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

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Decided on: 01.10.2021

+ RC.REV. 97/2021, CM APPL. 21911/2021 & CM APPL. 21912/2021

SHRI AJAY KUMAR & ORS.

.....Petitioners

Through: Mr. Naresh Thanai, Adv.

versus

SHRI DEVENDER SINGH & ANR.

.... Respondents

Through: Mr. Salman Khurshid, Sr. Adv. with
Mr. Prabhat Ranjan, Ms. Roshni
Anand and Ms. Shubhi Sharma,
Advs. for respondents/on caveat.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through video conferencing.

1. The petitioners-tenants impugn the order of eviction dated 05.04.2021 apropos premises no.71, Rajpura Village, Gurmandi, Delhi-07. The premises comprise tin-shed rooms as well as *khaprail* rooms with open courtyard admeasuring 82x49 ft. The premises were required for the dependent sons of the landlords.
2. The court is informed that Devender Singh has since passed away and his dependent son remains dependent. The tenants had raised various grounds in their application for the leave to defend. Leave has been declined. Among the various properties listed by the tenants, as being available to the landlords, only two are subject matter of this petition and are

strenuously argued, as being available to the landlords and that there was a triable issue apropos those properties. They are house no.2/26, Roop Nagar, Delhi and house no.72, village Rajpura, Delhi. Apropos these two properties, the impugned order has adjudicated as under:

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18. *The petitioners have categorically taken the plea that they do not have any other suitable premises for the business of their sons. In “Mohd. Ayub Vs Mukesh Chand”, (2012) 2 SCC 155 the Hon'ble Apex Court held as under:-*

"That the hardship appellants would suffer by not occupying their own premises would be far greater than the hardship the respondent would suffer by having moved out to another place. We are mindful of the fact that whenever the tenant is asked to move out of premises some hardship is inherent. We have noted that the respondent is in occupation of the premises for time. But in our opinion, in the facts of this case that circumstances can not be sole determinative factor."

The respondents have disclosed that the petitioners are having the following properties :-

- i) House no. 2/26, Roop Nagar, Delhi,*
- ii) House no. 3/62, Roop Nagar, Delhi*
- iii) House no. 72, Village Rajpura, Delhi,*
- iv) House no.176, Village Rajpura, Delhi,*
- v) Property no.186, Rajpura, Delhi.*

However the Petitioners have elaborately described the status of the above said properties as under :-

- a) House no. 2/26, Roop Nagar, Delhi -*

The Petitioners alongwith two other brothers were Co-Owners of the said property. It had been divided in two parts A and B. The Part A goes to the Petitioner no.1 and and the Part B goes the another brother namely Ravinder Singh. The Petitioner No.1 and his two marries sons

alongwith their families are residing in Part A. and the Top Floor of Part A in under tenancy. The four shops below are also devided among four brothers. The Petitioner no. 2 has already sold his shop with tenant, while the brother Rajinder is doing his work from his shop. And the shop in the share of petitioner no.1 is in occupation of his daughter-in-law and she is running a Homeopathy Clinic from the said shop.

b) House no.3/62, UGF, Roop Nagar, Delhi 110007

This was also a joint property and developed in colaboration with builder, where UGF goes to the share of petitioner no.2 and Top Floor goes to another brother Shri Rajender. Rest of the floors goes to the builder. The Petitioner no.2 is 56 years of age and he is residing at the UGF with his married son namely Narpinder Singh.

c) House no.72 and 176 Village Rajpura, Delhi.

These properties are jointly owned by four brothers and let out to different persons as tenant. The rental income is the only source of income of the petitioners. The said rent is distributed between all four brothers. The said two premises are neither available nor suited to start the business by the sons of the petitioners.

d) Property no.186, Rajpura, Delhi.

This property belongs to the wife of petitioner no.1 and occupied by different tenants and as such not available to the Petitioners.

Thus, the petitioners have specifically and categorically explained that these properties are not readily available with them to settle their respective sons. Further more according to the Petitioners it is most suitable property for starting the Computer and Networking

business by their sons in partnership.

Further, in Vidhya Dhari Bhagat Vs M/s Allahbad Law Journal Co. Ltd. the Hon'ble Supreme Court has held that "If the tenant is evicted under section 14 (1) (e) and the premises are not occupied by the Landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining the possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub section (1) of section 19 of the DRC Act or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bonafide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit under Section 19(2) of DRC Act.

Thus, if the respondents are residing/ doing business in the rented premises for long time then the petitioners can not be forced to remain out of their own premises even when they have genuine need of the same for starting business of their sons. And if the respondents have any apprehension that the petitioners will use the property otherwise then their rights are already secured under Section 19(2) of DRC Act.

19. The petitioners have further categorically contended that their sons namely Sanjay Singh and Narpinder Singh are sitting idle at home and they have to settle them. Considering the nature of our society, it can be presumed that the children are always dependent upon their parents. The parents also have duty towards their children to help them at the time of need. The respondents have failed to put forth any fact against the aforesaid contention of the petitioners. Thus, the petitioners have proved that the

rented premises are bonafidely required by them for starting of business of their respective sons.

20. In view of above mentioned considerations, facts and circumstances the respondents have failed to put-forth any triable issue. Therefore, I do not find merits in the Application to Leave to Defend moved by the Respondents and hence it is dismissed. In consequence of the same the Petition is allowed and the Respondents are directed to vacate the rented premises i.e. Premise No. 71, Rajpur Village, Gurmadi, Delhi-110007. It is hereby clarified that the Landlords/Petitioners shall not be entitled to obtain possession of the rented premises before the expiration of six months from the date of this order as per section 19(7) of DRC Act.”

3. Along with the leave to defend, the tenants had also filed a photograph of a board inviting tenants as PG. The same is reproduced hereunder:



4. The landlords have said that House no: 72 was jointly owned by four

brothers and the rental therefrom was their only source of livelihood, therefore, it was not available to the landlords as an alternate accommodation to be made available to the dependent sons. Furthermore, in terms of joint-ownership of four brothers, it would not be available exclusively for the benefit of sons of only two siblings viz. Devender Singh and Surender Singh. The rental income therefrom would be shared between the four siblings and reduction in said income by giving the property to the dependent sons jeopardizes their earnings. In effect, the said property was not available with the landlords at the time of filing of the eviction petition. Determination of the suitability of the said property is a prerogative of the landlords.

5. 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.

...”

6. Apropos house no.2/26, Roop Nagar, Delhi, the order has concluded that shop in the share of respondent no.1, is in the occupation of his daughter-in-law and she is running a homeopathic clinic from the said shop. The learned counsel for the tenants submits that the said premises is lying locked for some time and is not being put to use. The court is of the view that the said non-user of the property cannot be construed as not being occupied by the daughter-in-law. She may not be using it for a homeopathic clinic for some time but nevertheless, it is in her possession and the same is not available to the landlords for the benefit of their dependent sons.

7. 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.

...”

8. Evidently, the two properties indicated by the tenants are not available with the landlords to be given to their dependent sons. This court finds no reason to interfere with the impugned order. The petition is without merits. Accordingly it, along with pending applications, is dismissed.

9. At this stage, the learned counsel for the petitioners states that the petitioners have been living and using the premises for their livelihood for the past 40 years. He states that the petitioners-tenants seek some more time to make alternate arrangements and to vacate the premises, on such terms as may be fixed by the court.

10. The learned Senior Advocate for the respondents-landlords submits that the petitioners have already enjoyed the 6 months since the date of the eviction order, therefore, they had enough time to make alternate arrangements.

11. The learned counsel for the petitioners submits, upon instructions, that the premises shall be vacated by 30.04.2022. Let it be so done. The tenants shall vacate the premises on or before 30.04.2022, subject to payment of Rs.10,000/- per month as use and occupation charges, w.e.f. 05.10.2021. The monies shall be deposited on or before the 10th day of each Gregorian calendar month directly into the landlords' bank account, details of which shall be shared between the learned counsel for the parties. Any infraction in payments, either in quantum or by date, shall automatically be visited with costs of Rs.5,000/- per infraction. Two infractions would make the petitioners-tenants liable to be evicted from the premises right away.

12. Let affidavits of undertaking be filed within 2 weeks by all the petitioners, including their power of attorney holders, that they will abide by the terms of this agreement. If their affidavits of undertaking are not filed

within 2 weeks, it shall be deemed that there is no extension of time.

13. List for compliance on 23.11.2021.

NAJMI WAZIRI, J

OCTOBER 1, 2021

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