

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

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**Reserved on: 18th December, 2018
Pronounced on: 08th January, 2019**

+ **RC.REV. 319/2018 and CM APPL.28108/2018**

THOMAS GERVASE & ANR

..... Petitioners

Through : Mr.Sanjay Mishra and Mr.Nitesh
Singla, Advocates.

versus

RAVIN MEHRA

..... Respondent

Through : Mr.Rajiv Garg, Mr.K.K.Aggarwal
and Mr.Aayush Agrawal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision petition is against an order dated 01.05.2018 passed by learned Senior Civil Judge-Rent Controller, North-West District, Rohini Courts, Delhi (the learned Trial Court) in RC No.50/2017 titled as *Ravin Mehra vs Thomas Gervase & Another*.

2. The respondent herein claiming to be an owner of the premises had instituted the petition for eviction on account of bonafide requirement under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act) in respect of MIG DDA Flat No.379, Ground Floor, Pocket R(U), Pitampura, Delhi – 110034 (subject property) on the following grounds:-

That the Petitioner is the owner of the premises bearing No.DDA Flat No. 379, Ground Floor, Pocket R(U), MIG, Pitam Pura Delhi-110034 and the same was let-out by the father of the petitioner jointly to the respondents for residential purpose at monthly rent of Rs1,000/- per month. No rent agreement was written between the parties Subsequently the rent was increased from time to time and the last rent @ Rs 2500/- , was paid by the respondent.

Sh. P. N. Mehra father of –the petitioner died on 08.02.2008. After the death of Sh. P.N. Mehra the suit property was transferred in the name of the petitioner vide conveyance Deed dated 16.01.2012, DDA and as such the petitioner became the absolute owner of the suit property.

After the death of Sh. P N Mehra respondent had attorned in favour of the petitioner. The respondent had paid a sum of Rs 30,000/- to the petitioner in August 2008 after the demise of the father of the petitioner in August 2008 as part payment of arrear of rent for 17 months @ Rs.2500/. Thereafter no payment towards rent has been made by the respondent to the petitioner till date.

It is submitted that presently the petitioner is residing at Pune and is working as General Manager Finance and Commercial with JBM MA Automotive Pvt. Ltd C-11/2 MIDC, Chakan Talegaon Road, Chakan District Pune-410510.

The petitioner, as per the retirement policy of the company has already attained, the retirement age of 58 years. The petitioner is about 60 or above and the petitioner is currently working on extension till 31.10.2017.

That the petitioner has filed the present eviction petition through his attorney Sh. Madhav Khanna' as he is not presently residing in Delhi and is working in Pune. The petitioner has authorized Sh.Madhav Khanna vide SPA dated 21.08.2015 to conduct the proceedings before this Hon'ble Court.

That the suit premises i.e. DDA Flat No. 379, Ground Floor, Pocket R(U), MIG, Pitam Pura Delhi-110034 under tenancy of the respondent is bonafidely required by the petitioner Sh. Ravin Mehra for his personal use to reside with his family after his extension period of service expires on 31.10.2017.

The petitioner has alongwith him, his wife and married daughter in. his family. One of the daughter of the petitioner had already expired. The other daughter of the petitioner is residing with her family in Faridabad Haryana and the petitioner wants to shift in ,suit premises from Puna so that he and his wife are near to his daughter and other close relatives during the last stage of their lives and are being looked after by their daughter in their old age.

That the petitioner, the owner has no any other vacant premises either- in Delhi or NCR to live and the suit property is the only premises which are required by the petitioner bonafiedly for his and family's personal' use as stated hereinabove.

3. The petitioners did not file any leave to defend application, but rather filed a reply to the eviction petition wherein the petitioners rather allege themselves to be absolute owners of the subject property. It was alleged they have purchased the subject property from the father of the

respondent for an amount of Rs.4.00 Lac, but since they were having only Rs.2.35 Lac at the relevant time so they paid the same and got executed a set of GPA, Affidavit, Receipt etc dated 24.02.1999 and 24.12.1999 from the father of respondent and promised to pay him the balance amount, but could not pay the same; but now are inclined to clear the same. It is alleged they had also paid Rs.30,000/- to the respondent after the death of his father and had further promised to pay full and final consideration amount only on the execution of final sale deed of the property. However, they have admitted the suit property was given to them, initially, on rent by the father of the respondent, but later they allegedly purchased in the manner stated above.

4. Admittedly, the petitioner have not filed any purchase documents viz. GPA, Agreement to Sell, Receipt etc before the learned Trial Court along with their reply to the petition. Admittedly they have not paid the entire consideration. Thus the sale transaction, if any, was never complete. Even today they are allegedly to pay balance amount of Rs.1.05 Lac towards alleged sale consideration which with interest may be huge sum.

5. The petitioners had filed on record various letters viz dealings between them and the DDA, copies of challans to say after the purchase of the property they have been paying the instalments to the DDA as also the house tax of the premises and have also relied upon a receipt dated 24.12.1999, Annexure -4, which give details of the amount they have paid to the father of the respondent viz. a sum of Rs.2.70 lac and promised to pay further sum of Rs.1.30 Lac at the time of the execution of the sale deed, which sum was never paid. On the other hand the

respondent's case is since he was stationed in Pune so whatever documents were sent by the DDA in the premises were taken over by the petitioners and they without any authority had started dealing with DDA on their own. He denied execution of any sale-purchase documents and alleges the payment of sum of Rs.30,000/- was only on account of arrears of rent.

6. In this scenario, let me see how the learned Trial Court has dealt with the contentions raised by the petitioners. Following paragraphs are relevant:-

"18. The respondents have claimed that they are the owner of the suit property in question. It is further claimed that they have purchased the tenanted suit premises for Rs. 4 lacs from the father of the petitioner and even a sum of Rs. 2,35,000/- was paid at that time about 20 years ago. It is further stated that all the construction work, electricity and water connections are in the name of respondent No.2. On the other hand same is vehemently denied by the petitioner.

19. In rent control legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. In M.M.Quasim Vs Manohar Lal Sharma [(1981) 3 SCC 36] it was observed by the Apex Court that an "ownerlandlord" can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own.

It was observed in Shanti Sharma Vs. Smt Ved Prabha [AIR 1987 SC 2028] that the term "owner" has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. The Act has been enacted for protection of the tenants. But, at the same time, it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds. Ordinarily, the concept of the ownership may be absolute ownership in the land as well as of the structure standing thereon. But in the modern context, where all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Government or the authorities constituted by the State. The legislature, when it used the term "owner" in s. 14(1)(e), did not think of ownership as absolute ownership. The meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. The object of the requirement contained in Clause (e), that the petitioner should be owner of the premises, is not to provide an additional ground to the tenant to delay the proceedings by simply denying ownership of the landlord of the premises and thereby putting him to proof by way of full fledged trial. The object is to ensure that the

provision is not misused by people having no legal right or interest in the premises. The proceedings under the Act cannot be converted and utilized by a tenant to prevent eviction merely on the ground that he seeks to cast doubt on the title of the property, which has been acquired, when there is really no one else claiming right to the property.

20. In the present case, the petitioner has placed on record a copy of allotment letter in favour of his late father Sh. Kanwal Nath Mehra and subsequent conveyance deed dated 16.01.2012 in favour of petitioner by the DDA. Further, in so called leave to defend application itself it is admitted by the respondents that initially suit property was given on rent to the respondents by the late father of petitioner at a monthly rent of Rs. 1000/- per month. Thus it is the admitted position that the respondents entered into the suit property as tenants. But they claimed that later they purchased the same from the late father of the petitioner. But no sale deed in this regard is placed on record by the respondents despite having sufficient opportunities to do so. In fact it is admitted by the respondents in their alleged leave to defend application that they even failed to pay whole of the sale consideration of Rs. 4 lacs. On the other hand the petitioner has placed on record the conveyance deed in his favour. In fact the respondents have denied such ownership of the petitioner for want of knowledge. Further, it is pertinent to note that so far the respondents did not take any steps to complete the alleged sale transaction in their favour. As such, such stand taken by the respondents appears to be an after thought. In any case, having regard to the copy of conveyance deed placed on record by the petitioner it is held that he is the owner of the suit property in question for the purpose of present petition.

21. On a bare perusal of the alleged leave to defend application it is clear that there is no averment at all disputing the bonafide requirement of the petitioner nor there is any averment regarding any alternative suitable accommodation available with the petitioner at Delhi.

22. In the judgment titled as Ragavendra Kumar v. Firm Prem Machinery [AIR 2000 S.C.534], the Hon'ble Supreme Court held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

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24. As already noted, it is submitted that the petitioner is residing at Pune at present and is working as General Manager in a Private Limited Company and is about to retire. As such after retirement, he requires the tenanted suit premises for his residence along with his wife. It is further stated that his daughter is residing nearby Delhi. It is further stated that the petitioner does not have any other residential property in or around Delhi except the tenanted suit premises. Both such facts are not disputed at all by the respondents. Therefore, in view of above mentioned position of law, it is held that the respondents do not raise any triable issue of such a nature that would disentitle the landlord from obtaining an order for the recovery of possession of the tenanted suit premises.

Re-let at higher rate of rent

25. It may also be noted at this stage that regarding the apprehension that petitioner with malafide intention wants to get vacated the tenanted suit property from the respondents and then to re-let the same to the new tenant for earning handsome amount, it was held by Hon'ble High Court of Delhi in Vinod Kumar Bhalla Vs. Sh. Nanak Singh [1982 (2) RCR (Rent) 715] that in all applications for leave to defend the common defence raised by almost all the tenants, is that the landlord wanted to enhance the rent or to sell the property after getting it vacated. It was observed by the High Court that such types of allegations are without any foundation and that after an order of eviction is passed under section 14 (1)(e), the tenant is granted six months time to vacate the premises and the landlord is required to occupy the same within two months and the landlord is further dis-entitled for re-letting or alienating the whole or any part of the premises within three years from the date of obtaining possession from the tenant. Thus, the landlord is not in a position either to sell or re-let the tenanted premises for a period of three years."

7. The only issue raised before me qua ownership has been duly answered by the learned Additional Rent Controller on the facts so brought before him. The petitioners even in this petition have not filed any title documents viz. GPA etc to show they had actually purchased the property from the late father of the respondent. Rather, admittedly, the petitioners have not paid the entire consideration and neither till date have filed any suit for specific performance of any alleged contract.

8. Admittedly, the property was converted into free-hold and a conveyance deed dated 16.01.2012 was executed in favour of the respondent, yet the petitioners slept over the matter and failed to file any suit for cancellation of the conveyance deed which the petitioners now allege was wrongly executed in favour of the respondent. Can they now file such suits? It appears to be doubtful.

9. Lastly it was argued since the petitioner are in possession of premises for more than 20 years hence are owners by adverse possession. This is a baseless argument. Admittedly the petitioners entered the premises as tenant. Their entry was never forceful. They rather failed to

assert their alleged ownership rights, legally by filing relevant suits etc., hence they cannot allege adverse possession.

10. Thus considering the submissions on record, I see no reason why I should differ from the decision of the learned Additional Rent Controller. The impugned order do not suffer from any illegality/infirmary and hence there is no reason to set it aside.

11. Accordingly, the petition is hereby dismissed being devoid of merit.

12. Pending application, if any, is also dismissed.

YOGESH KHANNA, J.

JANUARY 08, 2019

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