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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 26/2017 & CM APPL Nos.2496-97/2017**
KAMAL SINGH MINHAS

..... Petitioner

Through : Mr.Ashish Mohan, Mr.Mohit Kumar,
Mr.Shaswat Panda, Advocates with
petitioner.

versus

BHAGAT SINGH & ANR

..... Respondents

Through : Mr.Sanjay Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **12.03.2019**

This revision petition challenges the order dated 02.08.2016 passed by the learned SCJ cum Rent Controller, District South East in petition no.5151/2016.

The respondent had filed a petition under Section 14(1)(e) of the DRC Act for eviction of the petitioner from the shop in premises no. 1862, Ravi Das Basti, Kotla Mubarakpur, New Delhi which was let out to him on 01.10.1995 and he is paying rent to respondent since then.

It is submitted by the respondent the premises is required by him bonafide for commercial purposes to run the business by his son who has done a professional course from ITI in trade of refrigeration and air conditioner. The petitioner does not have any other shop; has three sons; all of whom are unemployed and hence the eldest son

would support the petitioner by doing business from the premises. The petitioner himself is unemployed as had met with an accident and is presently 59 years old. The learned Trial Court allowed the eviction petition by dismissing the application for leave to defend.

The petitioner has challenged the eviction and has raised three issues which he says are triable issues *(a)* the respondent is not an owner of the premises and rather the Government is its owner and thus the learned ARC has no jurisdiction to deal with this matter; *(b)* various rooms are lying vacant in the property of respondent and *(c)* one adjoining shop was recently let out by the respondent.

Coming to issue *(a)* the learned counsel for the petitioner has referred to a document viz. a *jamabandi* of 1948-49 of Khasra no. 276 and 350 of village Kotla Mubarakpur, Delhi, issued per certificate dated 16.08.2016 by *Tehsildar*, Lajpat Nagar-IV, New Delhi.

The learned counsel for the petitioner refers to Section 3(a) of the DRC Act as under:

*“3. Act not to apply to certain premises.-
Nothing in this Act shall apply-
(a) To any premises belonging to the Government;
(Note: The word "or" omitted by Act 57 of 1988, sec.2
(w.e.f. 1-12-1988).
(b)-(d) xxxx.”*

It is argued by since the *Jamabandi* of the year 1948-49 reveal the land belongs to the Government, this petition would not be maintainable per Section 3(a) of the DRC Act. I am afraid the interpretation so given is fallacious. What section 3(a) of the DRC Act refers to is the *premises* belonging to the Government. The

premises is defined under Section 2(i) of the DRC Act as under:

“2. Definitions. –

In this Act, unless the context otherwise requires-

(a)-(h) xxxxx.

(i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes.-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house;

xxxxx”

Admittedly, the petitioner has not shown any document which could reveal the building constructed on the land thereof belongs to the Government. Admittedly the house tax receipts are being issued in the name of the respondent and the MCD would not have issued such bills in the name of respondent for property belonging to the Government.

Admittedly this issue was never raised by the petitioner in his application for leave to defend, hence was not decided by the learned ARC. Admittedly, the petitioner filed a review petition against the impugned order but withdrew it and now for the first time has raise this plea before this Court.

Admittedly the petitioner has taken the premises on rent in 1995 from the respondent and has been paying rent to him since then. The respondent has shown me a sale deed dated 25.01.1993 in respect of an adjoining shop no.1862/A which is a part of this very property. The said sale deed is duly registered by the Sub-Registrar, Delhi and

if such shop was on Government's land then Sub-Registrar ought not to have registered such sale deed. Moreover the petitioner could not file any alleged document which could reveal the premises fall in either of the Khasra's shown in *Jamabandi* of 1948-49. Rather the sale deed show the premises is in Khasra no. 272. Thus the plea taken by the petitioner for the first time before this Court is misconceived; not supported by law, hence needs to be rejected.

Qua contention *(b)* the learned counsel for the petitioner relied upon a *To-let* advertisement affixed on the rear side of the property for 1, 2 and 3 rooms, hence it was argued the respondent has in his possession the alternative accommodation viz. such vacant rooms. Admittedly the petitioner in his leave to defend has himself admitted a portion of the property is being used by the respondent as P.G. accommodation which he rents and it is his only source of income. The learned ARC has observed the advertisement of *To-let* cannot be for letting of the shop premises as *firstly* such To-let board/signage mentions 1 room, 2 rooms, 3 rooms etc. which show it is for P.G. accommodation purpose and *secondly* the said signage is not affixed on the shutter of the tenanted premises. There was nothing wrong in taking such a view by the learned ARC.

Qua contention *(c)* the re-letting of a shop is also denied by the respondents. Admittedly if an adjoining shop is re-let the petitioner must be aware to whom it is re-let and thus ought to have given the name of such tenant. The allegations hence is vague.

A bare perusal of the impugned order show it does not suffer from any infirmity or perversity. In *Sahu Basheshar Dayal Bankers &*

Anr. vs. Sujata R.Nath Decd. Thr. Lrs. 152(2008) DLT 18 the Court held:

“11. The revisional jurisdiction of the High Court under Section 25B(8) does not warrant that High Court should enter into merits of the case and re-appreciate the evidence so as to take different view on facts as if it were a Court of Appeal. The High Court is only required to test the order of the ARC on the touch stone “whether it is according to law or not.” ”

Thus the petition has no merit and is accordingly dismissed.

YOGESH KHANNA, J.

MARCH 12, 2019

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