



2024 : DHC : 1122



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 07.02.2024**Judgment pronounced on: 15.02.2024*

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RC.REV. 130/2020

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RC.REV. 131/2020**KANTA GUPTA**

..... Petitioner

Through: Mr Hemant Kumar with Mr
Venkatesh Kumar and Mr Bhavishya
Mohaniya, Advs.

versus

GOVERDHAN DASS DAGA (DECEASED) THR LRS

..... Respondents

Through: Mr Ashok Chhaparia, Adv

CORAM:**JUSTICE GIRISH KATHPALIA****GIRISH KATHPALIA, J.:**

1. By way of these petitions, brought under proviso to Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”), the petitioner/landlord has challenged dismissal after full dress trials of the two eviction petitions under Section 14(1)(e) of the Act pertaining to two different portions (hereinafter referred to as “the subject premises”) on ground floor of the larger premises bearing No. 1779, Kucha Latto Shah, Dariba Kalan, Delhi. The factual and legal matrix being similar, these petitions are taken up together for disposal through this common judgment. On notice, the respondents/tenants entered appearance through counsel. I heard learned counsel for both sides and examined the trial court record.



2. Briefly stated, circumstances leading to the present petitions are as follows.

2.1 The petitioner, claiming herself to be the owner of ground floor (*of which subject premises are part*) and first floor of the said larger premises No. 1779, Kucha Latto Shah, Dariba Kalan, Delhi, by virtue of registered Sale Deed dated 06.06.1989, filed two eviction petitions, pleading that Shri Goverdhan Dass Daga, father of the respondents was inducted in the subject premises as a tenant and after his death, the respondents are using the subject premises for commercial purposes; that presently, son of the petitioner is running a small shop of *golgappa, papri* etc (snacks) and is also taking orders for catering in marriages; that the small shop from where son of petitioner is running his business is not sufficient for his work, so petitioner/landlord is in *bona fide* requirement of the subject premises to be used by her son; and that the petitioner/landlord has no other reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format, the respondents/tenants filed applications seeking leave to contest the eviction petitions on the grounds that the petitioner/landlord had concealed material facts by not correctly disclosing the accommodation available with her; that the petitioner/landlord is also in possession of third floor and fourth floor of the property no. 1778, Kucha Latto Shah, Dariba Kalan, Delhi, in addition to the said larger premises No. 1779; that one of the subject premises is being run by the respondents/tenants as a shop of electrical goods while the other



subject premises is being used as a godown of electrical goods; that according to the Sale Deed dated 06.06.1989, there were five tenants namely Ram Devi, Bhag Chand, N.K. Pandya, Gopal Bhargav and Prakash Chand in different portions on the ground floor of the said larger premises, all of whom had already vacated the respective portions under their occupancy; that in addition, the tenants namely Manikant and Nirmal Electric, who were occupying different portions on first floor of the larger premises also had vacated the portions under their respective occupancy; that besides, the petitioner/landlord also has concealed having one shop, one big hall, one godown and a basement in the said larger premises; that the vacant portions of the ground floor are lying locked and thus, the petitioner/landlord is in occupation of the entire first floor, second floor, third floor and fourth floor of the said larger premises and the same are lying locked; that accordingly, the entire building of the said larger premises is lying vacant and is available to the petitioner/landlord alongwith roof, so an illusory requirement has been set up by the petitioner/landlord, therefore, leave to contest deserves to be granted.

2.3 In replies to the applications for leave to contest, the petitioner/landlord vaguely pleaded thus: *“The alleged portions vacated by the tenants is not fit for the purpose of shop as the same are inside the property while the shop in possession of the respondent is in front portion and can be used as a shop and is being used as shop. As per own allegation of the respondents the third and fourth floor are constructed illegally therefore they can be demolished by the MCD and the use thereof can be*



deprived at any time. Property No. 1778 has been sold more than five years back in the year 2012”.

2.4 By way of orders dated 28.05.2018, the learned Additional Rent Controller after detailed discussion held that the petitioner/landlord appears to be concealing the material facts pertaining to the nature and extent of business of her son and availability of other premises, so *bona fide* requirement of the petitioner/landlord should be tested by way of trial. Accordingly, leave to contest was granted to the respondents/tenants and after full dress trial through completion of pleadings and recording of evidence adduced by both sides, the impugned eviction orders were passed, thereby dismissing both eviction petitions.

2.5 In the impugned eviction orders, the learned Additional Rent Controller after detailed discussions of pleadings and evidence arrived at the findings that the ownership of the petitioner/landlord over the subject premises and jural relationship of tenancy between the parties are not in dispute; that four tenants namely Ram Devi, Bhag Chand, N.K. Pandya and Prakash Chand on ground floor and two tenants namely Manikant and Nirmal Electric on first floor of the said larger premises have already vacated their respective portions, which were available to the petitioner and her son; that the petitioner/landlord during her cross examination stated that the said larger premises consist of ground floor, first floor, second floor and third floor while her son PW3 stated that the said premises consist of ground floor plus four floors, which is a vital contradiction and besides that, the



petitioner/landlord in the site plan Ex PW1/B has depicted only two floors; that similarly there are many vital contradictions in the statements of the petitioner/landlord and her son as regards presence of other tenants in the said larger premises and no document in that regard was filed; and that on the basis of pleadings and evidence, it also stood established that the petitioner/landlord has concealed correct description of the subject premises and the portions available with her. After meticulous examination of pleadings and evidence, the learned Additional Rent Controller held that the petitioner/landlord had failed to establish *bona fide* requirement with regard to the subject premises. As such, both eviction petitions were dismissed by way of orders impugned in the present petitions.

3. During final arguments, learned counsel for petitioner/landlord took me through the above record and contended that the impugned orders are not sustainable in the eyes of law as the petitioner/landlord had successfully established her cases under Section 14(1)(e) of the Act. It was submitted on behalf of petitioner/landlord that according to the testimony of PW1, the tenants Ram Devi and Prakash Chand vacated the portions in their respective possession in or about 1992 and 2013 respectively but the date, month or year, when the remaining tenants vacated the portions in their respective occupancy are not known. It was submitted by learned counsel for petitioner/landlord that the tenant Gopal Bhargav continued to be in tenancy even at the time of filing the eviction petition. Learned counsel for petitioner/landlord contended that although the facts pertaining to the remaining portions of the said larger premises were not disclosed in the



eviction petitions, but those facts were clearly brought out in the testimony of petitioner and her son, so there is no concealment.

4. On the other hand, learned counsel for respondents/tenants supported the impugned orders and contended that the revision petitions are totally devoid of merit. It was contended on behalf of respondents/tenants that the petitioner/landlord not only concealed the vital facts in the eviction petition, but also did not answer the questions properly in her cross examination.

5. At this stage, it would be apposite to briefly traverse through the legal position culled out of various judicial pronouncements, which should be guiding light for this court while exercising jurisdiction under proviso to Section 25B(8) of the Act.

5.1 By way of an amendment in the year 1976, Chapter IIIA was inserted into the Delhi Rent Control Act with retrospective effect from 01.12.1975 in order to stipulate summary trials pertaining to the eviction claims largely dealing with the situations where the landlord was in *bona fide* need of the tenanted accommodation. One such situation was already on the statute book in the form of Section 14(1)(e) of the Act and one more such situation was added by amendment of the year 1976 in the form of Section 14A. Subsequently, the amendment in the year 1988 added more such situations in the form of Section 14B to Section 14D of the Act. The broad scheme of Chapter IIIA precludes a tenant from contesting the eviction proceedings of those specific situations as a matter of right, unless the tenant obtains leave



to contest from the Controller; and if the leave is declined, an order of eviction would necessarily follow. The whole idea is that a landlord who *bona fide* requires the tenanted premises should not suffer for long, awaiting eviction, though at the same time, the tenant also must not be subjected to eviction like any other civil consequence without being afforded an effective opportunity to defend himself in such civil proceedings. The court has to cautiously and judiciously strike a fine balance between the right of the landlord to eviction through summary proceedings and right of the tenant to continue tenancy.

5.2 Notably, the provision under sub-section (8) of Section 25B of the Act places complete embargo on any appellate scrutiny of an order for recovery of possession of the tenanted premises passed by the Rent Controller in accordance with the summary procedure laid down under Section 25B. The underlying principle was to ensure expeditious remedy to the landlord who is in *bona fide* need of the tenanted premises. It is also significant to note that the proviso, enacted in Section 25B(8) of the Act to lift the blanket of scrutiny in a limited manner has to be understood and used in such a manner that it does not negate the legislative intendment of expeditious remedy in certain specific kind of cases.

5.3 A careful examination of the proviso to Section 25B(8) of the Act would show that it does not specifically use the term “revision”. But the provision read in its entirety shows that the power conferred under the said proviso is a revisional power, completely distinct from appellate power in



the sense that the appellate power is wide enough to afford the appellate court to scrutinize the entire case and arrive at fresh conclusion whereas the revisional power is quite restricted to superintendence and supervision aimed at ensuring that the subordinate courts and tribunals operate within the bounds of law. The proviso to Section 25B(8) of the Act confines the satisfaction of the High Court to the extent that the order impugned before it was passed by the Controller under Section 25B “in accordance to law”. It is trite that the power of revision conferred upon the High Court by the proviso to Section 25B(8) of the Act being in the nature of superintendence over the court of first adjudication on the decision making process, including compliance with the procedure laid down by law, the High Court cannot substitute and supplant its view over that of the court of the first adjudication by exercising parameters of appellate scrutiny. The High Court has a superintendence role only to the extent of satisfying itself on the process adopted. It is not permissible for the High Court in such proceedings to arrive at a finding of fact different from the one recorded by the Rent Controller, unless the findings of fact recorded by the Rent Controller were so unreasonable that no Rent Controller would have recorded the same on the material available.

6. The present cases revolve around the question as to whether the findings arrived at by the learned Additional Rent Controller with regard to the alleged concealment and consequently absence of *bona fide* requirement are sustainable in the eyes of law or not. In the case of ***Shiv Sarup Gupta vs Mahesh Chand Gupta***, (1999), 3SCR 1260, the Supreme Court held that the



High Court in such proceedings is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law and it is for the limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller is only unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available that the High Court can examine the matter. Keeping in mind that limited scope of the present proceedings, I have examined the entire record.

7. The core issue in the present cases being concealment of vital facts, it needs to be understood that not every failure to disclose facts amounts to concealment. It is non-disclosure of only the vital facts, which is tantamount to concealment. The test is as to whether the court would have allowed the petition or plaint, as the case may be, on the basis of incomplete facts, had the respondent or defendant, as the case may be, had not appeared or not contested the proceedings. In a case where the respondent/defendant on appearing before the court discloses certain vital facts which would non-suit the petitioner/plaintiff and which facts were not disclosed in the originally filed petition/plaint, it would be a case of concealment. Such concealment, being a fraud attempted on a court vitiates any order which could be obtained by the petitioner/plaintiff in such proceedings.

8. The requirement of tenanted premises by the landlord approaching the court under Section 14(1)(e) of the Act has to be *bona fide* requirement and not a mere fanciful desire or evil design to recover possession of the tenanted premises with an object to make unjust financial gains.



Concealment of vital facts is anathema to *bona fide*. In case, the landlord is found to have concealed vital facts, the requirement of tenanted premises projected by him cannot be accepted as a *bona fide* requirement.

9. In the present cases, the petitioner/landlord did not disclose in her eviction petitions, vital facts on the nature and expanse of business of her son and availability of a number of other premises from where her son could start or expand his business. Had the respondents/tenants failed to appear and/or failed to timely file applications for leave to contest, disclosing those vital facts, the eviction petitions would have been allowed. Merely because during trial, those vital facts came up before the court, it cannot be said that the petitioner/landlord had not concealed those facts in the eviction petitions.

10. As reflected from record, the petitioner/landlord in the eviction petitions pleaded that her son is engaged in selling *golgappa* and *chat papri* etc and has been taking catering orders for marriages for which he does not have sufficient place to be used as office. In order to establish *bona fide* requirement, the petitioner/landlord ought to have specifically pleaded and established by evidence the scale and expanse of business of her son, but the same was not done despite clear pleadings in the applications for leave to contest followed by the written statements as well as evidence.

11. Paragraph 8 of the eviction petitions to be filed under Section 14(1)(e) of the Act mandates the landlord to truly and completely disclose details of the accommodation available alongwith the site plan. In the eviction



petition, from which RC Rev 130/2020 arose, the petitioner disclosed the said accommodation in paragraph 8 as only one shop and in the eviction petition from, which RC Rev 131/2020 arose, the petitioner disclosed the said accommodation as only one godown. None of the portions of ground floor or first floor which were already vacated by other tenants was disclosed. The petitioner/landlord did not even disclose about availability of four floors in the said larger premises.

12. As regards availability of other premises including No. 1778, Kucha Latto Shah, Dariba Kalan, Delhi, as mentioned above, despite specific pleadings in applications for leave to contest and the written statements, the petitioner/landlord did not disclose the complete facts in replications. Even in cross examination, the petitioner/landlord was completely evasive as to when the other tenants vacated the portions in their respective possession and when the premises No. 1778, Kucha Latto Shah, Dariba Kalan, Delhi were sold away.

13. The eviction petitions having been filed in the year 2017, all these particulars were necessary to be pleaded and established in evidence in order to test the *bona fide* requirement projected by the petitioner/landlord by ascertaining as to whether those other premises were got vacated in proximity to the date of institution of eviction petitions.

14. It is not a case where the petitioner/landlord would disclose the remaining portions of the larger premises available but would plead that



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none of those portions is reasonably suitable for the purpose for which eviction from the subject premises is sought; in such a case, as per settled law, this court would not have directed the petitioner/landlord to use any of those alternate available premises instead of the subject premises. It is a case in which the petitioner/landlord did not at all disclose the other available premises.

15. In view of the aforesaid, I find no infirmity in the impugned orders, so the same are upheld and the revision petitions are dismissed.

**GIRISH
KATHPALIA**

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GIRISH KATHPALIA
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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 15, 2024/as