

3. Parties have led their evidence before the ARC. The petitioners herein have led the evidence of RW-1 Shri Virender Jain, RW-2 Shri Surjiit Singh Sawhney, RW-3 Shri Rajesh Gawri, RW-4 Shri Jaswinder Singh Chug, RW-5 Shri Deepak Singla from Tamilanad Mercantile Bank, RW-6 Shri Raj Kumar Gupta. The respondent herein has led the evidence of himself Shri

Arjun Uppal as PW-1. They have also examined Shri B.P.Singh (B.E.) Civil as PW-2, Shri Anil Kumar Ahuja A.E. Civil as PW-3, Shri Raghuvir Singh from MCD Department as PW-4, Shri Raj Kumar JJA, Record Room, Civil as PW-5.

4. On the issue of landlord-tenant relationship ARC came to a conclusion that there is no dispute and the respondents are the owners of the premises and there exists the relationship of landlord and tenant.

On the issue of bona fide requirement the ARC noted the testimony of PW-1 Shri Uppal including the fact that respondent No.2 the father of respondent No.1 is running a hotel by the name and style of M/s.New Royal Hotel on the first floor and above. Respondent No.1 has completed his MBA and wants to start a posh restaurant in the area. The project report was on record as Ex.PW1/5. It also noted that the proposed restaurant would not require sanction of any building plan as only some internal changes are necessary and no new structure is to be erected. Professional opinion had also been obtained from Engineers in this regard. Regarding parking facility it was noted that across the road there is parking for 1,000 cars. Noting that there is nothing adverse in the testimony of PW-1, a conclusion was reached by the ARC that respondent No.1 requires the premises for bona fide requirement.

Regarding the plea of the petitioners that the respondents have various other properties in their possession in the form of alternate accommodation the ARC held the same has no relevance as the landlord/respondent was seeking additional accommodation in the same building situated on the ground floor. It was also noted that there was no evidence on record placed by the petitioner showing ownership or existence of any commercial

building/alternate accommodation with the respondents in Delhi. The ARC also noted the plea of the petitioner that the respondent is carrying on work of running a company by the name of Adonis Developers Private Limited which has not been pleaded. The ARC noted that the company in question was formed in November 2010 i.e. after filing of the present eviction petition and, therefore, cannot said to be a concealment on the part of the respondent. Further, the ARC also noted that carrying on other business activities during pendency of the proceedings would be irrelevant. In view of the above, the ARC allowed the eviction petition and passed an eviction order in favour of the respondents.

5. I have heard learned counsel for the parties. Learned senior counsel for the petitioner has vehemently sought to impugn the eviction order on the following grounds:-

(i) A plea had been raised by respondent No.1 in the Eviction Petition that he was unemployed and sought to open a posh restaurant in the tenanted premises. However, it is pointed out that in the cross-examination of respondent it has been revealed that he holds 90% share and is a Director of the company Adonis Developers Private Limited, which company had transaction of several crores of rupees being involved in large scale real estate projects. Hence, there is no bona fide in the plea of the respondent.

(ii) From a perusal of cross-examination of PW-1 i.e. Respondent No.1 it is manifest that respondent No.1 has no experience to run a restaurant. Hence, the plea of seeking eviction on the ground of running of a restaurant is misplaced and has no bona fide.

(iii) The building where the suit property is situated is very old and to make a restaurant as has been claimed by the respondent would involve

removing of pillars and reconstruction of the building. It is urged that PW-2 Shri B.P.Singh (B.E.) Civil, the so called expert who has been examined by the respondent has only given his report based on naked eye and does not give the correct picture of the suit property. Hence, it is urged that the property cannot be used for running of the restaurant as has been pleaded.

(iv) It has been urged that the area in question is not suitable for running of a posh restaurant, as claimed. The shop is located in a highly congested old Delhi area where it is difficult even for pedestrians to walk due to heavy traffic of rickshaw, auto, e-rickshaw, motorcycle etc. There are further acute restrictions of traffic including parking of vehicles though there is a parking opposite the building for railway passengers but the same is mostly full. Hence, there can be no reason for the respondent to want to open a posh restaurant measuring 5000 sq.ft. when there is no area to park the vehicles for the customers. The plea it is urged lacks bona fide.

(v) It is urged that if the respondent was serious to open a restaurant they received possession of a shop 5-6 years ago which was vacated by Vikas Motors. However, the shop was instead leased to India Bulls and later on to M/s. Laxmi Transport and then to M/s.Vinayak Motors. Hence, it is urged that the landlord/respondent is only interested in letting out the property at high current market rent or seems to be interested in selling the property after getting it vacated. There is lack of bona fide.

6. 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..."

7. Hence, the scope of the present petition is limited as explained above.

The order of the ARC is to be tested to see whether it is according to law.

8. 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.

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. There is no substantial dispute raised before the ARC about the relationship of landlord and tenant between the parties. The ARC rightly came to the conclusion in this regard.

11. As far as the bona fide aspect is concerned, the respondent has raised various pleas as noted above that the eviction petition lacks bona fide. I may deal with these pleas raised by the petitioners.

12. Coming to the first plea about the contention that the petitioner is carrying on business through the company Adonis Developers Private Limited in which he has 90% shares. In his cross-examination the respondent No.1 has mentioned stating that the company was started in the year 2010 and was formed for taxation purposes. He states that the company has no immovable assets and it is a loss making company. The fact of the matter is that the company is said to have been formed after the filing of the eviction petition in August 2010. It is settled legal position that a landlord is not expected to remain idle or starve himself while waiting for the outcome of the eviction petition. Reference in this context may be had to the judgment of the Supreme Court in the case of ***Raghunath G.Panhale (D) by LRs. Vs. Chaganlal Sundarji & Co., (1999) 8 SCC 1*** where the court held as follows:-

“11. It will be seen that the trial Court and the appellate Court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lock-out or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lock-out" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises.

For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a Bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the Courts was absolutely wrong in law, and 'perverse on fact. Unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India.”

13. Hence, there is no merit in the said plea of the petitioner about the fact that the respondent No.1 is carrying on business in the name of Adonis Developers Private Limited. He possibly could not be expected to sit idle to await the outcome of the eviction petition.

14. The next plea raised by the petitioner is that the respondent No.1 does not have experience in running a restaurant. It is true that in his cross-examination PW-1, namely, Respondent No.1 admits that he does not have experience of running/having worked in a restaurant business. However, prior experience in running of a business is not necessary prior to filing of an Eviction Petition. This aspect has no bearing on the bona fide of the requirement. Reference may be had to the judgment of the Supreme Court in

Ram Babu Agarwal vs. Jay Kishan Das (2010) 1 SCC 164 where it was held as follows:-

“6. However, as regards the question of bona fide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bona fide need.

7. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also. Hence, we are of the opinion that the High Court should have gone deeper into the question of bona fide need and not rejected it only on the ground that Giriraj has no experience in footwear business.”

15. This court in ***Puran Chand Aggarwal v. Lekh Raj, 210 (2014) DLT 131*** held as follows:

“26. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

27. The following judgments do help the case of the respondent:

Start new business/no experience required

(i) In *Ram Babu Agarwal vs. Jay Kishan Das*, MANU/SC/1719/2009MANU/SC/1719/2009: (2010) 1 SCC 164, it was observed that "A person can start a new

business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also."

(ii) In *Tarsem Singh vs. Gurvinder Singh*, MANU/DE/2640/2010: 173 (2010) DLT 379, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In *Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*, 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In *Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.*, MANU/DE/1078/2013: 2013 (2) RCR (Rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA, 1958."

(v) In *Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.*, MANU/SC/0411/1995: AIR 1995 SC 576, it was observed that "It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would

bind the landlords to start the same business in the premises after it was vacated.”

Hence, the legal position is quite clear. The landlord need not show evidence that he has experience of said business. It is not necessary for landlord to indicate the precise nature of business which he intends to start in the premises. There is no merit in the contention of the petitioner that the need for starting a restaurant is not bonafide requirement. Hence, there is no merit in the said plea of the petitioner.

16. Coming to the next plea of the petitioner, namely, that the building in question where the tenanted premises is located is a very old building and for the purpose of making of a restaurant the respondent would have to remove some of the pillars and reconstruct the building. I may note that PW-2 Shri B.P.Singh who is B.E.(Civil) DCE (DU) was examined as PW-2. He has stated that he has inspected the building in question and has given a structural safety certificate Ex.PW2/A. He has stated on visual inspection that all the partition walls are not load bearing walls. He has also denied that if some of the partition walls are removed the building will fall. It is also a matter of fact that the petitioner did not lead any evidence to the contrary. In view of the unrebutted testimony of PW-2 the plea that the area in question cannot be used to run as a restaurant is misplaced. It is in any case inconceivable that the landlord would carry out such changes in the building which would endanger the structural safety of the building especially as respondent No.2 is running a hotel on the first floor and above. Modifications and renovations in today's age and technology are possible.

Old buildings are being used as restaurants after renovation in an artistic manner and attract customers.. The plea is misplaced and has no merits.

17. Coming to the next plea of the petitioner about non-suitability of the area in question. If such a plea was to be accepted most of Delhi would be unable to run any restaurants. Parking is known to be a major problem in most areas of Delhi. It is a known fact that most markets have huge parking problems like Rajiv Chowk, Khan Market, South Extension etc. Restaurants still thrive in the markets. In the present case it is on record that there is parking available in the old Delhi Railway Station opposite the premises. This aspect is admitted by RW-1 the Director of the petitioner. RW-1 also admits that there is a regular parking in the basement of Shyama Parshad Mukherjee Marg. The said parking is within a distance of 150-200 sq.yards approximately from the building. It is quite obvious that adequate parking is available in the vicinity. It would be for the respondents to organize parking when the restaurant becomes functional.

18. The next plea raised by the petitioner is that a big shop was vacated by Vikas Motors 5-6 years ago but it was leased out to India Bulls instead of being used by the respondent. In this context reference may be had to the evidence of RW-6 Raj Kumar Gupta c/o Vinayak Motors who is supposed to be the present tenant of the premises as pleaded by the petitioners. The said RW-6 has stated that he has taken the mezzanine floor of the shop for the purpose of godown on a monthly rent of Rs.26,800/- per month whereas the ground floor shop is lying vacant. He has stated that he is a tenant for the last 10 years. It is quite clear from this testimony that the said Vinayak Motors was inducted as a tenant in the year 2005. PW-1, namely, Respondent No.1 in his cross-examination has admitted that India Bulls was a tenant in the

said shop from 2005-2006 only when he was pursuing his studies. As per the eviction petition he has come back to India after completing his studies in March 2008 much prior to all these so called change of tenants taking place. The alleged change of tenancy has taken place in the distant past and cannot be a ground to come to a conclusion that the desire now projected in the eviction petition lacks bona fide. There is accordingly no merit in any of the contentions of the petitioner.

19. In *Ragavendra Kumar v. Firm Prem Machinery and Co., [2000] 1 SCR 77*, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In *Prativa Devi 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 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.

20. Reference may also be had to the said judgment of the Supreme Court in *Anil Bajaj & Anr. vs. Vinod Ahuja, AIR 2014 SC 2294*. That was a case where the landlord owned several properties in the vicinity of the tenanted premises. In those facts the Supreme Court accepted the plea of the landlord and held as follows:-

6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises

located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.”

21. There is no merit in the pleas of the petitioner. There are no grounds made out for this court to interfere in the order of eviction passed by the

ARC. The present petition is accordingly dismissed. All pending applications, if any, also stand disposed of.

(JAYANT NATH)
JUDGE

OCTOBER 10, 2017

n

