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

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Pronounced on: 04.04.2018

+ RC.REV. 494/2016 & CM No.37792/2016

GOPAL KRISHNA SAWHNEY Petitioner

Through Mr.Satyam Thareja, Advocate

versus

VINOD KUMAR Respondent

Through Ms.Sonali Malhotra & Mr.Amit
Sanduja, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This revision petition is filed under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act') to impugn the order of eviction dated 20.5.2016 passed by the Additional Rent Controller (hereinafter referred to as 'the ARC').

2. The respondent/landlord filed an eviction petition against the tenant/petitioner under section 14(1)(e) read with section 25B of the DRC Act seeking eviction of the premises 308/12 Shahzada Bagh, Old Rohtak Road, Delhi comprising of three rooms, kitchen, toilet, bathroom with small courtyard on the ground floor. It was pleaded in the Eviction Petition that the premises was let out to the petitioner/tenant by the previous owner Shri Lachman Singh by an oral agreement for residential purposes only and the nature of premises is also residential. The respondent purchased the property vide sale deed dated 21.11.1997. It was also pleaded that the

respondent/landlord is residing in Rohini with his sister in a flat owned by her. Further, it was stated that the sister had asked the respondent to vacate the premises and that the respondent does not own any other property other than another property being 308/11, Shahzada Bagh, Old Rohtak Road, Delhi which is on rent to one Shri Bhupinder Singh Grewal. It was also pleaded that the respondent is not married on account of non-availability of accommodation.

3. The petitioner/tenant filed his application for leave to defend. The ARC vide his order dated 12.12.2005 noted that the issue as to whether the tenanted premises was let out for commercial purposes is an issue which will have to be gone into at the time of trial. Hence, leave to defend was granted to the petitioner. The petitioner thereafter filed his written statement.

4. Parties have led their evidence. The petitioner examined himself as RW-1 and led the evidence of Shri Jaswinder Singh RW-2 who is owner of premises 308/16, Shahzada Bagh, Daya Basti, Delhi who deposed that the said premises is being used for commercial purposes and the entire area is industrial/commercial area. Evidence of RW-3 Shri Ashok Kumar Singh, UDC, Industries Department, 419 FIE, Patparganj Industrial Area, Delhi-92 RW4 Shri Sita Ram, SS(O), Idgah Telephone Exchange, MTNL, RW-5 Shri Vijay Singh, Office Incharge, Factory Licensing Department, North Delhi Municipal Corporation was also led.

5. It may be noted that in the course of evidence the respondent/landlord moved an application under section 151 CPC stating that the demised premises were purchased by the respondent from its previous owner Shri Lachman Singh vide registered Sale Deed dated 21.11.1997 and that the premises was let out for residential purposes and the nature of the premises

is also residential. The applicant further pleaded that the entire contention in the written statement of the petitioner was that the premises was let out to the petitioner for commercial purpose. The applicant pleaded that the Supreme Court in *Satyawati Sharma (Dead) by LRs vs. Union of India, (2008) 5 SCC 287* has expanded the scope of 14(1)(e) of the DRC Act to include premises used for commercial purposes also. Hence, it was pleaded in the application that the plea of the petitioner regarding the demised premises being put to commercial use be ignored and the evidence of the petitioner be restricted accordingly as needless time is being spent in recording the evidence. However, the ARC by order dated 23.9.2014 did not accept the plea of the respondent. After completion of evidence the impugned order was passed.

6. A perusal of the impugned order would show that the ARC on the existence of the relationship of landlord and tenant concluded that the respondent is the owner of the premises and the relationship of landlord-tenant existed between the parties.

On the question as to whether the premises are required bona fide for his residence by the respondent and also on the issue whether there is sufficient alternative accommodation with the respondent, the ARC noted that the respondent is living in the premises of his sister and the suit premises is required urgently for his residence. The ARC noted the testimony of PW-1 the respondent who has reiterated the contents of the petition and had also withstood the cross-examination. The ARC also noted the evidence/cross-examination of RW-1 i.e. the petitioner, who clearly stated that he was not aware as to whether the respondent was residing with his sister or whether he was married or not. These facts were never denied by the petitioner. Further,

no clear evidence was placed on record to show that the respondent had any other accommodation. The ARC concluded that the respondent was not having adequate alternative accommodation. The ARC also concluded that the premises are required bona fide by the respondent for his own residence. The ARC also rejected the pleas of the petitioner that the premises were let out for commercial purposes and passed the necessary eviction order.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner has vehemently argued as follows:-

(i) It has been pleaded that the premises in question was a shed and that as per the Masterplan the area is designated as a commercial area and the property has to be used only for commercial purposes in view of section 14 and 29(2) of the DDA Act, 1957. Hence, the respondent cannot use the property as a residence, as claimed. It was admitted that this plea that the area falls in the commercial area as per the Masterplan was not taken before the ARC. It is pleaded that this fact can be raised, at this stage, being a question of law.

(ii) It is further pleaded that the eviction petition was filed in 2005 when the judgment of the Supreme Court in *Satyawati Sharma (Dead) by LRs vs. Union of India (supra)* had not been given and hence on that date the respondent could only seek eviction on the ground that the suit property had been let out for residential purpose. Hence, it is stated that a false plea was taken that the property has been let out for residential purpose.

(iii) It is further pleaded that the contention of the respondent is that he is not able to get married on account of paucity of accommodation. It was pleaded that the respondent is now around 63 years of age and that there can be no question of any requirement of marriage, at this age.

9. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222 described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available...”

Hence, this court has to test the order of the ARC as to whether it is according to law.

10. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (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:-

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(e) that the premises let for residential purpose 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 the landlord or such person has no other reasonably suitable residential accommodation.”

11. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

12. I will now deal with the first contention of learned counsel for the petitioner, namely, that the area in question is a commercial area where the suit property is located and can only be used for commercial purpose. Hence, it is pleaded that the requirements for bona fide residence cannot be

entertained inasmuch as such a user is contrary to the Masterplan and will be in violation of the provisions of the DDA Act. Admittedly, this plea has not been taken before the ARC and it is for the first time sought to be raised before this court. Petitioner has also filed in court an extract of the Delhi Masterplan dated August 1990 modified and corrected upto 7th September 2006 where it is claimed that the area Shahzada Bagh is stated to be part of an industrial estate.

13. In ***National Textile Corporation Limited vs. Naresh Kumar Badri Kumar Jagar and Others***, (2011) 12 SCC 695 the Supreme Court held as under:-

“12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide *Trojan & Co. v. Nagappa Chettiar* [AIR 1953 SC 235] , *State of Maharashtra v. Hindustan Construction Co. Ltd.* [(2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299] and *Kalyan Singh Chouhan v. C.P. Joshi* [(2011) 11 SCC 786.

18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a

issue unless factual foundation has been laid down in respect of the same.

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See *Sanghvi Reconditioners (P) Ltd. v. Union of India* [(2010) 2 SCC 733 : AIR 2010 SC 1089] and *Greater Mohali Area Development Authority v. Manju Jain* [(2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817]”

14. In *J. Jermans v. Aliammal* [(1999) 7 SCC 382] while dealing with a similar issue, the Supreme Court held as under:

“31. ... there is a fundamental difference between a case of raising additional ground based on the pleadings and the material available on record and a case of taking a new plea not borne out by the pleadings. In the former case no amendment of pleadings is required whereas in the latter it is necessary to amend the pleadings. ...

32. ... The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision.”

15. These facts which are now pleaded before this Court were available with the petitioner when the written statement was filed. In fact the eviction petition was filed in 2005 and has now been disposed of after 11 years in 2016. During this entire period no such plea was raised before the ARC. It is not as if a new fact is sought to be introduced which was not known or could not have been known to the petitioner, at that stage.

Further, it cannot be said that this plea now raised about the Master Plan is a pure question of law. The exact location of the premises and as to

whether it is covered by the description as stated in the Master Plan are issues which had to be determined by evidence led by the parties before the ARC. If necessary, appropriate revenue authorities would have to be summoned as witness to identify as to whether the area falls in a commercial area or not. The petitioner cannot, at this belated stage be permitted to rely upon additional evidence in this manner and introduce new pleas. Introduction of such a plea at this stage would cause grave prejudice to the respondent. The plea is accordingly rejected.

16. I may note that the only other plea that has been raised before this court is regarding the age of the respondent, namely, that he is now 62 years old and that no longer can be said to be of marriageable age. The plea is liable to be rejected completely as the issue of marriage would be a personal decision for the respondent to decide. His age cannot be a ground to deny him that choice if he were to so exercise the same.

17. I may note that the ARC has noted that no suggestion was put to the respondent/(PW-1) that the suit premises was let out for commercial purpose. In his cross PW-1 has denied that the property was let out for commercial purpose. Merely because the premises may have been used for commercial purpose does not mean that the same was let out for commercial purpose. Clearly, a finding of fact was recorded by the ARC that the property was originally let out for residential purpose. It is not for this court to re-appreciate the evidence. Given the nature of evidence on record, the findings recorded by the ARC are as per law. There are no reasons to interfere in the finding of fact recorded by the ARC.

18. Apart from the above, there is no other serious challenge to the findings recorded by the ARC. Accordingly, there is no merit in the present petition and the same is dismissed.

(JAYANT NATH)
JUDGE

APRIL 04, 2018
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