

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 176/2016 & CM Nos. 10123/2016, 23320/2016**

KASTURI DEVI & ORS Petitioners
Through: Mr. U.M. Tripathi, Adv.

versus

RAM KISHAN & ANR Respondents
Through: Mr. Satish Kumar Tomar, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **15.03.2018**

1. The case (E no.-2/2015) in which the impugned order dated 23.11.2015 was passed by the Additional Rent Controller was instituted by the respondents on 21.01.2015 seeking an order of eviction on the ground under Section 14(1)(e) of Delhi Rent Control Act, 1958 in respect of premises described as one room, a veranda unauthorisedly covered, kitchen, toilet and bathroom on the ground floor forming part of property No. WZ 1220A, Nangal Raya, New Delhi, concededly in the tenancy of the petitioners.

2. Having regard to the nature of the ground of eviction, the procedure under Section 25B of Delhi Rent Control Act, 1958 was invoked. In response to the special summons issued, the petitioners moved an application for leave to contest. The said application was considered by the Additional Rent Controller but dismissed by order dated 23.11.2015 leading to the direction to the petitioners to vacate

the said tenanted premises. It is the said order which is under challenge by the revision petition at hand.

3. The pleadings in the petition reflect that the petitioners own three adjoining properties, they having been referred to as property bearing municipal nos. WZ-1220, WS-1220A, WZ-1220B in Nangal Raya, New Delhi-110046. The tenanted premises forms part of the first of the said three mentioned properties. The property bearing no. WZ-1220A admittedly is a built up accommodation on a plot of land admeasuring 225 sq. yards.

4. In the pleadings, it was stated by the first respondent that he and his family consisting two married sons and their respective family were residing at the ground floor, it comprising of three rooms, drawing dining facility, the upper floors having been let out to various tenants for earning livelihood in old age. The pleadings vaguely referred to property to be built up to the level of third floor. No details of accommodation on the upper floors are set out in the pleadings nor shown by any site plan. It is stated that the family of the two petitioners (landlords) requires at least 12 rooms.

5. The petitioners in their leave to contest, on the other hand, had stated that the built up accommodation in the properties bearing nos. 1220A and 1220B provide 20 to 22 rooms with facilities in the nature of kitchen, bathrooms, latrines and two shops. The Rent Controller has found such pleadings of the petitioners to be unacceptable for the reason no proof of existence of such large number of rooms has been placed on record.

6. In a case of this nature, it was first the obligation of the respondents (the landlords) to clearly demonstrate either in the pleadings or by a site plan the existing accommodation in their possession and control. In spite of being repeatedly asked, the counsel for the respondents had no valid explanation to offer for such omission. This itself gives rise to triable issues.

7. For above reasons, in the opinion of this court the respondents-landlords have *prima facie* failed to show *bona fide* by not disclosing the accommodation in their possession in property Nos. WZ 1220A, Nangal Raya, New Delhi, through a site plan. The contention of the petitioner-tenant about availability of 20-22 rooms to the landlord in these circumstances could not have been short-shrifted or disbelieved.

8. Thus, the impugned order is set aside. The application of the petitioner-tenant for leave to contest is granted. The eviction petition stands revived on the file of the Additional Rent Controller.

9. The parties are directed to appear before the Additional Rent Controller on 5th April, 2018. Needless to add, the petitioners will be obliged to submit written statement in answer to the eviction petition on the date of first appearance.

10. This disposes of the petition and the applications filed therewith.

R.K.GAUBA, J

MARCH 15, 2018

nk/srb