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

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Decided on: 28.09.2021

+ RC.REV. 93/2021 & CM APPLs. 21132/2021 and 30177/2021

SH PARMOD KUMAR

.... Petitioner

versus

SH LALIT MOHAN

.....Respondent

+ RC.REV. 94/2021 & CM APPLs. 21203/2021 and 30250/2021

SH.ASHOK KUMAR

.... Petitioner

versus

SH LALIT MOHAN

.....Respondent

Through: Mr. Sanat Kumar, Senior Advocate with Mr. Sanjay Sharma, Advocate for petitioners.
Mr. Tanmaya Mehta, Mr. Sourabh Gupta, Mr. Abhay Raj Verma and Mr. Puneet Yadav, Advocates for respondent.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

The hearing was conducted through video conferencing.

1. These petitions impugn the eviction order dated 09.03.2021 passed by the learned Rent Controller, Tis Hazari Courts, Delhi directing the petitioners/tenants to vacate the commercial shops admeasuring 14x14 sq. ft. and 10 x 12 sq. ft on the ground floor and a room admeasuring 10x10 sq. ft. on the first floor, in property no.6, Alipur Road, Civil Lines, Delhi-110054. (hereinafter referred to as the

‘tenanted premises’).

2. The landlord has sought the aforesaid premises for the benefit of his dependent mother who desires to open a Yoga Centre, which would include the tenanted premises. She was 76 years of age when the petitions were filed; her husband passed-away in 2019. The opening of the Yoga Centre is for her livelihood. The grounds for *bonafide* need are spelt out in the eviction petition, *inter alia*, as under:

“...E. That the tenanted premises is bonafidely required to the Petitioner. It is apposite to mention herein that the father of the Petitioner had expired in the year 2019 and after his demise the mother of the Petitioner who is 76 years old leave alone behind him now she wants to open a Yoga Center for her livelihood.

F. That as submitted above in the current situation of Covid-19 pandemic when the Government and Doctors advised the people/public for safety measures especially for their physical fitness/exercise, however, due to the current situation of Covid-19 pandemic the people/public avoid the gym and prefer the Yoga for their health and physical exercise to save their lives from the pandemic, therefore, the mother of the Petitioner wants to start a yoga center for which she needs an area of 400-500 sq.yds. approximately. It is apposite to mention herein that the Petitioner has a total area of 900 sq. yds. at the property No.6 Alipur Road, Civil Lines, Delhi out of which 450 sq. yds. is a residential bungalow and remaining 450 sq. yds. is a commercial area containing four shops. It is also apposite to mention herein that in the above said 450 sq. yds., commercial area there are two shops under the tenancy of the Petitioner which are closed from last several years & rest two shops are lying vacant.

G. That as submitted in the foregoing para the shops in question is required to the mother of the Petitioner for starting the abovesaid Yoga center. The above said

Property along with the portion let out to the Respondent by the earlier owner/is most appropriate and suitable to the mother of the Petitioner for her Yoga Center because it is having adequate space. It shall not be out of place to mention herein that the above said property/premises in question is situated in the vicinity of the residence of the mother of the petitioner as she is residing at 8/8 Sri Ram Road, Civil Lines, Delhi-11 0054. It is pertinent to mention herein that the mother of the petitioner due to her old age cannot travel far, further no other like yoga center is available in the locality, furthermore the mother of the Petitioner does not have any similar alternate accommodation/place nearby her residence to suffice her needs/Yoga center...”

3. The eviction petition has further averred as under: -

“...I. That the Petitioner has noticed that the Respondent is running his separate businesses from different properties other than the premises in question. Further the premises in question was lying locked from last many years and now the Respondent entered into an agreement dated 21.01.2021 with some M/s K & M Garmenguardini with the intend to create sub tenancy in the shop in question under the name & style Gaurdini. The photographs of the shop in question are annexed herewith as Annexure- C.

J. That it is submitted that the respondent, who is in default of rent from last 8-9 years, have sufficient accommodation for him he does not require the tenanted premises in question, on the other hand, the tenanted premises is required bonafide by the Petitioner for her mother who wants to start a yoga center for her livelihood and the noble cause of public service...”

4. The tenants were not granted leave to defend as the learned Rent Controller did not find any triable issues in the application.

5. For being granted leave to defend, all that the tenant had to do was to aver in the application, with something in supporting material and not bald statements, to make out a triable issue -- that the mother was not dependent upon the landlord for accommodation, including the tenanted premises, for opening a yoga centre and/or that the landlord had alternate accommodation to meet her needs. The impugned order concludes that the tenant failed to do so.
6. The petitioners/tenants argue that the mother is not a yoga expert; that she is aged and bed-ridden, therefore, she is neither qualified nor competent to run a yoga centre. The impugned order has rejected the said argument and held, *inter alia*, as under: -

“...Therefore, the defence of the respondent that the mother of the petitioner is not yoga expert, is not tenable in law. As even if she is not experienced, she can run Yoga Centre, and there is no bar to it. The other defence of the respondent that the mother of the petitioner is 76 years old and bed ridden is also not tenable as the age of the person for whom the eviction is sought is totally immaterial. The respondent had not placed anything on record to show that mother of the petitioner is incapacitated. The legislative intent behind DRC Act was not to devoid the landlord of eviction when the same is required bonafidely. The defence with respect to age and experience of the mother of the petitioner are baseless, vague and meritless. Infact, a person at any age, can feel the need to become independent and to serve the society. There is no bar on the age at which one can start working...”

7. The learned Senior Advocate for the petitioners/tenants submits that:
- i) the tenants are occupying only a small portion of a 900 sq. yards property which has four shops in front, ii) the tenants being small-

time businessmen should not be displaced because their families are dependent upon the livelihood earned from the tenanted premises, which has been occupied by them for quite some time iii) their displacement would be of great inconvenience to the tenants, iv) the landlord's mother's desire to open a Yoga Centre is just a desire and the same has nothing to do with any public cause and v) a 'public cause' cannot outweigh the pressing needs of livelihood of the tenants. He refers to the dicta of the Supreme Court in *M.M. Quasim v. Manohar Lal Sharma and others* (1981) 3 SCC 36 which held *inter alia* as under:-

"...18. Before turning to the next topic, a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place. The learned judge of the first appellate court while upholding the claim of personal requirement of respondent I has observed as under:

"..."It is for the plaintiffs to decide whatever they think fit and proper. It is not for the defendant to suggest as to what they should do. The defendant has led evidence to show that the plaintiffs have got some more houses at Girdih.... The defendant appellant has also filed certified copy of judgment of one suit No. 47/73 which is Ext. only to show that plaintiffs have got a decree for eviction with respect to the other house at Giridih. I have already pointed out earlier that it is for the plaintiffs to decide which of the houses is suitable for them. It is not for the defendant to suggest that the house which will fall vacant in the near future is most suitable house for the plaintiffs".

This approach betrays a woeful lack of consciousness relatable to circumstances leading to enactment of Rent Acts in almost all States in the country. The time honoured

notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison d'être of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life-shelter-and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe. In

'The Sociology of Law', edited by Pat Carlen, the author examines the rent and rent legislation in England and Wales and observes as under:

"The prevailing paradigms of neo-classical economics and empiricist political theory have determined the conceptual insularity of law and legal institutions, with the result that they and other social events appear as random existences independent of their historical formation. The force of any theory of law must of course lie in its explanatory power, and this in turn depends on the wider image of social relations which produces it..."

8. The petitioners also rely upon *Charan Dass Duggal v. Brahma Nand* (1983) 1 SCC 301, which has held, *inter alia*, as under: -

*"...5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v. Bhai Mool Singh*, 1958 S. C. R. 1211). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision,*

the burden is on the landlord to establish his case affirmatively. If, as it appears in this case, the landlord is staying at Pathankot, that a house is purchased may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

...

7. The genesis of our procedural laws is to be traced to principles of natural justice. The principles amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and prove his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he had a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out

where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave... ”

9. The petitioner's also rely upon a decision of this court in *Khem Chand and Others v. Arjun Jain and Others* 2013(138) DRJ 154 which has held, *inter alia*, as under:-

“...49. In my considered opinion, it is necessary to emphasize that while applying the principle of “landlord is a best judge” in cases of residential requirement of the properties which are subject matter of commercial tenancy, the court should act cautiously and should not apply the said principal to such cases as liberally as applied to the residential premises. It has to be noted that the judgment passed in the case of Satyawati Sharma Vs. Union of India, AIR 2008 SC 3148, has merely held that the provisions of Section 14 (1) (e) of the DRC Act would be applicable in the cases of commercial premises in the same manner as applicable to the residential premises. However, the principle that the landlord is the best judge to decide his residential requirement and the courts have no business to interfere, cannot be applied as a matter of necessary consequence without application of the judicial mind. This is due to the reason that even though the ground of the eviction available to the landlord to evict the tenant for both residential and commercial premises is same, still the requirement of the landlord in both the cases may vary from case to case basis. While the question of eviction of residential premises is the one which affects the right to live which is the basic facet of right to life and human dignity as provided in Article 21, and thus the right of landlord to live at the place of his desired choice along with the family members should normally be respected as a part of basic human right and fundamental right to life. On the other hand, the eviction of the commercial premises affects the

right of earning and livelihood of one person who is a tenant. The said right to livelihood is equally the other facet of right to life as evident from the reading of Article 21 of the Constitution of India. Thus, in the event of adopting a summary procedure to evict the tenant who is earning his livelihood from a commercial place at the behest of the landlord and proceeding to affect the longstanding status quo of commercial tenancy on the ground of bonafide personal requirement, the court must take a precautionary approach. While deciding the question of genuineness of the need or availability of alternative accommodation, the court must apply its judicial mind rather than merely reiterating the theorem based principle that the landlord is the best judge to decide his need. In that way, the test for evaluating the eviction of commercial properties on account of bonafide need is slightly distinct and more stringent than that of the one relating to residential premises. The court should weigh the competing rights to livelihood of both the landlord and tenant and adopt a balanced approach. Where genuineness of the need or availability of the alternative commercial premises is doubtful, the court should postpone the said issue so that the tenant be granted an opportunity to contest the proceedings. Doing otherwise would be whittling down the entire policy behind the rent control legislation which is still the law for the time being in force...”

10. The learned Senior Advocate for the petitioners/tenants emphasizes that the need of the landlord has to be specific and not wishful or fanciful; that the landlord already has a built-up space of 450 sq. yards and an additional open courtyard which could be put to use for a Yoga Centre. Photographs of the premises were filed before the learned Rent Controller.
11. Essentially, the argument of the tenants is that the space available

with the landlord is sufficient for opening a yoga centre. The said argument is flawed because it assumes that the landlord/mother will/should convert the built-up residential portion in 450 sq. yards for commercial purposes. If it is the landlord's/mother's residential space, it may not be available for running a yoga centre. According to the landlord, i) it is the open space next to the residential portion -- along with the shops/tenanted premises in the front, which are to be amalgamated and made into an attractive and amenable open space for running a yoga centre; ii) of the four shops on the front, the landlord/landlady has already possession of two, while the other two are the subject matter of these petitions; iii) the eviction order is already in favour of the landlord, iv) once, the entire contiguous area is redone, more open space will be available and an access from the front side would make the proposed yoga centre prominent and attractive, thus making the proposed enterprise viable.

12. It is settled law that the tenant cannot dictate or instruct a landlord as to how and which property should be used for which purpose. The Supreme Court in *Sarla Ahuja v. United Insurance Company Ltd.* (1998) 8 SCC 119 held *inter alia* as under:

“ ...

The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the

landlord shows a prima facie case, it not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.
...”

13. It is the prerogative of the landlord to determine the suitability of the land/space available with him for the need espoused. This Court in *Sudesh Kumari Soni and Ors. V. Prabha Khanna and ors.*, RC.REV. 44/2004 held *inter alia* as under:

“ ...

24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement. In view of well settled law, I hold that accommodation available with the petitioner is insufficient as against total family members. Hence the

petitioner has made out a case under Section 14(1)(e) of Delhi Rent Control Act and is entitled for relief claimed.

... ”

14. *MM Quasim* supra holds that an alternative accommodation has to be shown in the application for leave to defend to make the issue triable. In the present case the built-up portion in 450 sq yds. is residential in nature. It is not commercial premises which is sought by the mother. So the said built-up portion is not an alternate space available with the landlord, therefore it does not raise a triable issue.
15. *Charan Das Duggal* supra holds that when premises are required for personal need, albeit absolute need is not to be satisfied in eviction proceedings, yet the landlord must affirmatively establish his case/need. In the present case, the impugned order has found that the landlord has established his case that this widowed mother has no commercial premises with herself or suitable alternate accommodation to start her enterprise. He had stated that his mother was dependent upon him for space for starting her commercial enterprise. Furthermore, the tenant cannot seek to question the aspirations of the dependent mother to better her personal circumstances by earning her own livelihood. She has lost her husband recently. It is plausible that her self-respect and dignity constrains her to be dependent upon her son financially. She may desire an independent source of earning. Her age does not daunt her. She may aspire to be financially independent and not a strain upon her son, friends, family and well-wishers. Her need is therefore not

fanciful or a mere desire. It is linked to her dignity and self-respect and livelihood. These rights of hers and of the landlord are as much to be safeguarded, as the right of livelihood of the tenant. However, the latter's right would come into consideration only in appropriate cases where availability of alternate accommodation is shown. The mother's living in a 'comfortable accommodation' can hardly be an impediment in her seeking to start any business, which besides being profitable enterprise would also serve a public cause of providing good health to people. The landlord has stated that post-Covid and the need for social distancing, yoga may now be preferred as compared to gyms, as the former provides each yoga student/practitioner ample distance and open space; therefore the premises may be most suitable to be developed as a yoga centre. A yoga centre cannot be run from two shops abutting a road. It needs an ambience, space and other amenities. The bonafide need has to be seen from the landlord's perspective or the plan as specified, and not merely in terms of shops or limited space. Otherwise the specified bonafide need will always be subject to the tenant's objections and dictation, which is not permissible in law.

16. The impugned order has rightly rejected arguments apropos the mother's lack of experience or technical expertise to run a yoga centre, as such same are not legal pre-requisites. Perhaps, the tenants are unable to fathom that a 76-year old lady can aspire to and can actually run a yoga centre. The law does not forbid her nor does it limit her aspirations. Neither can the tenant.

17. For the aforesaid reasons, the court is not persuaded to alter the

impugned order, it does not suffer from any infirmity. The petitions are without merit and are accordingly dismissed.

NAJMI WAZIRI, J

SEPTEMBER 28, 2021/rd

