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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Pronounced on: 11.10.2017

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RC.REV. 406/2016 & CM No.30260/2016

RAJENDER KANAUIA

..... Petitioner

Through

Mr.Sudhir Nandrajog, Sr.Advocate
with Mr.Ajay Talesara & Mr.Ajay
Kumar Chopra, Advocates

versus

ASHA RANI GUPTA

..... Respondent

Through

Mr.Jeevesh Nagrath, Ms.Monica
Manchada & Mr.Amit Sanduja,
Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. The present Revision Petition is filed under section 25-B(8) of the Delhi Rent Control Act, (*hereinafter referred to as 'the DRC Act'*) seeking to set aside the eviction order dated 30.04.2016 passed by the Additional Rent Controller (*hereinafter referred to as 'the ARC'*) under section 14(1)(e) of the DRC Act.

2. The respondent/landlord filed an eviction petition against the petitioner/tenant under section 14(1)(e) of the DRC Act regarding property being a shop at ground floor of property bearing No.7, Jor Bagh Market, Block No.172, New Delhi-110 003. The case of the respondent/landlord is that on the ground floor of the said premises, there are two shops, two open spaces, common verandah and common toilet. The property originally belonged to the respondent's father-in-law. The late father of the petitioner was inducted as a tenant one of the shops by the father-in-law of the respondent-Late Sh.Daulat Ram Gupta sometimes in 1957. Presently, the

petitioner is in possession of the shop and open space. The last paid rent by the father of the petitioner is Rs.295/-.

The other shop in question was let out to M/s. Delhi Cloth Mills sometimes in 1956. The said company handed over vacant physical possession of the said shop in 2009. The said shop was under the possession of a company namely Santasha Real Estate (P) Ltd., which was being run by the respondent's sons who are engaged in the business of real estate.

It is further stated that the respondent and one of her sons and his family are residing on the first floor of the property which comprises of two rooms.

3. There is a history of some litigation between the parties. It is the case of the respondent that the petitioner broke the backside wall of the open space in his occupation and placed heavy dry cleaning machinery in the common verandah and a water treatment plant in the open space. The respondent hence filed a suit being CS(OS) No.288/2012 before this court to restrain the petitioner from wrongfully obstructing the peaceful use of the common verandah and toilet. The suit is said to be pending. The Interim orders are said to have been passed in favour of the respondent. On 13.02.2013, it is stated that a fire broke out in the dry cleaning machinery and gutted everything. The respondent also claims that massive loss was caused to the respondent who resides on the first floor of the premises apart from causing great trauma.

It is further stated that the respondent is a teacher by profession and has served as Trained Graduate Teacher from 1973 to 1980 and as a Post Graduate Teacher from 1980 to 2002 and as Vice Principal from 2002 to 2007 in Government Schools of the Directorate of Education (Delhi

Administration) and hence has teaching experience of more than 34 years. It is the case of the respondent that she is keen to start a charitable play school for the underprivileged children/local children in the tenanted premises of Jor Bagh, New Delhi as she loves to teach and look after children. She has also served in Government Senior Secondary School, Jor Bagh, New Delhi which is adjacent to the tenanted premises for about eight years and is a very well known educationist in the locality. It is further urged that as the eviction petition was pending and was likely to take some time, the son of the respondent shifted the entire business of real estate being run from the adjacent shop to a rented accommodation in Noida, U.P. The respondent has started a play school in the area so vacated by her sons in the said adjacent shop w.e.f. 10.09.2014. Five children have already joined and few more children are likely to join. It is urged that the tenanted premises is on the ground floor and has a open back court yard where an open playground for the children can be made which is a must for any playschool. It is a good site for opening a play school for underprivileged children. It is also stated that the elder daughter-in-law of the respondent, Ms.Mamta is also a teacher by profession and has served in junior branch of Cambridge School, New Rohtak Road, Karol Bagh, New Delhi. She is also willing to assist the respondent in operating the said play school in the tenanted premises.

4. The respondent filed their written statement. The parties have led their evidence before the ARC. The respondent led the evidence of herself as PW1 and of Ms.Kajal as PW2. The petitioner have led the evidences of RW1 Dr.Sudhakar Gaikward, Principal, Sarvodaya Vidyalaya, Jorg Bagh, RW2 Shyam Sunder, Deputy Education Officer, NDMC, RW3 Ravindra Kumar, ASEO, Social Education Department, NDMC, RW4 Desh Bandhu Gosain,

UDC Sub Registrar II, RW5 Meena Tuli, Legal Assistant, Department of Education, GNCTD, RW6 Sh.Rajender Kanojia (evidence by way of affidavit), RW7 Ramanand Pal, Zonal Meter Inspector , NDMC, RW8 Sh.R.K.Saini, Senior Technical Assistant, O/o Registrar of Companies, RW9 Mohan Lal, AERO, RW10 Sh.Malik Singh PRI, Lodhi Road, Head Post Office, New Delhi, RW11 Sh.Mukesh Kumar, Tax Assistant, RW12 Ms.Harjeet, SJA, Original Branch, Delhi High Court and RW13 Mukul Kanojia (evidence by way of affidavit).

5. The ARC on the issue of landlord-tenant relationship, concluded that there is no dispute so far as the relationship of landlord-tenant is concerned, though the petitioner did raise a plea regarding ownership claim of the respondent. The plea of the petitioner was rightly rejected by the ARC as the respondent is the wife of Sh.S.K.Gupta who is an LR of the original owner Late Sh.Daulat Ram Gupta. Shri Daulat Ram Gupta was allotted the said property by L&DO vide Lease Deed dated 09.01.1957.

6. On the issue of bona fide requirement and availability of reasonably suitable alternative accommodation, the ARC held that the original eviction petition was filed on 09.05.2013 whereby it was stated that the respondent intends to start a charitable play school from the tenanted premises. Subsequently, an application for amendment of the eviction petition was filed to bring on record the factum of having started a charitable play school on 10.09.2014. The amendment application was allowed. The ARC noted the educational certificates of the respondent, the fact that she had employed teachers to assist her in the school. The ARC concluded that the respondent had established a play school in the name and style of Republic of Kids, which is being run in the property in question of which the tenanted premises

is a part. The order also notes that presently, the school is being run in the area so vacated by the son of the respondent, which is around 300 sq.ft. and is indeed insufficient to run a play school. The ARC recorded a finding that keeping into account, the kind of activities involved for running a play school, the area under possession and occupation of the respondent is insufficient and the need for additional area is genuine.

7. The impugned order notes the various pleas raised by the petitioner including that running of the play school was nothing but an eye wash and that the respondent is suffering from various old age ailments including asthma and skin disease. The petitioner also pleaded hardship. Noting that the respondent had spent her entire life in the field of education, the ARC held that the intention of the respondent was genuine and needs to be appreciated and encouraged. The ARC also held that originally the petitioner was carrying on business of a dry cleaning shop. However, in view of the orders of this court in the suit proceedings, dated 03.09.2012, 20.02.2013 and 12.07.2013, the petitioner can no longer carry on the said business in the tenanted premises. Further the son of the petitioner has started a business in the name and style of M/s. Mac Euro Cleaners, from a shop which is owned by the petitioner being Shop No.22, Defence Colony, DDA Market, under Flyover, New Delhi, which was allotted to the petitioner in September, 2015. The petitioner also owns other properties in Chhattarpur and Safdarjung Enclave. The plea of the petitioner of hardship was rejected. The various pleas of the petitioner were rejected and an eviction order passed in favour of the respondent and against the petitioner.

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

9. The learned senior counsel for the petitioner has submitted as follows:-

(i) It is urged that the need for charitable activities as projected by the respondent is very subjective and it is not a need which can be enforced by means of an eviction petition.

(ii) It is urged that the respondent retired in 2007. She has now in 2013 sought to file an eviction petition stating a need to start a charitable play school. It is urged that the projected need is make belief and is only an attempt to have the petitioner evicted from the tenanted premises.

(iii) It is urged that earlier also the petitioner was harassed by such frivolous cases filed by the respondent/landlord, which were filed with the object of harassing the petitioner to vacate. The plea of the petitioner lacks bonafide.

iv) It is also urged by the learned senior counsel for the petitioner that the respondent is already running a play school from the adjacent shop. At best, the need survives for open area and that the petitioner is ready and willing to hand over open space behind the shop for the play school. In that eventually, he urges that there is no other requirement left of the respondent.

v) It is further urged that the charity which is stated to be done can be misused by the respondent. The petitioner apprehends that the respondent will run the charitable play school for a short time and thereafter will vacate the same and will use the space for the commercial purposes.

vi) It was sought to be urged that this petition under Section 14(1)(e) of the DRC Act is not maintainable.

10. 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...”

Hence, scope of this petition is limited to testing the order of the ARC to see whether it is in accordance with law.

11. 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:-

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(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.”

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 dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

13. In my opinion, none of the pleas raised by the learned senior counsel for the petitioner has any merits. The plea that the petitioner is only camouflaging charity/charitable activities is concerned, the submission is misplaced. Admittedly, the respondent is running a charitable play school from the adjoining premises under the name and style of Republic of Kidz since 10.09.2014. She has also engaged the services of two teachers to help her. In her evidence by way of affidavit, she has stated as follows:

“12. That the deponent has started the play school in the portion, which was in occupation of the sons of the deponent in the name and style of ‘Republic of Kidz’ shown in green colour

in the site plan, w.e.f. 10.09.2014. At the initial stage five children have joined the said school and now presently there are ten children studying in the school. The deponent has appointed two teachers namely Smt. Savita Barua, r/o H.No.699, Sector-6, R.K.Puram, New Delhi and Ms.Kajal, R/o B-8, B.K.Dutt Colony, Lodhi Road, New Delhi. Teaching Service Agreements of these two teachers are being exhibited as Ex.PW-1/54 and Ex.PW-1/55.

13. That the Attendance Register maintained in the school of the children is being exhibited as PW-1/56 [colly.]. Admission forms of the children are being exhibited as Ex.PW-1/57 [colly.]. Copies of Aadhar Cards of the parents of the children are being exhibited as Ex.PW-1/58 [colly.] and the copies of the birth certificates of the children are exhibited as Ex.PW-1/59 [colly.].

14. That the photographs of the school being run in the premises are being exhibited as Ex.PW-1/60 [colly.].

15. That the sons of the deponent have shifted their entire business of Santasha Real Estate (P) Limited to the rented accommodation bearing No.MEZ-21, 25, 48, 49 and 50, Wave Centre Stage Mall, Sector-18, Noida, U.P. which they have taken on rent at a monthly rent of Rs.20,000/-, Rs.20,000/-, Rs.27,500/- and Rs.27,500/- and Rs.55,000/- from S/Shri Satya Prakash, Smt.Rani Tyagi and Smt.Kirti Taygi and Smt.Nikhat Khan respectively and the premises shown in green colour in the site plan has already been vacated by the sons of the deponent on 31.08.2014 and they have shifted their business to the aforesaid rented accommodation.”

14. The only worthwhile cross-examination of the respondent on this aspect is as follows:

“.....In the play school the children are in the age group of 2.5 years to 4 years. I have not brought the original register having the details of the children being admitted in my play school. Vol. the photocopies are already exhibited.

In my service career as a teacher in Govt. School, I have taught students from primary clauses to 12th standard. The

school from which I retired was from class 6 to 12. In last 15-20 years, I have taught the students from primary, higher classes, even I have taught my children at my home

.....”

15. Clearly, the fact of the respondent having started a charitable play school during pendency of the eviction petition stands established. The school has ten children. Two teachers have been employed. I may also note that there is no dispute about the fact that the respondent has been involved in teaching profession from 1973 till 2002 i.e. 8 and ½ years in the locality of Jor Bagh. There is nothing on record to doubt the bona fide of the respondent.

16. Keeping in view the above, the ARC rightly concluded that need of the respondent is bona fide and she is genuinely carrying out activities for education of underprivileged children for which additional space is required.

17. The Supreme Court in *Sarla Ahuja vs. United India Insurance Company Ltd. (1998) 8 SCC 119* held as follows:-

“14. The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it

is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

18. Hence, it was open to the ARC to draw a presumption that the requirement of the landlord is bona fide. The argument of the learned senior counsel for the petitioner that this alleged charitable need may be misused by the respondent is misplaced.

19. Regarding other plea raised by the petitioner, namely that there is a time gap of 4-5 years since retirement of the respondent from her job, the said plea has no merit. The respondent has requisite experience in the field of education. The respondent is entitled to gainfully use her experience to keep herself busy and occupied in her old age and to pursue her passion. Merely because the eviction petition was filed four or five years after retirement does not effect on the bona fide requirement of the respondent.

Regarding the other plea that the petitioner is ready to hand over the open space behind the shop for the play school, it has been concluded by the ARC that the area presently available with the respondent is about 300 sq. ft. and is grossly insufficient to run a play school. The offer of the petitioner is hence meaningful.

20. I may see the legal position regarding the bona fide requirement. 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 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.

21. 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.”

22. 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.

23. In my opinion, a clear case of bonafide is been made out. I see no reasons to interfere with the findings recorded by the ARC.

24. I may also note that a faint plea was raised by learned senior counsel for the petitioner that the present petition should have been filed u/s 22 of the DRC Act. Section 22 of the DRC Act reads as follows:-

“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.”

25. This court in ***Ravinder Kumar Verma vs. Laxmi Narayan Mandir Nirman Sabha & Anr.*** MANU/DE/3115/2016, while dealing with the same issue held as follows:-

“16. Similarly, in the case of ***Satnam Kaur & Ors. vs. Ashlar Stores P. Ltd.,*** MANU/DE/0258/2009, this court held as follows:-

“9. This Court in the case of *Chunni Lal v. University of Delhi* reported in 1970 RCR 742 drew a distinction between Sections 14 and 22 of DRC Act in the following terms:

...The relationship of Sections 14 and 22, therefore, is that all landlords are able to apply under Section 14 but only the landlords who are corporate bodies or public Institution are entitled to apply under Section 22. This necessarily means that such corporate and public institution landlords have been given the ordinary grounds under Section 14 and additional grounds under Section 22. This accords with their position of being primarily similar to natural persons and sometimes being

different from them. I therefore, find that the corporate and public institution landlords are entitled to the ordinary grounds of eviction under Section 14 like other landlords and also to the special grounds of eviction under Section 22 which are peculiar to the corporate and public institution landlords and that Section 22 does not deprive the corporate and the public institution landlords from the benefit of Section 14.

10. Consequently, in my view, an eviction petition can be filed by a Private Limited Company under Section 14(1)(e) of DRC Act for residence of its Chairman and Directors.”

17. The above view was reiterated by this court in the case of ***Canara Bank vs. T.T. Ltd. (2014) 214 DLT 526.***

25. In the light of the above legal position, the contention of the petitioner that the respondents were obliged to file a petition only under Section 22 of the DRC Act and that the present petition filed under Section 14(1)(e) of the Act was not maintainable has no basis and is without any merit.

26. Hence, there are no reasons to differ with the view expressed by the ARC. The petitioner has not been able to show any material error in the judgment of the trial court to warrant interference by this court. The present petition is without any merit and is dismissed.

**(JAYANT NATH)
JUDGE**

OCTOBER 11, 2017/v