

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 11th July, 2018

Date of decision : 05th September, 2018

RC. REV. 307/2018

SIMARJIT SINGH

..... Petitioner

Through: Mr. Panna Lal Sharma,
Advocate.

versus

BALBIR SINGH

..... Respondent

Through: Mr. Neeraj Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Simarjit Singh assails the impugned order dated 05.03.2018 of the learned Rent Controller, (West), in Eviction Petition No.54/17 whereby an application under Section 25-B of the DRC Act, 1958 (as amended) filed by the petitioner herein seeking leave to defend the eviction petition filed by the respondent herein, i.e., Sh. Balbir Singh seeking eviction of the petitioner herein from the tenanted premises bearing no.WZ-89/3 Gali No.9, Guru Nanak Nagar, Outer Ring Road Delhi was declined, and it was held that the petitioner herein, i.e., the

respondent to the Eviction Petition No.54/17 had failed to raise any triable issue and thus had been directed to vacate the tenanted shop as shown in red colour in the site plan filed by the landlord and to hand over the vacant peaceful possession of the same to the landlord, with it having been directed that the said order would not be executable for the period of six months from the date 15.03.2018 in terms of Section 14(7) of the DRC Act, 1958 (as amended). The petition was taken up on 11.07.2018 and submissions were made on behalf of either side qua the petition filed by the petitioner inasmuch as the petitioner and the respondent were represented by the learned counsel, inasmuch as the counsel for the respondent to the present petition in RC.REV. P. 307/18 was present on advance notice.

2. The respondent to the present petition, i.e., the landlord claimed vide the eviction petition that the tenanted premises was situated on the ground floor and had been let out for non-residential purpose and were being used by the respondent to the eviction petition, i.e., petitioner herein for commercial activities where the respondent/ tenant was carrying on the business of car sale and purchase with assistance of his employees under the name and style of SHRI ISHAR MOTORS. **The shop was described to be an L-corner shop in which the electricity meter was installed under the name of the tenant in the tenancy created in the year 2013. The landlord further submitted through annexure-A to the petition that he had purchased**

two shops in the property bearing no. WZ-89/3, Gali No.9, Guru Nanak Nagar, Outer Ring Road Delhi vide sale deed dated 29.07.2004 and GPA dated 29.09.2005 and that the agreed rate of rent was Rs.3,500/- per month but that the tenant had been depositing “Rs.1,400/-” and had not been paying the rent from January 2013 in any form nor was he paying the electricity bills. The landlord further asserted that the adjoining shop in the same property was being used by his brother namely Sh. Dalbir Singh who was running his business under the name and style of M/S BUSINESS LINKS since 2013 and that he, the landlord did not have any other commercial property other than these two properties and required the said tenanted premises *bona fide* for his own use and occupation for carrying on his own business, inasmuch as he was presently idle as there was no scope now for income from his earlier business of property dealing and that the landlord wanted to start his own business of food items/mini restaurant like bar-be-que from the suit shop.

3. The landlord further asserted that he had a residential premises at Plot no.430, Gali no.1, Karnail Singh Dairy Area, Street no.19, Sant Garh, Tilak Nagar, New Delhi of which the second floor was in use for his occupation and for residential purpose for his other family members and that the petitioner was possessed of sufficient funds to start a new business and had the

knowledge and know how to start his new venture with the experience and expertise.

4. Through the eviction petition, the landlord had further contended that he was living in a joint family with his brother and other family members in one house and that his own family comprised of his wife and two sons aged about 21 years & 16 years at the time of the institution of the petition which was instituted on 19.04.2017 and that his elder son was mentally abnormal and he needs special medical care and attention and huge expenditure was incurred on his treatment on a regular basis and thus, the landlord intended to start his own business from the tenanted premises and contended that his needs were *bona fide* and genuine as he required the tenanted premises for his own commercial use, inasmuch as he and his wife did not have any other commercial accommodation for starting their own venture. The said petition was supported with an affidavit of the petitioner, i.e., the landlord of the eviction petition.
5. The respondent to the eviction petition, i.e., the petitioner herein admitted that the tenanted premises were let out to him by the petitioner which he states were let out in the year 2006. The petitioner herein, however, contended that the adjacent shop, i.e., the shop adjacent to the tenanted premises was lying vacant and it was a new board of M/S BUSINESS LINKS which has been affixed recently only to make a ground for institution of the petition and that there were two shops on the first floor of

the same building which were also lying vacant which were in exclusive possession of the petitioner of the eviction petition who thus was contended to have sufficient accommodation to start his business/ restaurant and it was also stated on behalf of the petitioner through the present petition that all those shops were lying locked since 2011.

6. The respondent to the eviction petition, i.e., the present petitioner submitted that there was a Gurudwara near the shop at a distance of about 80 meters on both sides of the shop and that the business of the bar-be-que was thus not permissible in the area as per rules. The petitioner of the present petition further contended that it was the PWD, Govt. of NCT of Delhi which was the owner of the tenanted shop presently which shop had been constructed on the PWD land and stated further that in the year 2013, some notices were issued in the area by the PWD, Govt. of NCT of Delhi including the tenanted shop stating that it belonged to the PWD and then the respondent to the eviction petition, i.e., the petitioner herein had stopped the payment of rent as the property belonged to the PWD but in the month of April, 2014, an oral settlement was arrived at between the petitioner and the respondent in the presence of one Sh. Satnam Singh son of Sh. Dewan Singh and on the assurance of the petitioner that he would file a case in this Court against the PWD, rent was paid from 2013 to May, 2014 in good faith but thereafter the respondent, i.e., the petitioner herein did not pay

any rent from March, 2016 inasmuch as, a notice was served on the petitioner of the eviction petition, i.e., the respondent herein by the PWD, Govt. of NCT of Delhi that the land belonged to the PWD, the Govt. of NCT of Delhi and thereafter no rent was paid to the petitioner. It was also contended by the petitioner of the present petition that the landlord was a party in W.P.(C)313-319/2005 and CM.APPL. No.1993/15 in which this Court passed an order for removal of illegal possession on the road and thus, as the shop in question was constructed on the land of PWD and the Superintendent Engineer of the PWD had issued a letter to the respondent for removal of the illegal possession of the land, it was thus contended on behalf of the respondent that the land in question on which the tenanted shop was constructed was the property of the Govt. of NCT of Delhi and that the petitioner was not the owner of the shop and that the parameters under Section 14(1)(e) of the DRC Act, 1958 (as amended) were not satisfied.

7. Through the affidavit annexed to the application seeking leave to defend, similar submissions were made.
8. The petitioner of the eviction petition denied being a party to W.P.(C)313-319/2005 which had been filed in this Court and denied that any letter was issued by the Superintendent Engineer of the PWD for removal of any illegal possession. *Inter alia* the petitioner of the present petition through the reply to the leave to defend denied that the tenanted premises were

not suitable to meet his *bona fide* requirements and stated that the shop did not have any access to the first floor and there were no stairs. The petitioner/ landlord further denied that a new board M/S BUSINESS LINKS was recently affixed on the shop adjacent to the shop of the tenant, i.e., the petitioner herein only to make a ground for eviction and denied that the shop was lying locked since 2011 and denied that the petitioner had sufficient accommodation to start his business/ restaurant and submitted that the entire first floor of the building was used by the brother of the petitioner for his own business. The landlord further contended that the benefit of Section 19 of the DRC Act, 1958 (as amended) was always available to the respondent if the landlord failed to occupy the shop in question.

9. Vide the impugned order, the learned Rent Controller, (West) held that there was no triable issue that had been raised by the tenant, i.e. the petitioner of the present petition. The relationship of the landlord and the tenant between the parties is apparently admitted; the aspect of *bona fide* requirement of the petitioner of the eviction petition who contended that he wanted to run a restaurant/bar-be-que in the shop on the ground floor to augment his income inasmuch as there was no scope for running his business, cannot be termed to be not *bona fide* or not a ploy to evict the tenant from the tenanted premises. The contention of the tenant, i.e., the present petitioner that there was sufficient accommodation available to the landlord in the

form of ample space at the first floor of the building was not accepted vide the impugned order as it was observed that the petitioner of the eviction petition, the landlord was the best judge of his own needs and apparently the space for running a business of restaurant/ bar-be-que on the ground floor was much better than running a business at the first floor.

10. The landlord has further placed on record the photographs of the shop adjacent to the shop of the tenanted premises to indicate that it was adjacent to the shop SHRI ISHAR MOTORS in which the petitioner of the present petition runs a business under the name and style of SHRI ISHAR MOTORS and in the adjacent shop, the brother of the petitioner runs a shop under the name and style of M/s BUSINESS LINKS.

11. A contention was raised by the tenant that the landlord was carrying on the business under the name and style of "CITIZEN PROPERTIES" and it was observed by the learned Rent Controller, (West) that there was no material to support the contention.

12. In any event even taking into account the factum that the landlord was running the business under the name and style of "CITIZEN PROPERTIES", the same itself does not suffice to grant an opportunity to the tenant to contend that the landlord cannot seek to augment his income when his business of property dealing was not running as well as stated by him. As to whether the landlord could run a restaurant/ bar-be-que at the

space of the tenanted premises or not because it is close to a gurdwara, the same apparently would have to be done by the landlord within permissible rules. The *bona fide* need for the premises in question thus stands established and that the landlord is the best judge of his own needs and cannot be mandated and dictated by the tenant as to in which portion of the property he needs to run his own business, is brought forth also from the verdict of this Court in “**BABU LAL VS. ATUL KUMAR & ANR.**” ILR (2014) III Delhi 2047.

13. As regards the contention raised by the tenant that there was a disruption of the landlord- tenant relationship inasmuch as the PWD had issued a notice calling upon the petitioner of the eviction petition to remove the illegal possession on the land comprised in PWD Road no. 26, Outer Ring Road and though, it is thus apparent that the petitioner of the eviction petition had no *locus standi* to file the eviction petition, undoubtedly, the petitioner of the eviction petition through the reply to the application seeking leave to defend filed by the respondent/tenant had submitted that he was not a party to W.P.(C)313-319/2005 and denied that the land in question on which the tenanted property was constructed belonged to the PWD, the Govt. of NCT of Delhi. As regards this submission of the petitioner of the eviction petition though undoubtedly, the number of the petition appears to have been erroneously mentioned by the tenant, i.e., the present petitioner herein as

being W.P. (C) 313/19, as indicated by the copy of the proceedings dated 10.05.2016 in W.P. (C) 7370/14, the petitioner of the eviction petition, i.e., the respondent to the present petition was apparently a party to the same vide which the petitioner of the eviction petition had sought a writ/order or direction in the nature of mandamus requiring the respondents to the said writ, i.e., **“Union of India and Anr.”** to allow him to be in peaceful possession and was stated to be in possession of the said premises, in relation to which vide order dated 10.05.2016 of this Court, it was observed that the said petition and the petition W.P.(C)8252/14 were covered by the judgment dated 07.10.2015 in W.P. (C) Nos. 313-19/2005, 3818/14, 3846/14, 7532/14 and that thus the petition W.P.(C)7370/14, i.e., the petition filed by the respondent to the present petition as petitioner thereof and W.P.(C)8252/14 were disposed of with observations further to the effect that the petitioners of the said petitions including the petitioner of the eviction petition, i.e., respondent to the present petition were at liberty to avail appropriate legal remedies available to them in accordance with law.

14. Significantly, during the course of proceedings dated 10.05.2016 in W.P.(C)7370/14 to which the respondent to the present petition was the petitioner, a submission had been made that a Civil Suit had been filed in the connected matter which was pending in the Court and that the petitioner and the other

petitioner to the eviction petition and other petitioners be granted an opportunity to approach the Civil Court and thus this Court had vide order dated 10.05.2016 in W.P.(C)7370/14 titled “**Shri Balbir Singh Vs. UOI and Ors.**” and in W.P.(C)8252/14 titled “**Hardeep Kaur Vs. UOI and Ors.**” observed as follows:-

“1. Learned counsel for the respondent submit that in similar matters bearing Writ Petitions (Civil) Nos.313-19/2005, 3818/2014, 3846/2014 and 7372/2014, this Court has disposed of the writ petitions on various grounds *inter alia* that the issues raised in the writ petitions are barred by principles of *respondent judicata* and disputed questions of facts cannot be adjudicated in writ proceedings. This Court further held that the respondent shall complete the construction of 200 ft wide road in accordance with the regularisation plan. Relevant portion of the judgment dated 07.1.2015 is reproduced herein:

“6. From the aforesaid, it is apparent that even the regularisation plan relied upon by the petitioners itself shows a 200 ft. wide encroachment free road. HMJ Sanjay Kishan Kaul had directed that a survey be carried out on the basis of regularisation plan and further that whatever encroachment falls within the 200 ft wide road be removed. In the said order it had been emphasised that by way of the regularization plan only a residential colony had been regularised and not commercial encroachment on the proposed road.

7. Learned Judge had also pointed out that there was also an element of public interest involved in the present proceedings.

8. Consequently, this Court is of the opinion that the issue raised in the present writ petitions are barred by principles of res judicata.

9. As far as the factual disputes, i.e., whether survey is in accordance with the regularisation plan or whether petitioners or Anand Kunj Society or Gujrawalan Society have encroached upon the public land, this Court is of the view that they are in the nature of disputed questions of fact which cannot be adjudicated in the present proceedings.

10. As construction of Ring Road which is a major infrastructural project has been delayed because of the pending petitions, all respondents are directed to complete the construction of 200 ft. wide road in accordance with the regularisation plan immediately. In the event any demolition is to be carried out for construction of the said road, respondents are directed to take action in accordance with law.

With the aforesaid directions. Present batch of writ petitions and applications stand disposed of and all interim orders stand vacated. Order dasti.”

2. Learned counsel for the petitioner submits that the petitioners in the connected matters have filed a civil suit which is pending before this Court. It is submitted that the petitioners in these matters be also given liberty to approach the Civil Court.

3. These petitions are squarely covered by the judgment dated 7.10.2015 passed in the Writ petitions (Civil) Nos.313-319/2005, 3818/2014, 3846/2014 and 7372/2014 and are, therefore, disposed of in terms thereof. The petitioners are at liberty to avail appropriate legal remedies available to them in accordance with law.

4. Interim orders stand vacated. Pending applications are also disposed of.

5. Copy of this order be given dasti to the counsel for the parties under signatures of the Court Master.”

15. The entire record thus speaks that there existed and exists a landlord/tenant relationship between the petitioner of the eviction petition and the respondent therein. Thus, through the factum of proceedings even in W.P.(C)7370/14 in which the landlord, i.e., the respondent to the present petition was apparently the petitioner thereof, the petitioner of the present petition cannot state that there has been a severance of relations between the petitioner and the respondent as being the tenant and landlord of the tenanted premises.

16. Vide order dated 07.10.2015 in W.P.(C)313-319/2005 whilst referring to proceedings dated 11.12.2003 in W.P.(C)2006/97, which reads as under:-

“The petitioners have impugned the letter dated 25.4.1997 of PWD Department of the Government of NCT of Delhi stating that there is illegal possession of land comprised in the road and that the possession has to be removed. The aforesaid letter was issued in view of the project for road widening and the apathy of the respondent department has resulted in a situation where this project is a stand still for the last six years. The land in question was acquired in terms of award No.20/73-74 and was placed at the disposal of the PWD Department on 2.7.1975. The area was declared as a developmental area but in terms of notification dated 13.7.1987 the area was denotified as a developmental area.

Learned counsel for the petitioner referred to the notification in terms whereof the area was denotified. The denotification is limited to the issue of the developmental area and the land as such acquired was never denotified. A colony in the meantime was constructed on the land and in terms of a regularisation plan, the colony is stated to have been regularised. The regularisation plan shows 200 ft. wide road which had to be constructed and apparently at the stage of regularisation there was not really much problem of encroachment on that road. This is stated to have been arisen subsequently. Learned counsel for the petitioner contends that the alignment of the road was such that only a few properties were being affected and other properties which are now sought to be demolished were not to be affected by the road widening. This submission is based on the regularisation plan. The respondents have filed their plans though the regularisation plan filed by the petitioner is not disputed. In terms of the plans filed by the respondents, it is stated that extensions have been made by persons and certain properties are affected which would require to be removed for the road widening. The aforesaid aspect was taken up in the present petition as far back on 27.2.97. It was noticed that there was even a PWD office (stated to be temporary at that stage of time) which was falling in the road way. The PWD Department has stated that the same would also be removed but learned counsel for the petitioner states that now it is permanent structure. In terms of the directions passed on the said date, the PWD was directed to file a bigger plan of the particular block. This plan has however not been filed and the affidavit filed by the DDA really relies upon regularisation plan filed by the petitioner. In my considered view all that required to be done is that a survey has to be made

and whatever falls within the road widening has to be removed. It has to be appreciated that the land in question in fact was acquired and the question whether any one has taken compensation or not as raised by learned counsel for the petitioner is immaterial for the present proceedings. The regularisation plan itself envisages a particular width of the road and the bottlenecks cannot be created in the said project. There is also an element of public interest involved as traffic create bottlenecks in the area in question. It may also be noticed that the photographs show that the properties are being used for commercial purpose. The regularisation was for a residential user. It is not clear as to whether this commercial user is as per authorisation given by an authority and as per any modified user plan. If it is so no further direction is required. But in case there is commercial user contrary to the prescribed user then it would call for forthwith action by the concerned authorities. The respondents No.2 and 3 which are the concerned respondents are thus directed to carry out a survey of the area within a maximum period of two months taking the basis as the regularisation plan and proceed thereafter for the construction of the road by removing all the structures which fall within the road widening project. The petitioner can supply necessary documents within 15 days. It may be noticed that some trunk load documents have been filed which respondents No.2 and 3 is directed to collect from the Registry against receipt. The writ petition stands disposed of with the aforesaid directions.”

17. It was held to the effect vide Para 10, which reads to the effect:-

“In the event any demolition is to be carried out for construction of the said road, respondents are directed to take action in accordance with law.”

18. Furthermore, vide Para 9 of the verdict dated 07.10.2015 in W.P. (C)313-319/2005, it was observed to the effect:-

“As far as the factual disputes, i.e., whether survey is in accordance with the regularization plan or whether petitioners or Anand Kunj Society or Gujrawalan Society have encroached upon the public land, this Court is of the view that they are in the nature of disputed questions of fact which cannot be adjudicated in the present proceedings.”

19. Thus, it is apparent that if there is any demolition to be carried out of the tenanted premises, the same is to be done by the Government Agency in accordance with law and cannot be detract from the relationship of the landlord and tenant between the petitioner of the eviction petition and the present petitioner herein and the respondent represented by the legal heirs. It is apparent thus, that there is no triable issue raised by the tenant, i.e., the present petitioner herein which would entitle him to seek leave to defend the petition filed by the petitioner of the eviction petition seeking the tenanted premises for his *bona fide* requirement of running the commercial business of restaurant/bar-be-que.

20. This is so, inasmuch as vide the verdict of the Hon'ble Supreme Court in **“Satyawati Sharma (Dead) by Lrs. Vs. Union of India”** reported in AIR 2008 SC 3148, it has been

categorically laid down that Section 14(1)(e) of the DRC Act, 1958 (as amended) which read to the effect:-

“14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) xxx xxx xxx

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.-For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes”,

has been partially struck down vide verdict dated 16.4.2008 and Section 14(1)(e) of the DRC Act, 1958 (as amended) has been directed to read to the effect:-

“that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonable suitable accommodation.”,

making it apparent that the landlord has a right to seek eviction of the tenant even for his *bona fide* requirement or his need to run a commercial enterprise.

21. Secondly, vide the verdict relied upon on behalf of the landlord during the course of the proceedings of this Court in “**BABU LAL VS. ATUL KUMAR & ANR.**” ILR (2014) III Delhi 2047, it has been categorically observed to the effect that:-

“12. The tenant's next contention was that the sale deed vesting ownership on the landlords was illegal and void. However, in matters of landlord-tenant relationship, the question whether the landlord has the title to the property pales into insignificance when the tenant shows that he has been paying rent to the eviction-petitioner. This Court is of the view that the relationship is established between the parties when the tenant has been paying rent to the landlord and the landlord has been collecting such rent in his own right and not on behalf of somebody. The learned counsel then argued that the property does not belong to the landlord but to the Government vide notification dated 18-12-1971 and the sale deed of the landlord is void; a fact, he contends, the learned SCJ-cum-RC failed to take due note of. This Court finds no credibility when such contentions are raised

without producing anything to ex facie substantiate the argument. Furthermore, the tenant cannot challenge the title of the landlord of the suit property when he is still in possession of the tenanted premises.”

22. Vide the verdict of the Hon’ble Supreme Court in “**Shanti Sharma and Ors. Vs. Ved Prabha and Ors.**” (1987) 4 SCC 193, it has been categorically observed to the effect that the meaning of the word “owner” in clause (e), i.e., 14(e) of the DRC Act, 1958 (as amended) is influenced and controlled by its context and the contention that ownership there under means absolute ownership in the land as well of the structure standing thereupon would be quite contrary to the reasonable operation of the statutory provision and that there existed a landlord and tenant relationship between the parties is undisputed and the factum that the tenanted premises in question is still in existence in which the tenant is an occupation coupled with proceedings in W.P. (C)7370/14 in which the respondent to the present petition was the petitioner thereof indicating clearly that vide order dated 10.05.2016 of this Court, therein the petitioner thereof, i.e., the respondent to the present petition, i.e., the landlord of the tenanted premises in question was held to be at liberty to avail appropriate legal remedies available to him in accordance with law in relation to the premises in question qua the completion of a construction of a 200 feet wide road in accordance with the regularization plan for construction of a Ring Road and infrastructural project. Apparently, in relation to

the said aspect, it would be for the State to seek action if any, against the landlord of the tenanted premises but the same *per se* confers no right on the tenant to contend that the landlord ceased to be the owner of the tenanted premises so long as the tenanted property continues to vest in the landlord, the owner of the same in terms of Section 14(1)(e) of the DRC Act, 1958 (as amended).

23. As also observed hereinabove, the contention of the landlord that he needed the premises *bona fide* for running a restaurant/bar-be-que, to augment his income has essentially to be accepted and as the averments on the record through the application seeking leave to defend and the reply thereof and the rejoinder of the tenant to the reply of the landlord and submissions made through the present proceedings indicating existence of an alternative accommodation available to the landlord for his *bona fide* need are not brought forth, the petition is thus held to be devoid of all merits and thus the present petition, i.e., RC.REV.307/2018 and the accompanying application CM.APPL.No.26996/18 are thus dismissed.

ANU MALHOTRA, J

SEPTEMBER 05, 2018/NC