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

% *Date of decision:* 14.02.2017

+ CM(M) 1007/2016 & CM No.36732/2016

SYED MOHD YAHYA NIZAMI Petitioner
Through Mr.Rajat Aneja & Mr.Toyesh Tewari,
Advocates
versus

DR MOHD ARSHAD & ORS Respondents
Through Mr.S.K.Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 08.08.2016 by which the application for leave to defend filed by the respondents/tenants was allowed.
2. The petitioner/landlord filed the present eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the 'DRC Act'*) regarding the property bearing No.111(old) and 261(new), Basti Hazrat Niazmuddin, New Delhi-110013 on the ground that it is required bona fide for his own residence and for the residence of his family members who are dependent upon him. It was stated that the family of the petitioner consists of himself, his wife, two married sons and four married daughters. Elder son has three children, i.e. two sons and one daughter. Second son has one son. The married daughters of the petitioner are namely

(i) Ms.Syeda Shabana Nizami, (ii) Ms.Faseeha Nizami, (iii) Ms.Shimaila Nizami and (iv) Ms.Syeda Kulsoon Nizami. All the sons, their wives and children live together with the petitioner in his house being No.54, Basti Hazrat Nizamuddin, New Delhi. The married daughters and their children often visit the petitioner especially on the occasion of Eid, marriages and other functions. It was stated that the petitioner and his family members have got only three rooms on the ground floor. A portion of the first floor is occupied by one Sh.Shoeb who is a tenant against whom a case is pending. It was stated that the petitioner does not have any alternative suitable residential accommodation. A list of properties owned by the petitioner which are fully occupied by very old tenants on very meager rent was also stated as below:

- (i) House No.100(old) and 262(new), Basti Hazrat Nizamuddin, New Delhi,
- (ii) A piece of land measuring 36 sq.yds. bearing Private No.T-395, Basti Hazrat Nizamuddin, New Delhi,
- (iii) A Jhuggi Jhopri bearing Private No.T-393, Basti Hazrat Nizamuddin, New Delhi and
- (iv) A Jhuggi Jhopri bearing Private No.T-394, Basti Hazrat Nizamuddin, New Delhi.

3. The respondents have filed their application for leave to defend. The submissions raised by the respondents are as below:

- (i) The suit property is a government land and is owned by DDA and the petitioner is not the owner of the said property. Hence, there is no relationship of landlord and tenant between the parties.

- (ii) The petitioner has not filed the correct site plan for House No.54, Basti Hazrat Nizamuddin, New Delhi where he claims to be staying. The said house is an area of 214.40 sq.yds. The petitioner has failed to show two Kothries, three store rooms and further he has failed to mention that the entire first floor is not in the possession of the tenant Sh.Shoeb. The tenant is only in possession of part of the portion of the first floor.
- (iii) House Nos.T-393 and T-394, Basti Hazrat Nizamuddin, New Delhi are not Jhuggi Jhopri as they are built on an area of 50 sq.yds. each. In addition, the petitioner also owns House No.91, Basti Hazrat Nizamuddin, New Delhi. He also has an accommodation measuring 30 sq.yds. in Dargah Hazrat Nizamuddin, New Delhi. Hence, it was stated that the petitioner has sufficient alternative residential accommodation for himself and for his family members.

4. The ARC by the impugned order, on the issue of relationship of landlord and tenant, rejected the submission of the respondents holding that the relationship of landlord and tenant exists between the parties. The ARC further noted that the petitioner has pursuant to a decree passed by the Civil Judge obtained possession of the first floor of the premises being House No.54(new) and 93(old), Basti Hazrat Nizamuddin, New Delhi. The petitioner resides in this house. It concluded that the extent of accommodation available on the first floor would be a triable issue. It also noted the some alleged contradictions in the site plans filed by the petitioner and the respondents and concluded that the same would also be a triable issue. It thirdly concluded that it is not ascertainable as to how the

accommodation of six rooms in House No.54 is not sufficient for the residence of the petitioner and his family members and the same could only be ascertained after adducement of evidence in the matter. Based on these three grounds, the ARC noted that respondents have pleaded facts that raise triable issues and granted leave to defend to the respondents.

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

6. The learned counsel appearing for the petitioner has stressed that the ARC has wrongly come to the conclusion about availability of accommodation on the first floor. On the issue of alleged discrepancies in the site plan to extent of accommodation on the first floor, he submits that comparison of the two site plans filed by the parties would show that it is accepted by the respondents that in all there are six rooms plus some Kothries and store rooms which exist with the petitioner. It is noted by the ARC that the Kothries and store rooms are of very small dimensions, Kothries being 3'.5'' x 7'.6'' ft. each and the store rooms are 3' x 3'.5'' each. These kothries/store rooms given their size cannot be used as rooms for living. He submits that given the size of the family of the petitioner there can be no quarrel that the petitioner and his large family cannot be accommodated in six rooms. He submits that family of the petitioner comprises of himself, his wife, two married sons, their wives and a total of four grandchildren, all of whom are staying together. He also has four married daughters, each of whom has three children and they often visit the family of the petitioner. He submits that one room would be required for the petitioner and his wife, two rooms for the married sons, at least 3 rooms should be required for the grandchildren, one room for drawing-cum-sitting one room for dinning, one room required for guests or for the daughters

when they visit the petitioner. He relies upon the judgments of this court in the case of *Salekh Chand Jain v. Vinesh Chand Sheth, 1986 RLR 17* and *Smt.Sudesh Kumari Soni & Anr. v. Smt.Prabha Khanna & Anr., 153 (2008) DLT 652* to support his contention that the fact whether the six rooms are sufficient for the family of the petitioner would raise no triable issue.

7. The learned counsel appearing for the respondents has submitted as follows:

- (i) In the site plan that has been filed by the petitioner, there are more rooms on the first floor.
- (ii) The grandchildren of the petitioner are small and do not require separate rooms.
- (iii) A writ petition was filed by the petitioner on account of which certain demolitions have been carried out in the rented accommodation, hence he submits that this is the reason as to why the petitioner cannot evict the respondents from the tenanted premises. He submits that the petitioner has more than six rooms available in the present accommodation.
- (iv) He further submits that no daughter comes to visit the petitioner as the daughters have strained relation with the petitioner.
- (v) It is stated that the owner of the property is the custodian and the respondents pay rent to the custodian and hence, he submits that there is no relationship of landlord and tenant.

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:-

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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.”

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 allowed the application for leave to defend to the respondent. 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.”

14. Similarly, 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.)”

15. I may now see as to whether in the light of the above legal position the ARC rightly allowed the application of the respondents granting leave to defend to the respondents.

16. I may first deal with the contention of the petitioner that even if there are six rooms available, given the type of his family, these would be grossly inadequate.

17. This court in *Salekh Chand Jain v. Vinesh Chand Sheth*(supra), held as follows:

“14. The claim of the landlord to provide two rooms to each of his married sons, in my considered opinion, is neither whimsical nor fanciful. First son has three children aged 10, 7 and 5 years. The other son has two growing family. It may not be possible to place 5 or 4 cots in one room after leaving some space for passage and for keeping other articles which are usually kept in a bed room. Moreover the sons must have privacy. At the time when tenanted appeared as his own witness, only one of the sons was married. He admitted that the said son was living independently of his father in portion marked ‘D’. This position consisted of two rooms besides bath and kitchen. This admission supports the contention of the landlord about the requirement of his married sons. The landlord and his sons in my judgment, are entitled to a reasonably comfortable living. Their minimum requirement was of eight rooms. Accommodation consisting of six rooms and a barsati could not, therefore, be considered reasonably suitable for the landlord and all the members of his family even if the requirement of the married daughters was altogether ignored.”

18. Similarly, in *Smt.Sudesh Kumari Soni & Anr. v. Smt.Prabha Khanna & Anr.*(supra), this court held as follows:

“22. In view of the well settled position of law and the circumstances of the present case it is not in dispute that petitioner is in possession of six rooms overall and there are 12 family members in the disputed property living. It is also not in dispute that the petitioner’s two sons were married and have two children each. Looking at the size of the family availability of six rooms in which the landlord is living is no doubt not

fulfilling even though basic need of the landlord. The petitioner also has one divorced daughter with her daughter staying in the same property. Each member of the family of petitioner requires one room. Such a large family cannot be accommodated in six rooms. In my opinion even if the two rooms vacated by Sh. Ram Rich Pal Singh, another tenant as alternative accommodation is taken into account, but the accommodation of petitioner's family in eight rooms is not sufficient, hence, requirement of the petitioner in the suit premises is bona fide.

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25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement. In view of well settled law, I hold that accommodation available with the petitioner is insufficient as against total family members. Hence the petitioner has made out a case under Section 14(1)(e) of Delhi Rent Control Act and is entitled for relief claimed.”

19. As noted above, the ARC has concluded that triable facts have been stated by the petitioner based on the fact that the petitioner has recently received possession of the first floor of House No.54 and also discrepancies in the site plan filed by the petitioner and the respondent. A perusal of the site plan and the order itself would show that the ARC has concluded based on the site plan filed by the respondent/tenant that as per the said respondent there are two rooms available with the petitioner on the first floor of property No.54 and four rooms on the ground floor making a total of six rooms. In addition, as per the impugned order there are three kotharis and three store rooms which have dimensions of 3'.5'' x 7'.6'' and 3' x 3'.5'' respectively. The admitted fact is that the kotharis and the stores are inconsequential given

their size, namely 3'.5'' x 7'.6'' and 3' x 3'.5''. Accepting the site plan of the respondent as correct the petitioner has six rooms available in House No.54 where he is residing. This accommodation would still be manifestly inadequate. The size of the family is an admitted position, namely, the petitioner, his wife, two married sons, four grandchildren and four married daughters and their children. Admittedly sons, their wives, grandchildren the petitioner and his wife are all residing together. Daughters often visit the petitioner. Even accepting the site plan filed by the respondent as correct the accommodation available with the petitioner is grossly inadequate. The ARC has wrongly concluded that the alleged discrepancies in the site plan filed by the petitioner and the respondents give rise to triable facts. Hence, the impugned order suffers from material illegality.

20. I may now deal with the submissions raised by learned counsel appearing for the respondent. He has firstly submitted that the site plan filed by the petitioner is incorrect. I have already dealt with the above issue in the aforenoted para.

The second contention raised was that the grandchildren of the petitioner do not require separate rooms. The requirement of the children is to be determined by the petitioner and the family members. Even school going children would require a separate rooms for studies, to keep recreational toys etc. In any case, this averment is a bald averment as there is no reference to the age of the grandchildren of the petitioner. The contention as stated has to be rejected, especially in view of the judgements noted above of this court in the case of *Smt.Sudesh Kumari Soni & Anr. v. Smt.Prabha Khanna & Anr.*(supra) and *Salekh Chand Jain v. Vinesh Chand Sheth*(supra).

The next contention raised was that the petitioner had filed a writ petition on account of which a portion of the rented premises got demolished. None of the documents regarding the writ petition filed or the orders passed by this court on the petition have been placed on record. Learned counsel for the petitioner has explained that the respondent was carrying out unauthorized construction and hence the writ petition was filed. It was pursuant to orders passed in the writ petition that the unauthorized construction was demolished. It is manifest that the submissions of the petitioner are vague without giving any proper details. There is no merit in the said contention.

The next submission raised was that the daughters are not on visiting terms with the petitioner. The allegation is not even worth considering. It is a bald averment without any factual details.

21. Regarding the claim of the petitioner that the custodian is the owner of the property, again the argument is misplaced. The contention is bereft of any details and is a mere bald averment.

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. The Supreme Court in the judgment of *Sarla Ahuja vs. United India Insurance Co.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.”

24. Accordingly, in my opinion, the order of the Additional Rent Controller granting leave to defend to the respondents suffers from material illegality. There are no facts stated which may give rise to triable issues raised by the respondents. This is a fit case for this court to exercise its supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, I quash the impugned order granting leave to defend to the respondents and pass an eviction order in favour of the petitioner and against the respondents in terms of the Section 14(7) of the DRC Act. Six months time is given to the respondents to vacate the tenanted premises.

25. The petition stands disposed of. All pending applications, if any, also stand disposed of.

(JAYANT NATH)
JUDGE

FEBRUARY 14, 2017/v

