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

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Judgment delivered on: 01.10.2019

+ RC.REV. 501/2016 & CM APPL. 38520/2016

DR. ALOK BHANDARI & ANR.

..... Petitioners

versus

DEWAN CHAND

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Jugal Wadhwa, Mr. Rishabh Wadhwa and Mr. Raghav Goyal, Advocates

For the Respondent:

Ms. Sadhana Sharma, Advocate (RC REV. 501/2016)

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners who are owners/landlord of the subject property impugn order dated 21.07.2016 whereby leave to defend the eviction petition was granted to the respondent.

2. Subject eviction petition was filed by the respondents on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 seeking eviction from shop No. 2, H-4, Ground Floor, Main Market, Rajouri Garden, New Delhi-110027 more particularly as shown in red colour in the site plan annexed to the

eviction petition.

3. Apart from the Respondent, there are two other tenants in the subject property in two other shops and the Petitioners have filed similar eviction petitions against the other tenants on the ground of bonafide necessity.

4. Leave to defend the Eviction Petitions has been granted in all the three eviction petitions. Petitioners have impugned the orders granting leave to defend by three Revision Petitions.

5. Eviction petitions were filed by the two petitioners contending that they are owners of the subject property having 50% share each. Said property is constructed on the ground, First and second/*Barsati* floors.

6. It is contended that in the front portion, towards the main market, adjacent to the main entrance gate leading to the drive way, on the Ground Floor of the said property, there are three shops and all three shops are in occupation of the three separate tenants. Said three shops are the subject matter of the three eviction petitions.

7. It is contended that the entire property except the three shops and a portion measuring 30' x 12' on the ground floor behind the three tenanted shops is being used by the petitioners and their family members for residential purposes.

8. The rear portion measuring 30' x 12' behind the three shops is

being used by petitioner no. 1 as his professional clinic. It is contended that petitioner no. 1's family consists of his wife, one married son, daughter-in-law and one grown up daughter. He is occupying the rear portion of the ground floor which is being used by the residential purposes.

9. Family of petitioner no. 2 comprises of his wife, one unmarried son and one unmarried daughter and they are residing on the first floor of the property.

10. The second floor of the property, which is described as a Barsati/terrace, is in joint occupation of both the petitioners and is being used by the servants of the petitioners for residence and for storage purposes.

11. Further it is contended that petitioner no. 1 is constrained to run his clinic from a small area on the ground floor behind the tenanted shops and the clinic includes a reception/waiting area and a toilet for patients and their attendants and the clinic does not have a front entrance. The access to the clinic is from the driveway as the front of the building is occupied by the three tenants.

12. The driveway is also used by the petitioners and their family members for ingress and egress to their residential portions. It is contended that since the patients of petitioner no. 1 come throughout the day, the driveway to the clinic become very claustrophobic and additional space is required for the clinic of petitioner no. 1.

13. It is contended that son of petitioner no. 1 is an Engineer/MBA by qualification and is employed in a private company and his wife i.e. daughter-in-law of petitioner no. 1 is a qualified Architect by profession but is unemployed and wants to start her own professional practice. Petitioner no. 1's daughter is a qualified MBA and also unemployed and intends to start a Human Resources Consultancy firm. It is contended that petitioner no. 1 besides requiring the space for his clinic, requires space for his daughter-in-law as well as for his daughter to set up their professional ventures.

14. It is further contended in the eviction petition that petitioner no. 2 is an electrical engineer and a qualified MBA and had gone to Middle East for employment, however, because of recession, he came back to India in the year 2009 and remained unemployed till 2012. Thereafter he got a job in a private company but due to reasons beyond his control he lost that job also and since December 2013 is working as a free-lance consultant and requires the commercial space for setting up his own business.

15. It is further contended that son of petitioner no. 2 is also a qualified MBA and intends to start his own business. Besides, his daughter at the time of the filing of the eviction petition was doing B.D.S./Dental Studies and intended to open her dental clinic after completing her studies. It is contended that she has already completed the above B.D.S./Dental Studies in 2016 and requires space for opening her clinic.

16. In the eviction petition, it is thus contended that the petitioners require the tenanted premises for being to put to commercial use by both the petitioners and their children/daughters/daughter in law.

17. It is submitted by learned counsel for the petitioners that after getting the tenanted premises vacated, they want to share the same between the two petitioners and their families by adding some more space to the tenanted premises according to the building bye-laws.

18. The respondent/tenant, in his leave to defend application, has contended that the petitioners have concealed that they have alternative properties available i.e. a Middle-Income Group (MIG) Flat i.e. 26-A, Red MIG Flats, Rajouri Garden as also a flat in Dwarka.

19. During submission, it is contended on behalf of the Respondent that the Petitioners also own a commercial property bearing No. SD-729, 7th Floor in DLF Tower, 15, Shivaji Marg, New Delhi.

20. Further it is contended on behalf of the respondent that since the petitioners have not disclosed the said accommodation, the eviction petition is liable to fail.

21. It is contended on behalf of the respondent that the MIG flat though is a residential flat and is situated in a residential colony but as per the Master Plan 2021 it can be put to commercial use and further that in the adjoining properties commercial activities are being carried

on. Further, it is contended that none of the petitioners have occupied either the MIG flat or the flat at DLF Tower for commencing their business therefrom which shows that their need is not bonafide. It is also contended that the second floor of the subject property is available and can be put to commercial use.

22. Further it is contended that the requirement pleaded is for six persons to start their separate ventures and the accommodation in the possession of the three tenants is only three shops and it is not clear as to how they are going to use the tenanted premises after vacation, thus the need is not bonafide.

23. In response, it is contended on behalf of the petitioners that the MIG Flat situated at Rajouri Garden is a residential flat and is situated in a group housing society and is situated far away from the market and is not suitable for commercial purposes and as per the lease conditions of the property, it cannot be put to any use other than residential.

24. It is further contended that said property is in no manner comparable to the tenanted premises. The MIG Flat is a residential flat situated in a DDA colony whereas the tenanted shops are on the main road in the main Rajouri Garden Market. Further it is contended that the flat in Dwarka, which is owned by petitioner no. 2, is on the fourth floor in a residential Group Housing society and even that cannot be put to any commercial use.

25. With regard to the property at DLF Tower Shivaji Marg, it is the case of the petitioners that said property has always been on rent and is a source of income for the family of petitioner no. 2, who does not have a regular job and works on free-lance basis.

26. With regard to the second floor of the subject property, it is submitted that in the eviction petition itself, it is mentioned that the second floor of the property is being used for the residence of the servants of the petitioners as also for storage purposes.

27. Leave has been granted by the Rent Controller primarily on the ground that the need projected is for six persons and the tenanted shop is a small shop and it would be impractical to open six offices in the three shops.

28. Further, the Rent Controller has held that in residential premises a doctor's clinic is permissible and that Petitioner No. 1 is a government servant and Petitioner No. 2 is running his office of share broker and insurance agent from first floor and has also not mentioned where he is working freelance.

29. It is a settled position of law that a tenant cannot dictate to the landlord as to in what manner he has to use his property.¹ It is not in dispute that the two flats which are mentioned by the respondents are residential flats. Though, it is a different matter that the same are

¹ *Anil Bajaj & Another Versus Vinod Ahuja (2014) 15 SCC 610*

stated to be not owned by the petitioners. Even if assuming that the petitioners own the said two flats, one MIG flat and other flat in a Cooperative Group Housing Scheme at Dwarka, it is an admitted position that both the flats are residential properties.

30. The MIG flat at Rajouri Garden is a leasehold property which is leased by the DDA and the flat at Dwarka is a group housing society flat.

31. A tenant cannot dictate to a landlord that the landlord must use his property contrary to the conditions of the allotment/lease.

32. Further, the flat at Shivaji Marg is at a distance from Rajouri Garden Main Market i.e. the tenanted premises. Clearly there can be no comparison in terms of commercial value of a MIG flat at Rajouri Garden or a flat at Dwarka in a group housing society, vis-a-vis, a commercial shop in Main Market, Rajouri Garden.

33. The rationale of the rent controller that leave to defend is to be granted because it is not clear as to how six full-fledged offices can be opened in three shops, is erroneous.

34. Rent Controller cannot deny eviction from the tenanted premises solely on the ground that the need expressed is more as compared to availability. Merely because six persons state that they need to open their offices and only three shops are available is no ground to grant leave to defend and to refuse eviction even from three

shops. Rather, the Rent Controller should have been more sensitive to the scarcity of accommodation with the landlords.

35. It is for the landlord to decide as to how the premises is to be put to use after the same is vacated. Neither the tenant nor the court can dictate to the landlord. Landlord is the best judge of his requirement and suitability.

36. The Respondent/tenant has not been able to show that the need expressed by the petitioners is not bonafide or is artificially created. Rent Controller has clearly erred in holding that the need is artificially created because the residential flats are not put to commercial use and because one flat has been rented out for augmenting income.

37. Petitioner has clearly explained that the so-called alternative accommodation mentioned above cannot be compared or put to use for the purpose for which eviction has been sought.

38. Petitioner no. 1 is running his clinic on the rear portion of the tenanted shops. Petitioner no. 1 certainly cannot be expected to have part of his clinic here and part of his clinic somewhere else in another property.

39. With regard to the ground raised by the respondent that petitioner no. 1 is a government doctor and cannot run a private clinic, it is the case of the petitioners that petitioner no. 1 has already taken voluntarily retirement with effect from 31.01.2013 and is only doing

private practice. The order of the Directorate of Health Services dated 29.01.2013 has been placed on record which shows that the Petitioner No. 1 retired from the Government Services voluntarily with effect from 31.01.2013. It is also not in dispute that he is, in fact, running his clinic from the rear of the tenanted Shops.

40. Petitioners along with the other dependent family members are residing in the subject property and if they seek to open their commercial ventures from the subject property, the same cannot be denied. A tenant cannot dictate to the landlord that he must open his commercial venture from a place far away from his/her residence. The landlord is the best Judge of his requirement and has full opportunity to decide as to in what manner and how the property is to be used and which property is more suitable for his requirement.

41. Further, it has been consistently held that non-disclosure of accommodation which is neither suitable nor alternative to the tenanted premises does non-suit the petitioner.

42. With regard to the property at Shivaji Marg, it has been stated that it has always been rented and the rental from the said property is a source of income for the family of petitioner No. 2. Apart from this, it may be kept in mind that the need expressed is of six persons who require commercial properties. It cannot be fulfilled by one flat at Shivaji Marg. Even if the property at Shivaji Marg is considered as available, it would satisfy the requirement of one of the petitioners or

of only one dependant family member of one of the petitioners and would not satisfy the requirement of both the petitioners and their dependent family members.

43. Clearly, the need expressed by the petitioners is far in excess of the availability and Rent Controller should have been conscious of the need expressed and the properties available.

44. Even if assuming that all the properties as stated by the respondents were available, they would not still satisfy the requirement of the petitioners.

45. Second floor of the subject property, which is stated by the petitioners as being used for the residence of the servants, cannot be compared to a shop on the ground floor.

46. I am of the considered view that the affidavit in support of the leave to defend applications does not raise any triable issue and does not show any ground which would disentitle the petitioners from an order of eviction.

47. Even if the pleas with regard to the alternative accommodation were proved, it would not satisfy the requirement of the petitioners and their dependent family members.

48. In view of the above, the impugned order dated 21.07.2016 is unsustainable and is set aside. The leave to defend application of the Respondent is dismissed. Decree of eviction is passed in respect of

shop No. 2, H-4, Ground Floor, Main Market, Rajouri Garden, New Delhi-110027 more particularly as shown in red colour in the site plan annexed with the eviction petition. In terms of Section 14(7) of the Delhi Rent Control Act, the order shall not be executable for a period of six months.

49. Order *Dasti* under signatures of the Court Master.

OCTOBER 01, 2019
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SANJEEV SACHDEVA, J