

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 317/2017 & CM No.24854/2017 (u/O XLI R-27 CPC)
CHAMPA DEVI Petitioner

Through: Ms. Pooja Bhatia & Mr. Vivek Gupta,
Advts.

Versus

PUSHPA DEVI & ANR Respondents

Through: Mr. Ajay Gupta & Ms. Surbhi Gupta,
Advts.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

26.10.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 27th April, 2017 in Case No.E-182/2017 of the Court of Additional Rent Controller (ARC), Central District, Tis Hazari Courts, Delhi] of dismissal of the application of the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from one room, one bath, one kitchen and one WC in property situated at Khasra No.582, near Shiv Mandir, Old Chandrawal, Civil Lines, Delhi.

2. The respondents appeared on caveat and finding that the parties were not possessed of the entire Trial Court record, vide order dated 17th July, 2017, notice of the petition was issued and the Trial Court record requisitioned and the execution of the order of eviction stayed.

3. The Trial Court record has been received and has been perused and the counsels heard.

4. The respondents instituted the petition for eviction from which this petition arises, pleading i) that the respondents are the owners of land constructed on area measuring 1750 sq. yds. near Shiv Mandir in Khasra No.582, Old Chandrawal Nagar, Khaiber Pass, Civil Lines, Delhi; ii) that the husband of the present petitioner was a tenant under Shatrughan Dass, Chela Mahant Mahavir Dass, Gaddi Lal Dwara, Old Chandrawal, Khaiber Pass, Civil Lines, Delhi and was paying rent of Rs.60/- per month to Shatrughan Dass and the last rent paid was for the period 30th September, 1992 vide cheque No.886523; iii) that the respondents became the owners / landlords under the Will of Shatrughan Dass and the respondent no.2 Ramesh Dass had also become the Mahant of Gaddi Lal Dwara; iv) that the family of the respondents comprised of their two sons aged 34 years and 29 years and of which the elder son was married and also residing with the respondents along with his wife and two children aged seven years and four years; v) that the portion of the same property in occupation of the respondents was insufficient for the requirement of the family members of the respondents; vi) that the younger son of the respondent no.1 was also of marriageable age.

5. The petitioner sought leave to defend pleading i) that the petition for eviction filed by the respondents under Section 14(1)(a) of the Act was also pending consideration; ii) that the respondents are neither the owners nor landlords of the property in occupation of the petitioner and had no right to file the petition for eviction; iii) that there is no relationship of landlord and tenant between the parties; iv) that the petitioner is in settled possession of

the portion of the property in her occupation, since 1967-68 and the electricity and water connection of the said portion are also in the name of the husband of the petitioner who died on 11th January, 2012; v) that the subject property is not situated in Khasra No.582; vi) admitting that the petitioner is using the premises for residential purposes but claiming that she is in possession thereof in her own right and not as a tenant; vii) that the property is in Khasra No.131 and not in Khasra No.582; viii) that the site plan filed by the respondents with the petition for eviction was false; ix) that all documents filed by the respondents are forged and fabricated; x) that no Will was executed by Mahant Shatrughan Dass in favour of the respondents; xi) that the Girdawari of Khasra No.582 filed by the respondents with the petition for eviction was also false; xii) that the letters from the husband of the petitioner to Mahant Shatrughan Dass filed by the respondents with the petition for eviction are also false and forged; xiii) that the elder son of the respondents was not even on visiting terms with the respondents and was living separately; xiv) that the respondents have more than sufficient accommodation with them in the property; xv) that the land in Khasra No.582 is government land and the husband of the petitioner was never a tenant under Mahant Shatrughan Dass; and, xvi) that Mahant Shatrughan Dass also had no right in the property.

6. A perusal of the letters filed by the respondents along with the petition for eviction shows the same to have been purportedly written by the husband of the petitioner to Mahant Shatrughan Dass and enclosing therewith the

cheques towards payment of rent. The said letters are of 10th December, 1995, 8th January, 1998, 18th August, 1998 and 12th April, 1998 and at least one of the letters is also accompanied with the postal envelope bearing the postal stamp in which it was received.

7. Though the petitioner in the leave to defend application has claimed the said letters to be forged and fabricated but has not specifically denied that the cheques referred to in the said letters were not issued by the husband of the petitioner or that the husband of the petitioner had no account with the bank on which the said cheques had been issued.

8. On the contrary, the leave to defend application has been drafted like a written statement i.e. denying each and every averment in the petition for eviction and putting the respondents to proof thereof.

9. That is not the ambit of leave to defend application under Section 25B of the Act, Sub-Section (5) whereof requires the leave to defend application to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act.

10. It has been held in judgment dated 24th July, 2017 in RC Rev. No.112/2016 titled “***Ram Saroop Vs. Viney Kumar Mahajan***” that the leave to defend application is not required to merely deny but to disclose facts and if no facts are disclosed; a mere denial of the contents of the petition for eviction will not entitle the tenant to leave to defend.

11. Upon perusal of the application for leave to defend, I do not find the same to be disclosing any facts whatsoever; so much so that though it is denied that the elder son of the respondent no.1 is not living with the

respondent no.1 in the property and is living separately, it is not stated as to where he is living.

12. As far as the stand with respect to the Khasra number in which the property is situated, I may state that the same is ambivalent. Though the petitioner at one place has stated the property is situated in Khasra No.131 and not in Khasra No.582 but at another place it is admitted that the property is situated in Khasra No.582. The counsel for the petitioner during the hearing before this Court also, has drawn attention to page 69 of the paper book being a copy of a statement, recorded on 5th February, 2001 in some other suit, of Halqa Patwari to the effect that Khasra No.582 belongs to the Government of India and to the Khasra Girdawari proved by the said Halqa Patwari at page 102 of the paper book and which Khasra Girdawari is also of Khasra No.582.

13. Though undoubtedly the said Khasra Girdawari shows ‘Sarkar Daulat Madar’ as the owner of the said Khasra but under the column titled ‘Cultivator in Possession’ therein, records the name of Mahant Shatrughan Dass.

14. The counsel for the petitioner has contended that the aforesaid Khasra Girdawari shows that Mahant Shatrughan Dass was not the owner and it was the Government of India which was the owner and thus the respondents cannot derive any title under the Will of Mahant Shatrughan Dass and which Will is also denied.

15. Supreme Court as far back as in *Shanti Sharma Vs. Ved Prabha* (1987) 4 SCC 193 and reiterated in *Swadesh Ranjan Sinha Vs. Hardeb Banerjee* (1991) 4 SCC 572, *Sheela Vs. Firm Prahlad Rai Prem Prakash* (2002) 3 SCC 375 & *Rajinder Kumar Sharma Vs. Leela Wati* (2008) 155

DLT 383 held that the requirement of ownership under Section 14(1)(e) of the Act is not of absolute ownership but only of a title better than that of the tenant. Even though the land on which the property is situated may belong to Government of India, once the records of the Government of India itself show Mahant Shatrughan Dass, under whom the respondents are claiming, to be in possession and once it is the case of the petitioner herself that the petitioner and her husband occupied the property in 1967-68, the title of Mahant Shatrughan Dass would be better than that of the petitioner / her husband and would satisfy the ingredient of ownership therein.

16. Secondly, the petitioner in the leave to defend application has not stated that anyone else claiming under Mahant Shatrughan Dass has claimed any right in the property. On the contrary, the petitioner is claiming to have only the right of possession to the property.

17. The counsel for the petitioner at this stage states that there is a statement of the Sub-Divisional Magistrate (SDM) at page 98 of the paper book to the effect that Shiv Mandir is situated in Khasra No.131.

18. The said document is a letter of SDM, Civil Lines, with respect to title of a plot proposed for construction of road near Shiv Mandir, Old Chandrawal and states that the records were verified and the site was visited by Revenue Officials and it was reported that the land is in Khasra No.131 and the owner of the land is Public Works Department (PWD) of the Government of India.

19. I have enquired, whether the respondents are also in occupation of the same property as appears from the pleadings.

20. A reading of the site plan at page 61 of the paper book confirms the same.

21. Once that is so, merely by raising spokes and without disclosing any facts, the requirements for grant of leave to defend is not satisfied.

22. I, therefore, find the order of the ARC impugned in the petition to be lawful within the meaning of Section 25B(8) of the Act.

23. The petition thus fails and is dismissed.

No costs.

Trial Court record be returned forthwith.

RAJIV SAHAI ENDLAW, J

OCTOBER 26, 2017

‘gsr’..