

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

% **Date of decision: 11th August, 2017**

+ **RC.REV. 362/2017 & CM No.27868/2017 (for stay)**

NALINI KANT GUPTA **..... Petitioner**

Through: Mr. Nitin K. Gupta, Adv.

Versus

LAJJA GUPTA **..... Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 29th April, 2017 in RC ARC No.6053/2016 of the Court of Senior Civil Judge (SCJ)-cum-Rent Controller (South), Saket Courts, New Delhi] of eviction, after full trial, of the petitioner / tenant from shop No.5, DDA Market, Safdarjung Development Area (SDA), Hauz Khas, New Delhi in pursuance to a petition filed by the respondent / landlady under Section 14(1)(e) of the Act.
2. The counsel for the petitioner / tenant has been heard.
3. The counsel for the petitioner / tenant during his arguments has not controverted that the respondent / landlady is the owner of the shop and / or that there is relationship of landlord and tenant between the respondent / landlady and the petitioner / tenant. Thus the discussion hereinafter is confined to the aspects of, whether the respondent / landlady during trial has established a *bona fide* requirement for the premises in the tenancy of the petitioner / tenant and whether the respondent / landlady has any alternate, suitable accommodation available to her from which the requirement, pleading which the petition for eviction was filed, can be satisfied.

4. The counsel for the petitioner / tenant has at the outset drawn attention to the petition for eviction filed on 30th July, 2008 in para 18(a) whereof the landlord is required to specify “the ground on which the eviction of the tenant is sought” and whereunder the respondent / landlady stated as under:

“That the premises in question is required by the landlord for her bonafide requirement to settle her only son, who is doctor for opening his clinic therein”

It is emphasised that the case with which the respondent / landlady approached the Court was of requirement of the premises in the tenancy of the petitioner “to settle her only son” and for “opening his clinic therein”.

5. Attention is next invited to the cross-examination recorded on 6th November, 2015 of Dr. Vivek Garg being the son of the respondent / landlady where he has deposed i) that he completed his MD in Medicine in the year 1997; ii) that he did his residency in Ram Manohar Lohia Hospital and in Safdarjung Hospital and thereafter in the year 1999 started his private practice as a medical practitioner from premises No.D-3/2 B, Ratiya Marg, Sangam Vihar, New Delhi; iii) that the said property at Sangam Vihar ad-measures 70 Sq. yds.; iv) that the said property at Sangam Vihar was initially taken by him on rent in or about the year 1999 and purchased by him in the year 2003; v) that the Sangam Vihar property is a residential property; vi) that the Sangam Vihar property is three storeyed but he was using only the ground floor thereof for medical practice and the rest is lying vacant; vii) denying the suggestion that he was using the entire property for running the medical practice; viii) admitting that he was carrying on his medical practice from the said premises in the name of “Dr. Vivek Garg Hospital”.

6. The counsel for the petitioner / tenant next draws attention to Ex.PW1/X2, being a document with which the counsel for the petitioner / tenant confronted the respondent / landlady in cross-examination and on which the respondent / landlady admitted, being the medical prescription of the son of the respondent / landlady on the letter head of “Medicare Clinic and Laboratory Dr. Vivek Garg Hospital” showing the clinics at C-1/39, SDA, Hauz Khas, New Delhi and D-3/2 B, Ratiya Marg, Sangam Vihar, New Delhi.

7. The counsel for the petitioner / tenant has argued i) that the respondent / landlady along with her son was earlier residing at C-1/39, SDA, Hauz Khas, New Delhi and which property has been sold in the year 2004 and the respondent / landlady and her son have purchased a house in Kalkaji, New Delhi; ii) that while the shop in the tenancy of the petitioner / tenant ad-measures 132 sq.ft., the Sangam Vihar property ad-measures 70 sq. yd. and admittedly comprises of ground floor and upper floors; iii) that the medical prescription Ex.PW1/X2 proves that the son of the respondent / landlady, at the Sangam Vihar, is running/operating a ‘Hospital’ having the facility of x-ray, ultrasound and pathological laboratory also; iv) that the ‘Hospital’ with all the said facilities cannot be accommodated within 132 sq.ft. of the tenancy premises which cannot provide waiting area, sitting area or area for ultrasound, x-ray, laboratory and for ‘Hospital’; v) that though it is the case of the respondent / landlady and her son that Sangam Vihar is an unauthorized colony but have not produced any notice served on them of demolition of the said property or asking the respondent / landlady or her son to shift therefrom; vi) that the respondent / landlady has indulged in concealment of the Sangam Vihar property from the petition for eviction;

vii) that the respondent / landlady in her cross-examination stated that she had filed the petition in view of the dicta of the Supreme Court in ***Satyawati Sharma Vs. Union of India*** 2008 (5) SCC 287; viii) that it indicates that but for the said judgment, the respondent / landlady had no requirement of the premises; ix) that had the respondent / landlady had any requirement of the tenancy premises, she, prior to the pronouncement of dicta in ***Satyawati Sharma*** supra, would have given a notice asking the petitioner / tenant to vacate the premises owing to the requirement of the respondent / landlady, notwithstanding that at that time the same was not a ground for eviction under the Delhi Rent Control Act, 1958; x) that the petitioner is a tenant since the year 1985 at a rent, at the time of filing of the petition for eviction, after statutory increases under Section 6A of the Rent Act, of Rs.1452/- per month; xi) that the ground of eviction set out in the petition for eviction as filed, of need to settle the son and to open a clinic for the son was false inasmuch as the son was already in private practice as doctor since the year 1999 and having his clinic at Sangam Vihar, New Delhi and which was not disclosed.

8. The learned ARC, in the impugned order has reasoned i) that property No. C-1/39, SDA, Hauz Khas, New Delhi was jointly owned by the husband of the respondent / landlady along with two other persons and had already been sold; ii) that there was no evidence on record that the son of the respondent / landlady was running any medical practice from his new residence at Kalkaji, New Delhi; iii) that no inference of *mala fides* could be drawn against the respondent / landlady for not filing the site plan or title documents of the property at Sangam Vihar; iv) that there is no dispute that the son of the respondent / landlady was the owner of Sangam Vihar

property and elaborate evidence during trial had been led with respect to the said property and qua its suitability, without any objection by the petitioner / tenant; v) that the question for adjudication was, whether the Sangam Vihar property could be considered as alternate suitable accommodation for the requirement of the son of the respondent / landlady; vi) that the testimony of the petitioner / tenant's witness coupled with the documents proved in his evidence established that Sangam Vihar is not a regularised colony and is an unauthorized colony; vii) that regularization of the said colony is objected to by the Forest Department as the same falls in forest area; viii) that no development work was being carried out in the colony of Sangam Vihar; ix) that the question, whether unauthorized colonies in forest areas should be regularised or not, was pending adjudication before the appropriate authorities of the government; x) that as per the prevalent policies of the government, the unauthorised colony of Sangam Vihar could not be regularised; xi) that the respondent / landlady and her son cannot be left to the mercy of policy decision; xii) that on this score alone, the premises in the tenancy of the petitioner / tenant are more suitable for the medical practice of the son of the respondent / landlady; xiii) that the son of the respondent / landlady had also deposed that he proposed to sell the Sangam Vihar property for the treatment of his father who had suffered brain stroke; xiv) that on the contrary, the tenancy premises are situated in a commercial market, with a chemist shop situated next to it; xv) that the market in which the tenancy premises are situated caters to the day-to-day needs of the residents of the colonies; xvi) that the premises at Sangam Vihar could not be considered as alternate suitable accommodation available to the

respondent / landlady; and, xvii) that the respondent / landlady had established a case of requirement of the premises of the petitioner / tenant.

9. I have considered arguments of the counsel for the petitioner / tenant.

10. Emphasis on the word “Hospital” on the medical prescription of the son of the respondent / landlady is misplaced. The same has to be seen in the context of the location of the clinic of the son of the respondent / landlady which the witnesses of the petitioner / tenant himself has proved is situated in an unauthorised colony, about the regularisation whereof also, there is a doubt owing to the same being in encroachment of forest land. Notice can be taken of the fact that such unauthorised colonies are inhabited mostly by low income citizens and who may not have very high educational background and whose paying capacity may also be not much and who though recognise the word “Hospital”, may not otherwise identify a doctor’s clinic. It is thus not uncommon for doctors to use the word “Hospital” outside their clinic, for the purposes of informing the surrounding residents of the premises providing a medical facility. The counsel for the petitioner / tenant has not drawn attention to any evidence as would have been available of any ‘Hospital’ being run in the Sangam Vihar premises.

11. The question for consideration before this Court is, whether the premises in an unauthorized colony, which is in encroachment of forest land, are to be considered as alternate suitable premises within the meaning of Section 14(1)(e) of the Rent Act. An unauthorised colony is an encroachment over public land and an illegality. Courts cannot render or base their decisions on such illegality. The purport of holding the Sangam Vihar premises as alternate suitable accommodation would amount to this Court putting its imprimatur on an illegality. An illegality, even if a

practicality of life, can never be an alternate to legality. Here, while the Sangam Vihar premises is an illegality, the premises in tenancy of petitioner are in a market in a sanctioned colony. From the very nature of the two premises, the Sangam Vihar premises cannot be 'alternate' to the premises in tenancy of petitioner. Merely because the Government has brought out a scheme for regularisation of unauthorised colonies cannot allow this Court to treat the same as legal, more so when it is still to be decided whether the unauthorised colony of Sangam Vihar is covered also by the said scheme or not. This Court in ***Radhey Shyam Khanna Vs. Amar Nath Khanna*** (1982) 21 DLT 273 dismissed the appeal against an order of eviction holding the premises in possession the landlord to be not alternate suitable accommodation, *inter alia* for the reason of the same being situated in an unauthorized colony. Moreover, once the landlord has a premises of his own, wherefrom the need for premises for a medical practice can be satisfied, it does not lie in the mouth of the tenant to say that the landlord should continue in an unauthorised colony, for the sake of allowing an old tenant, inducted when the landlord did not need the premises, to continue to enjoy the premises. Supreme Court, in ***Siddalingamma Vs. Mamtha Shenoy*** (2001) 8 SCC 561 reiterated that if the landlord wishes to occupy the comfort of his premises, law does not command and compel him to squeeze or dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises.

12. The learned ARC has deftly dealt with the said aspect and it cannot be said that the order of the ARC is not in accordance with law, which is the parameter for interference by this Court in exercise of powers under Section 25B(8) of the Act.

13. As far as the contention of the counsel for the petitioner / tenant of the premises in the tenancy of the petitioner / tenant, owing to the size thereof, being not able to accommodate the x-ray, ultrasound or the laboratory facility is concerned, each location has a different market. While an unauthorised colony may have a bigger market for such facilities, a posh colony like SDA where the tenancy premises are situated and from the residents / patients wherein the son of the respondent / landlady may be able to command a higher consultation fees, may not be a good market for such facilities; merely because the son of the respondent / landlady, from premises in an unauthorised colony is able to carry on his x-ray, ultrasound and laboratory facility also, is no reason to deny the son of the respondent / landlady a place for his own clinic, to provide consultancy, in a posh market.

14. It cannot be lost sight of that the son of the respondent / landlady is not a qualified pathologist or a qualified radiologist but an MD in Medicine and who are by their qualification trained to diagnose and suggest treatment and are not required to necessarily have the facilities of x-ray, ultrasound and pathology lab.

15. Supreme Court, in *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610 reiterated that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. It was further held that 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. Supreme Court, in *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209, approved of the reasoning that the fact that the landlord's son is a director in a family company and

earns salary therefrom cannot be impediment to his requirement of premises in tenancy of tenant for running his separate business of Sanitary and Hardware and that premises not situated in a market area cannot be alternate suitable premises. Similarly here, neither can premises in unauthorised residential colony be alternate suitable accommodation to the premises in tenancy of petitioner in a market, nor can existence of clinic of son of respondent/landlady in Sangam Vihar premises be a bar to the requirement for having clinic also, in the premises in tenancy of petitioner. Doctors are known to provide consultancy from clinics at several locations.

16. The argument of the counsel for the petitioner / tenant, of the need to draw adverse inference against the respondent / landlord for the reason of the respondent / landlord having not sent a notice expressing requirement for the premises even before the dicta of the Supreme Court in *Satyawati* supra cannot be understood.

17. A landlord cannot be expected in law, and no lawyer worth his salt is expected, to send a demand / notice contrary to law. In fact, when I asked the counsel for the petitioner / tenant whether he would send a notice demanding rent, even when rent was not due, he himself states that he would not do that. I have further asked the counsel for the petitioner / tenant, had such a notice been sent by the respondent / landlady, would the petitioner / tenant have vacated the premises. The counsel for the petitioner / tenant states that he would not have. Thus, it is not understood what is meant by a legal argument being raised in this regard, of no notice making a demand contrary to law, having been sent.

18. Qua the argument of the counsel for the petitioner / tenant of concealment having been practiced by the respondent / landlady, I have

reminded the counsel for the petitioner / tenant that the challenge in this petition is to the order of eviction after full trial and not for rejection of the application for leave to defend. Once the parties have gone to trial and led evidence on all pleas, the argument of concealment is not available inasmuch as no prejudice can be said to have been suffered by the petitioner / tenant therefrom as recently reiterated by me in ***Sunil Kumar Goyal Vs. Harbans Singh*** 2017 SCC OnLine 9289 relying upon the earlier judgments in ***M.L. Prabhakar Vs. Rajiv Singhal*** (2001) 2 SCC 355, ***Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta*** (1988) 1 SCC 383 and ***Harbant Singh Vs. Vinod Sikari*** 189 (2012) DLT 215. Supreme Court in ***Ram Narain Arora Vs. Aska Rani*** (1999) 1 SCC 141 held that the non-disclosure of accommodation which the Court also agrees cannot be alternate suitable accommodation, cannot be fatal to the petition for eviction. I have also in judgment dated 12th January, 2009 in RC (R) No.78-79/2005 titled ***Mumtaz Begum Vs. Mohd. Khan*** held that non-disclosure of other accommodation available is not always fatal. To the same effect are ***Surinder Singh Vs. Jasbir Singh*** (2010) 172 DLT 611, ***Sukhbir Singh Vs. Dr. I.P. Singh*** (2012) 193 DLT 129, ***Manju Devi Vs. Pratap Singh*** (2015) 219 DLT 260 and ***Hameeda Shahzad Vs. Shahjahan Khatoon*** 2017 SCC OnLine Del. 7203.

19. The counsel for the petitioner / tenant lastly contended that the dicta of the Supreme Court in ***Satyawati*** supra is being reconsidered.

20. The said argument is based, not on any order or judgment of the Supreme Court but on a report on a legal website viz. “Bar & Bench”. Merely because notice has been issued in a Special Leave Petition (SLP) before the Supreme Court, one of the grounds taken wherein is of ***Satyawati Sharma*** being not good law, would not amount to the Supreme Court having

ordered reconsideration of *Satyawati*. It cannot be lost sight of that *Satyawati* is a judgment of two Judge Bench and the order dated 10th July, 2017 in SLP(C) No.35206-35207/2016 (XIV) is also of a two Judge Bench of the Supreme Court. Had there been any intent to reconsider *Satyawati*, the matter would have been referred to a larger Bench. I may in this regard also mention that in the said matter, the landlady had already executed the order of eviction and recovered possession of the tenancy premises.

21. There is thus no merit in the petition.

Dismissed.

22. The counsel for the petitioner / tenant at this stage states that he cannot make a statement whether his client would have vacated the tenancy premises or not on requirement being expressed by the respondent / landlady.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 11, 2017

‘gsr’..