

\$~65

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

+ **RC.REV. 448/2017**

RAMESH CHAND TYAGI & ORS

..... Petitioners

Through: Mr. P.N. Dhar, Mr. Anmol Singh &
Ms. Divya Gupta, Advs.

Versus

GEETA GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

25.09.2017

CM No.35380/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

RC.REV. 448/2017 & CM No.35379/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 30th May, 2017 in ARC No.41/2016 (Old No.86/2015) of the Court of ACJ-CCJ-ARC, Shahdara District, Karkardooma Courts, Delhi] of dismissal of the application filed by the petitioners for leave to defend the petition for eviction filed by the respondent and the consequent order of eviction of the petitioner from Shop No.12/3, Chhota Bazar, Shahdara, Delhi-110032.
4. The counsel for the petitioners has been heard.
5. The first argument of the counsel for the petitioners is that the respondent sought eviction of the petitioners from the shop in the tenancy of the petitioners on the ground of requirement thereof for the husband of the

respondent to carry on his property brokerage office therefrom. It is contended that besides the shop in the tenancy of the petitioners, the respondent by the same document by which the shop in the tenancy of the petitioners has been purchased, had also purchased another adjoining shop; that the respondent, besides filing the petition for eviction against the petitioners, also filed petition for eviction against the tenant in the adjoining shop, on the same grounds and with respect to which adjoining shop, order of eviction was obtained and upheld by this Court on 9th August, 2017 in RC Rev. No.366/2017.

6. However the counsel for the petitioners fairly admits that no such plea was taken in the leave to defend application.

7. Without a plea sought to be urged before this Court having been taken in the leave to defend application, the same cannot be urged.

8. Even otherwise, a perusal of the site plan at page 109 of the paper book filed by the petitioners shows the dimensions of the shop with respect to which order of eviction has been obtained to be of 10'8"x3', while the dimensions of the shop in the tenancy of the petitioner is 8'8"x10'8".

9. As per Delhi Building Bye-Laws, 1983, the minimum habitable area is of 100 feet and the adjoining shop of which order of eviction is stated to have been obtained is not even 50% of the prescribed habitable size. For this reason also, it cannot be said that the respondent, after obtaining the possession of the adjoining shop, would have no requirement for the shop in the tenancy of the petitioners.

10. The next argument of the counsel for the petitioners is that the petition for eviction was filed immediately on expiry of five years of purchase of the shops aforesaid by the respondent.

11. Supreme Court in *Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate* (2016) 15 SCC 431 has held that when a person buys property which is in tenancy at a meagre rent, the presumption is that the purchaser has brought the premises for his own use and occupation and not for letting out.

12. Even otherwise, as far as the Rent Act of Delhi is concerned, the legislature has, to prevent the transfer of shops fraudulently in favour of persons who can evict old tenants on the ground of personal *bona fide* requirement of the premises, vide Section 14(6) of the Act placed an embargo of five years after purchase on suing on such ground. This Court cannot extend the said legislative embargo beyond that deemed appropriate by the legislature.

13. The only other argument of the counsel for the petitioners is, of the respondent, on the date of purchase of the shops, having sold another shop. Admittedly the said plea also has not been taken in the application for leave to defend.

14. There is no merit in the petition.

15. Dismissed.

No costs.

16. At this stage, the counsel for the petitioners states that the petitioners do not want to press this petition and withdraw the same and only seek a time of upto two years to vacate the premises. It is further stated that the

petitioners are in control and possession of the entire premises and are in a possession to furnish undertaking in the usual form to the Court and to pay compensation to the respondent for the time so granted.

17. Issue notice, limited to the aforesaid aspect, to the respondent by all modes including dasti and through the advocate for the respondent before the Trial Court, returnable on 14th November, 2017.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2017

‘gsr’..

