

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

% **Date of decision: 25th August, 2017.**

+ **RC.REV. 382/2017 & CMs No.29969/2017 (for condonation of 62 days delay in filing) & 29970/2017 (for stay)**

FARAH NAAZ & ORS

..... Petitioners

Through: Ms. Rachna Aggarwal with P-1-in-person.

Versus

MOHD. IQBAL & ORS

..... Respondents

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 25th February, 2017 in E No.182/14/10 (New No.79429/16) of the Court of Additional Rent Controller (ARC)-02, Central District, Tis Hazari Courts, Delhi] of eviction, after full trial, of the petitioners from Second Floor of Property No.8954, Naya Mohalla, Pul Bangash, Delhi, in pursuance to the petition for eviction under Section 14(1)(e) of the Act filed by the respondent No.1.

2. The petition came up first before this Court on 22nd August, 2017, when the counsel for the petitioners was fully heard. However, the petitioners along with this petition did not file the site plan of the premises and need wherefor was felt for adjudicating, whether this petition should be entertained and notice thereof ordered to be issued or not. Thus, the file of the Court of the ARC was requisitioned and the matter posted for

today. The requisitioned file has been received and has been perused and the counsel for the petitioners has been further heard.

3. The respondent No.1 Mohd. Iqbal sought eviction of the four petitioners and the respondents No.2 to 4 herein, from the second floor of property No.8954, Naya Mohalla, Pul Bangash, Delhi as shown in red colour in site plan filed with the petition for eviction and let out to the predecessor of the petitioners and the respondents No.2 to 4, pleading (i) that the respondent No.1 was the owner of the property aforesaid by virtue of the registered Sale Deed dated 17th June, 1993 in his favour and the petitioners and the respondents No.2 to 4 had become tenants under the respondent No.1 by operation of law; (ii) that the family of the respondent No.1 consists of himself, his wife, one son aged 20 years, one daughter aged 18 years, twin daughters aged 9 years and divorced sister residing with the respondent No.1; (iii) that the respondent No.1 also has four married sisters and four married brothers who, from time to time, visit the respondent No.1; (iv) that the respondent No.1 was in possession of the ground floor and first floor of the said property having accommodation of five rooms, two varandahs, one store, kitchen, bath, WC and a basement; (v) that the respondent No.1 is also the owner of another property No.819, Mohalla Sheesh Mahal, Delhi having one room, one chabutra, open courtyard and latrine on each floor but the same is not suitable for the respondent No.1 and the respondent No.1 also does not want to split up his family; (vi) that the respondent No.1 is also the owner of one godown at fourth floor of property No.824, Sheesh Mahal, Delhi and which is also not suitable for the respondent No.1; (vii) that the respondent No.1 is also

the owner of ground floor of property No.8841, Naya Mohalla, Pul Bangash, Delhi which was in occupation of tenant.

4. The petitioners, on grant of leave to defend, contested the petition for eviction, pleading (a) that the petitioners are owners, occupiers of the portion of the property in their possession by way of adverse possession and have never paid rent to the respondent No.1 or to anyone; (b) that the petitioners had also spent monies on the construction of the property and converted two tin sheds into two rooms, latrine, bathroom, kitchen and courtyard; (c) that during the period of ownership of Nand Kishore Kapoor and Mamta Kapoor, the petitioners paid the rent @ Rs.20/- per month to Nand Kishore Kapoor; (d) that Nand Kishore Kapoor never informed the petitioners of sale in favour of the respondent No.1; (e) that the portion under use and occupation of the petitioners was not included in the sale by Nand Kishore Kapoor in favour of the respondent No.1; (f) that the petitioners had never paid rent to the respondent No.1; (g) that earlier, the brothers of the respondent No.1 were also residing in the property with the respondent No.1 but the said brothers had shifted out and the portion occupied by them is also available to the respondent No.1 and his family members; (h) that the accommodation available to the respondent No.1 was sufficient for the members of the family of the respondent No.1; (i) that the divorced sister of the respondent No.1 who was earlier residing with the respondent No.1 has since shifted to the house of the other brothers of the respondent No.1.

5. The ARC, on the basis of the evidence led before him, has allowed the petition for eviction under Section 14(1)(e) of the Act and passed an

order of eviction in favour of the respondent No.1 and against the petitioners and respondents No.2 to 4, finding/observing/reasoning/holding (I) that the petitioners had admitted to be a tenant in the premises under Nand Kishore Kapoor; (II) that the petitioners, appearing as RW-1 also, in cross-examination, admitted payment of rent till 1993; (III) that the witness of the petitioners, appearing as RW-3, in cross-examination admitted that Nand Kishore Kapoor was the previous owner of the property and that presently the respondent No.1 was the owner of the property; (IV) that as per the dicta of the Supreme Court in *Rita Lal Vs. Raj Kumar Singh* AIR 2002 SC 3341, a person once inducted as a tenant, as long as remains in possession, can not deny the title of the landlord; (V) that the respondent No.1 had proved the Sale Deed executed by Nand Kishore Kapoor of the property in his favour as Ex.PW1/1; (VI) that the respondent No.1 was thus the owner of the premises in the tenancy of the petitioners; (VII) that the petitioners, appearing as RW-1, had also admitted the correctness of the site plan proved as Ex.PW1/2 by the respondent No.1; (VIII) that as per the said site plan, the accommodation in possession of the respondent No.1 and as pleaded by the respondent No.1 was correct; (IX) that considering the members of the family of the respondent No.1, the accommodation available to him was not sufficient and the respondent No.1 had established requirement for the portion in the tenancy of the petitioners and respondents No.2 to 4.

6. I have considered the matter.

7. The Legislature, in its wisdom, has not provided for a remedy of appeal against the order of eviction of the tenant on the ground of Section 14(1)(e) of the Act. Only the remedy of Revision under Section 25B(8) of the Act is available. The scope of interference in exercise of jurisdiction under Section 25B(8) of the Act thus can certainly not be as wide as appeal. Reference can be made to ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*** (1999) 6 SCC 222 and ***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh*** (2014) 9 SCC 78.

8. To be fair to the counsel for the petitioners, he has in his arguments not seriously challenged the findings of the ARC qua the requirement of the premises in occupation of the petitioners by the respondent No.1. His main emphasis was, that the respondent No.1, by virtue of the Sale Deed proved by him, has not acquired any rights in the portion of the property in possession of the petitioners and that the petitioners having not paid rent to anyone since the year 1993 have become owners by adverse possession.

9. The learned ARC, qua the said contention of the petitioners, has cogently reasoned that the petitioners having admitted to be tenant under Nand Kishore Kapoor from whom the respondent No.1 claims title, could not without first vacating the premises and surrendering their tenancy rights, set up title in themselves and that too by way of adverse possession. Reference in this regard can be made to ***Atyam Veerraju Vs. Pechetti Venkanna*** AIR 1966 SC 629; ***D. Satyanarayana Vs. P. Jagadish*** (1987) 4 SCC 424; ***T. Anjanappa Vs. Somalingappa*** (2006) 7 SCC 570; ***Annasaheb Bapusaheb Patil Vs. Balwant*** (1995) 2 SCC 543.

10. The principle of “once a tenant always a tenant” can also be invoked in this respect. Any further reference, if required to this effect, can be made to *M/s Jagdambey Builders Pvt. Ltd. Vs. J.S. Vohra* (2016) 228 DLT 49.

11. As aforesaid, it was for the reason of the argument of the counsel for the petitioners, that the portion in possession of the petitioners is not part of the Sale Deed, that the need to requisition the Trial Court record was felt.

12. A perusal of the Sale Deed proved before the Trial Court as Ex.PW1/1 shows the sale to be of entire built up property No.8954, Naya Mohalla, Pul Bangash, Delhi together with freehold land admeasuring 200 sq.yds. thereunder, by Nand Kishore Kapoor in favour of the respondent No.1. A site plan of the property sold is also attached to the Sale Deed and which shows the property to be comprising of basement, first floor and second floor. The Sale Deed also records that the first floor and second floor of the property was under possession of tenant and thus proprietary possession thereof was being delivered.

13. The accommodation shown in the site plan accompanying the Sale Deed matches with the accommodation as shown to be in possession of the petitioners in the site plan filed along with the petition for eviction and proved as Ex.PW1/2 by the respondent No.1.

14. There is thus no manner of doubt whatsoever that the portion of property in possession of the petitioners, is sold, conveyed and transferred by Nand Kishore Kapoor admitted by the petitioners to have been the owner landlord of the premises, in favour of the respondent No.1. The

mere fact that the respondent No.1 did not claim rent from the petitioners or the petitioners did not pay any rent since the year 1993 will not affect the right of the respondent No.1 as owner and landlord to seek eviction of the petitioners and respondents No.2 to 4.

15. The only other argument of the counsel for the petitioners, is of the other properties admitted by the respondent No.1 himself in the petition for eviction to be owned by him, being available to the respondent No.1.

16. There is no merit in the said contention either. The respondent No.1, along with his family members is admittedly residing in the property and cannot be expected to, for the sake of continuing with the petitioners as tenants, split up his family and to make some of his family members go and live in another property, even if the same were to be suitable for residential purpose. Reference in this regard can be made to ***Shiv Sarup Gupta*** supra and ***M.L. Prabhakar Vs. Rajiv Singhal*** (2001) 2 SCC 355.

17. The petitioners have not filed and proved any site plan of their own and as aforesaid, admitted the correctness of the site plan proved by the respondent No.1. The accommodation available to the respondent No.1, as per the site plan, shows the same to be insufficient for the members of the family of the respondent No.1 and no error can be found with the findings of the ARC, of the portion of the property in possession of the petitioners being required by the respondent No.1 for the residence of himself and his family members.

18. There is no merit in the petition.

19. Dismissed.
20. The requisitioned file be returned forthwith.
- No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 25, 2017

‘bs’

(corrected & released on 25th January, 2018)

