



2024:DHC:3381



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 26.04.2024
Judgment pronounced on: 30.04.2024

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RC.REV. 205/2019

ASHOK RANI

..... Petitioner

Through: Mr Gaurav Kumar, Adv.

versus

KEWAL ARORA

..... Respondent

Through: Mr. Ajay Sharma and Mr. Vipul Lamba,
Advocates**CORAM: JUSTICE GIRISH KATHPALIA****J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the landlord has assailed order passed by the learned Rent Controller, South-West District, New Delhi, whereby the respondent/tenant was granted leave to contest the eviction proceedings under Section 14(1)(e) of the Act. On service of notice, the respondent entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

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2.1 The petitioner, claiming herself to be the owner of the larger premises bearing no.1130, Som Bazar, Haibatpura, Najafgargh, New Delhi, which houses four shops including the one which is the subject premises herein, filed petition under Section 14(1)(e) of the Act, broadly pleading that originally in the year 1972-73, the subject premises were let out by her father to Shri Bishan Lal, after whose death, his widow Smt. Anju Bala inherited the tenancy but the subject premises remained locked during the period 1986-1988; that in the year 1992, by way of rent agreement dated 31.03.1992, father of the petitioner inducted Smt. Vidyawati, grandmother of the respondent as a tenant in the subject premises and after her death, the respondent acquired possession of the subject premises; that all four shops forming part of the said larger premises are in possession of different tenants; that the petitioner is in *bona fide* requirement of the subject premises for her two unmarried sons Gagan and Bunti, who are engaged in business of readymade garments on footpath and they have no alternate accommodation available; that earlier she had filed a suit for possession and damages against the respondent, but that suit was dismissed as withdrawn with liberty to file the present petition.

2.2 On service of summons in the prescribed format, respondent appeared before the Rent Controller and filed application for leave to contest the proceedings, pleading that his father Shri Kishan Lal had been inducted as a tenant in the subject premises by the father of the petitioner and after death of Shri Kishan Lal, he succeeded the tenancy of the subject



premises and started business of undergarments from there; that the petitioner has ample immovable properties available with her; that with regard to the said larger premises, the petitioner is also involved in several litigations against one Roshan Lal; that the petitioner has rented out one *chabutra* and unauthorized *khokha* (*platform and temporary kiosk*) which can be got vacated by her instead of seeking eviction of the respondent; that the petitioner has concealed material facts from the court.

2.3 The petitioner filed reply, denying the contents of the application for leave to contest and reaffirmed the petition contents. The petitioner specifically denied being engaged in several litigations with Roshan Lal, one of the tenants and also denied having let out any *chabutra* with unauthorized *khokha*. The petitioner contended that the application for leave to contest failed to raise any triable issue.

2.4 On the basis of the above rival pleadings, the learned Rent Controller passed the impugned order thereby granting the respondent leave to contest on the grounds that identity of the subject premises and measurement of the said larger premises remains in dispute; that ownership of the petitioner over the subject premises remains in dispute; that the *jural* relationship of tenancy between the parties remains in dispute; that neither any proposed business plan nor other details have been furnished by the petitioner as regards requirement of the subject premises for her sons; and that the availability of alternate accommodation with the petitioner remains in



dispute.

2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioner contended that the impugned order is not sustainable in the eyes of law as no triable issue has been raised by the respondent. It was pointed out by learned counsel for petitioner that despite the respondent's clear admission of landlord tenant relationship between the parties, the learned Rent Controller held that it was a triable issue. Learned counsel for petitioner placed reliance on judgment of coordinate benches of this court in the cases of ***Surender Singh vs Narender Kumar***, 2018 SCC OnLine Del 6871 and ***Vinod Kumar Aggarwal vs Ritu***, 2016 SCC OnLine Del 5720 and of the Supreme Court in the case of ***Abid-ul-Islam vs Inder Sain Dua***, (2022) 6 SCC 30.

4. On the other hand, learned counsel for respondent supported the impugned order and contended that it is a fit case to grant leave to contest on the grounds already mentioned in the impugned order.

5. To begin with, the pleadings of the respondent pertaining to the alleged *chabutra* and *khokha* are completely vague and the same are extracted verbatim below:

“7. The petitioner has further stated that they have rent out one chabutra and unauthorized khokha is their on their land. However, the respondent can get the shop vacated from the rent out chabutra or from the unauthorized khokha in the land of the



petitioner but intentionally to evict the respondent; the petitioner has filed the present eviction petition before this Hon'ble Court."

Although the above portion extracted from the application for leave to contest is not clearly decipherable, but it seems that the respondent claims through this portion that the petitioner has inducted a tenant in a platform and unauthorized kiosk in the said larger premises but instead of getting the same vacated, the petitioner has filed the present proceedings against the respondent. No other meaning can be deduced from the above extract. Although the petitioner in reply to the application denied having let out any platform or kiosk, in response to which the respondent adduced no material at all, the allegation in itself completely lacks merit. Even in a case where the landlord has inducted tenants in premises other than the subject premises, right of the landlord to decide as to which of the tenanted premises he wants to get vacated cannot be denied to him. So even if it is assumed that in the present case the petitioner had inducted some tenant in the platform and kiosk, it is complete discretion of the petitioner to decide as to whether he wants the subject premises to be vacated in preference over the said platform or kiosk. This can hardly be a triable issue.

6. On the aspects of identity of the subject premises and *jural* relationship of tenancy between the parties, the learned Rent Controller appears to have failed to notice that there is no dispute on these aspects. Neither the municipal number nor location of the subject premises nor even the correctness of the site plan thereof has been challenged by the



respondent in his application for leave to contest. As regards the *jural* relationship of tenancy, in paragraph 4 of the application for leave to contest, the respondent specifically pleaded as follows:

“4. Briefly, the father of the Respondent i.e. Shri Kishan Lal was the tenant of the father of the petitioner i.e. Late Shri Bahadur Singh. After the demise of Shri Kishan Lal the tenancy devolved upon the legal heirs i.e. Shri Kewal Arora the Respondent herein who started doing the business of undergarments from the Shop.”

Therefore, on these two aspects there was no dispute and consequently, no triable issue. The impugned order in this regard is completely inconsonant with the pleadings.

7. So far as the issue of availability of reasonably suitable alternate accommodation, which according to the learned Rent Controller raised a triable issue, again it seems that the rival pleadings were missed out. What to say of placing on record some reliable material on this aspect, the respondent did not even plead specific particulars of any reasonably suitable alternate accommodation available with the petitioner. On the other hand, the petitioner specifically pleaded that there are four shops including the subject premises in the said larger premises and all those four shops are occupied by different tenants, so not available with her.

8. Next ground raised by the respondent seeking leave to contest is that ownership of the petitioner over the subject premises is a subject matter of several litigations with one Roshan Lal. In response, the petitioner clarified



that Roshan Lal is one of the tenants and there is no ownership litigation between them. Despite that, the respondent brought no material on record in support of his claim.

9. Moreover, the respondent having admitted the *jural* relationship of tenancy between the parties as described above, was estopped from challenging ownership of the petitioner over the subject premises. It is trite that under Section 116 of the Evidence Act, the lessee is estopped from denying the title of the lessor during the continuance of tenancy. So long as the tenant has not surrendered possession of the tenanted premises, he cannot dispute the title of the landlord. The principle underlying is that a tenant who could not have got possession of the tenanted premises but for his contract of tenancy admitting right of the landlord, cannot be allowed to dispute title of the landlord after taking undue advantage of possession. Reference in this regard can be drawn from the judgments in the cases titled: *Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani*, 191 (2012) DLT 594 and *Ambika Savaria vs Sanjay Sharma*, Civil Appeal No.7360/2016, decided by the Supreme Court on 09.08.2016.

10. In the impugned order, the learned Rent Controller also opined that non disclosure of exact business plans of petitioner's sons constitutes a triable issue. But that is not correct legal position. In the eviction petition or even at any subsequent stage, the landlord need not meticulously disclose the exact business plans. The only requirement is that the eviction petitioner



must plead the purpose for which the tenanted premises are required to be vacated.

11. It is practically not possible for the landlord to disclose in the litigation the exact business plans. In view of the very nature of the concept of business, the plans can never be static and they keep changing and evolving in the face of changing circumstances and market conditions. The landlord cannot be expected to disclose if he would commence business of a particular nature or a trading of a particular commodity or services from the tenanted premises subsequent to getting the same vacated. It is a matter of common awareness that tenancy litigation in this country takes number of years and at times even more than decade to fructify into an eviction order, during which period the market conditions may not remain same.

12. In the present case, there is no specific denial that sons of petitioner are engaged in sale of readymade garments from footpath and have no alternate accommodation for that purpose. The respondent has not come up with even a shred of reliable material to show otherwise. In such circumstances, it cannot said that requirement of the subject premises set up by the petitioner for business of her sons is not *bona fide* requirement.

13. I am unable to find any triable issue in the present case. Therefore, the impugned order is set aside and the application of the respondent for leave to contest is dismissed.



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14. Consequently, eviction order is passed holding the petitioner entitled to recover possession of the subject premises which is a shop forming part of the larger premises bearing no.1130, Som Bazar, Haibatpura, Najafgargh, New Delhi, depicted in red colour in the site plan annexed with the eviction petition.

15. However, in view of Section 14(7) of the Act, this order of recovery of the possession of the subject premises shall not be executed before expiration of six months from the date hereof.

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(JUDGE)**

APRIL 30, 2024/ry