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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th April, 2018

\+ RC.REV. 631/2015 and CM 29172/2015

ROSHAN LAL JINDAL ..... Petitioner
Through: Mr. P.D. Gupta, Sr. Advocate with
Mr. Abhishek Gupta, Advocate

Versus

SURENDER KUMAR GUPTA ..... Respondent
Through: Mr. Varun Yadav, Advocate

\+ RC.REV. 632/2015 and CM 29174/2015

ATISH KUMAR & ANR. ..... Petitioners
Through: Mr. P.D. Gupta, Sr. Advocate with
Mr. Abhishek Gupta, Advocate

Versus

SURENDER KUMAR GUPTA ..... Respondent
Through: Mr. Varun Yadav, Advocate

\+ RC.REV. 633/2015 and CM 29176/2015

SARDAR GURU SHARAN SINGH ..... Petitioner
Through: Mr. P.D. Gupta, Sr. Advocate with
Mr. Abhishek Gupta, Advocate

Versus

SURENDER KUMAR GUPTA ..... Respondent
Through: Mr. Varun Yadav, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These petitions seek to assail the orders dated 05.06.2015 of the Additional Rent Controller passed on the files of the eviction petitions (E.No.58/13, E.No. 60/13 and E.No.59/13) whereby the applications of the petitioners for leave to contest were declined and the eviction orders passed against each petitioner.

2. The respondent in these three petitions is common, the petitioners being tenants in occupation of different portions in his property. The grounds on which the respondent sought eviction of these petitioners, as pleaded before the Rent Controller in the eviction petitions simultaneously presented, are identical. Each of these cases was considered, at the stage of request of the petitioners for grant of leave to contest simultaneously, such consideration having led to similar orders being passed on 05.06.2015. Since the contentions of the petitioners are identical and since they give rise to common questions of fact and law, these petitions have been heard together and are being decided by this common order.

3. The respondent had filed the cases on 02.07.2013 against the petitioners on the ground of *bonafide* need under Section 14(1)(e) of the Delhi Rent Control Act, 1958 in respect of the shops (nos.3, 2 and 4 respectively) forming part of property bearing no.919/7, Mehrauli, New Delhi-110 030 admittedly in their respective possession and use

as tenants, the case of the respondent (landlord), as pleaded in each of the three petitions, being that he needs the space forming part of the three shops for setting up his younger son Ashutosh Gupta in the business of mobiles and electronic showroom for which he does not have any other suitable alternative accommodation. The landlord (respondent) had, *inter alia*, pleaded that on the date of filing of the petition, he was a senior citizen (aged 65 years) suffering from various ailments, he being desirous of setting up his said younger son in such business with the intention that he would also assist the said son in running the said business and thereby would be "*fruitfully occupying himself*". He declared in the petitions that he does not own or possess any property other than the property referred to above, there consequently being no alternative premises available. Alongwith the eviction petitions site plan was filed which indicates the accommodation available at the ground floor of the property, it comprising of a portion which is residential in one half, the other half divided into four portions, which are the shops which have been in use of different tenants including the petitioner(s) herein, the fourth portion being a shop larger in size (12 ft x 26 ft.), there being no explanation whatsoever in the averments as to its current use.

4. The petitioners, on being served with the summons under Section 25 B of the Delhi Rent Control Act, 1958 filed applications for leave to contest, *inter alia*, stating that the landlord also owns and possesses another commercial property, it bearing no.1019/7, Mehrauli, New Delhi which, according to the petitioners (tenants) consists of four shops on the ground floor and commercial space in the

said basement, the basement portion having been let out for running of a gym by the landlord, the shops lying vacant and unutilized.

5. In the reply to the said applications for leave to contest, the landlord did not dispute ownership and control of the said other property, and while admitting that the basement is used as a gym, the contention that there are four shops lying vacant on the ground floor was disputed, the explanation being that the ground floor in the said property is used, for living, by *"some labour class people",* it being closed by a shutter.

6. The prime argument of the petitioners is that the Additional Rent Controller has ignored the fact that the landlord has withheld crucial information suppressing the factum about the use of the larger space in the property of which the tenanted premises form a part and also the other property in the basement of which the gym is run by a tenant, there being no explanation as to why the existence of the ground floor portion therein was not disclosed.

7. The respondent through counsel countered by saying that he (the landlord) has explained the position vis-à-vis all portions of both the properties in the reply to the applications for leave to contest and there was no obligation on him to disclose the details of the accommodation which were not available or not suitable. Reliance is placed on the ruling in *Mumtaz Begum and Ors. Vs. Mohd. Khan, RC(R) 78-79/2005* decided on 12.01.2010.

8. In the considered view of this court, a landlord approaching the court of the Rent Controller to seek an order of eviction on the ground of *bonafide* need must conduct himself *bonafide*. It is his obligation to

disclose upfront all relevant facts, such facts particularly concerning the properties that he owns or possesses or controls and as to their current use and if any of the portions of such properties is vacant, the reasons why the same do not fulfill the need for which he seeks eviction of the tenant against whom the eviction petition is brought.

9. Having regard to the averments in the eviction petitions, it is quite vivid that the respondent / landlord tried to create an impression that he being a senior citizen suffering from various ailments was not engaged in any gainful activity and his intention was to set up his younger son in some business, the objective being eventually to assist the said son and thereby engaging himself in some fruitful activity. In the eviction petitions, there is not even a remote reference to the use of the larger portion of the shop or the nature of the business run therein, not the least the involvement of the respondent / landlord himself. Crucially, the facts concerning the other property i.e. the property bearing no.1019/7, Mehrauli, New Delhi were conspicuously omitted. It was only when the petitioners (tenants) made a reference to the said property and the accommodation available therein, that the respondent landlord came with the disclosure conceding that the basement portion has been let out for running of a gym, also conceding the existence of space at the ground floor level which noticeably is not described as anything other than non-residential. A vague explanation that some labour class people are living in the said portion cannot be accepted on its face value.

10. In the above facts and circumstances, this court finds *prima facie* the respondent to have indulged in suppression of facts, crucial

details about the larger portion available within the property of which the tenanted portions are a part and another property which also seemingly has sufficient space meant for commercial use, having been withheld by the petitioners. Triable issues, thus, are found to have been raised.

11. The impugned orders, therefore, are set aside. The applications of the petitioners for leave to contest are granted. In the consequence, the proceedings arising out of the eviction cases stand revived on the file of the Rent Controller.

12. The parties are directed to appear before the Rent Controller for further proceedings on 14th May, 2018.

13. Needless to add, the petitioner(s) as the respondent(s) before the Rent Controller will be obliged to submit their respective written statements which they must do on the date fixed as above for first appearance.

14. The user / occupation charges paid by the petitioner(s) to the respondent shall be liable to be adjusted against the contractual terms for the period upto date and the balance refunded.

15. The petitions and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 12, 2018
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