



2024:DHC:1193



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 08.02.2024
Judgment pronounced on: 16.02.2024

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RC.REV. 233/2023**MITHAN LAL SINGHAL****..... Petitioner****Through: Ms Pankhuri Shrivastava, Adv.****versus****PANCHAYATI DHARAMSHALA TRUST****..... Respondent****Through: Mr Sandeep Kumar, Adv.****CORAM:****JUSTICE GIRISH KATHPALIA****GIRISH KATHPALIA, J.:**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”), the petitioner/tenant has assailed order dated 29.05.2023 of the Additional Rent Controller Delhi, whereby application of the present petitioner for leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed and consequently, eviction order against the present petitioner was passed with respect to shop no. 2 (hereinafter referred to as “the subject premises”) on ground floor for the larger premises bearing no.1716/125, Shanti Nagar, Main Road, Tri Nagar, Delhi. On service of notice, the present respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

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2. Briefly stated, rival factual matrix and circumstances relevant for present purposes are extracted from record below.

2.1 The present respondent trust, claiming itself to be the owner and landlord of the said larger premises no.1716/125, Shanti Nagar, Main Road, Tri Nagar, Delhi (*of which the subject premises are a part*), filed an eviction petition through its President against the present petitioner, pleading as follows. The present petitioner was inducted as a tenant in the subject premises for commercial purposes and has been carrying out his business from there for past about 40 years and the last paid rent was Rs.200/- per month, excluding electricity and other charges. The said larger premises is a two storey building, constructed on an area of 200 sq. yards and it has three shops on front side and a big hall on the rear side. The first floor of the said larger premises consists of two halls, which the present respondent lends on license basis to its clients for various public and personal functions. In the front portion on the ground floor of the said larger premises, there are three shops, out of which the subject premises is the middle shop and one of the corner shops is under tenancy of another person while the third shop is in occupation of the present respondent. The present respondent is using the said third shop to maintain office of the trust, to keep its records/accounts, to entertain its clients, to conduct meetings of trustees and to store the articles like utensils, chairs, furniture, beddings, loud speakers and tent material etc. The present respondent is facing space crunch in the said third shop and cannot shift to the rear portion or the upper floors of the said larger premises as that would cause substantial inconvenience to the trustees and clients of



the respondent trust. Therefore, the present respondent has *bona fide* requirement of the subject premises and there is no reasonably suitable alternate premises available to the present respondent.

2.2 On service of summons in the prescribed format, the present petitioner/tenant entered appearance through counsel and filed an application with an affidavit seeking leave to contest the proceedings. In the said affidavit, the present petitioner did not dispute the ownership of the present respondent over the subject premises and the *jural* relationship of tenancy between the parties. The present petitioner in the said affidavit testified that his father-in-law Sh. Har Swaroop Gupta was a former member of the respondent trust and invested in the trust, so the subject premises were let out to the petitioner; that later on, the petitioner became member of the respondent trust and worked on various posts of office bearers but was unceremoniously removed from membership of the trust after which the trustees filed these proceedings. The present petitioner further testified in the said affidavit that the present respondent admittedly has two more shops on the ground floor of the said larger premises, so the present petitioner who has been running his shop from subject premises for 46 years ought not to be evicted. Besides, the present respondent also has available area in the middle of the ground floor of the said larger premises, which can be utilized by it. Thus, the requirement of the subject premises as projected by the present respondent being not *bona fide* and alternate space being available, the application for leave to contest deserved to be allowed.

2.3 In reply to the application for leave to contest, the present respondent



through a counter-affidavit denied the contents of the application for leave to contest and reiterated the contents of the eviction petition. The present respondent in the said counter-affidavit denied having carried out any secret meeting or having removed the present petitioner from membership of the trust and specifically testified that the present petitioner continues to be the member of the trust and reiterated that the present petitioner had categorically admitted the *jural* relationship of tenancy between the parties. The present respondent in the said counter-affidavit reiterated circumstances pertaining to paucity of space in the shop under its occupancy and clarified that the area in the middle of the ground floor of the said larger premises being an open area, cannot be put to use.

2.4 Against the backdrop of above rival pleadings on affidavits, the learned Additional Rent Controller heard both sides and passed the impugned eviction order, holding that no triable issue was raised by the present petitioner. The learned Additional Rent Controller in the impugned order held that since one of the said three shops is already occupied by another tenant, the same cannot be treated as premises available to the present respondent; that the shop already being used by the present respondent has been shown to be not sufficient; that the space in the middle of the ground floor is an open area as depicted in the photographs, so the same cannot be used as a store or a office; that the halls on the first floor of the said larger premises being the source of earning for the present respondent trust cannot be used for the purposes of storage or office.

2.5 Hence, the present revision petition.



3. As reflected from record of the present proceedings, on 17.08.2023 in the course of preliminary hearing, after some arguments, learned counsel for the present petitioner sought adjournment to obtain instructions of his client as regards additional time required by him to vacate the subject premises. On the next two dates, the matter could not reach before the learned predecessor bench. Thereafter, on 31.10.2023 before the predecessor bench learned counsel for the present petitioner submitted that her client is not agreeable to seek time to vacate the subject premises. That being so, the predecessor bench posted the matter for final arguments. I heard the final arguments. During final arguments, learned counsel for the present petitioner simply reiterated the above mentioned factual matrix and contended that the present petitioner deserves leave to contest because the present respondent can always use the other property available to it. On the other hand, learned counsel for respondent/landlord took me through the impugned order, especially paragraph 8 thereof and contended that no triable issue has been raised on behalf of the present petitioner.

4. 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.

4.1 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.

4.2 At the stage of seeking leave to contest, it is sufficient if the tenant makes out a case by disclosing such facts as would disentitle the landlord from obtaining an eviction order. At the stage of seeking leave to contest, the tenant is not required to establish such a strong case that would non-suit the landlord. At the stage of seeking leave to contest, the test to be applied is as to whether the facts disclosed in the affidavit of the tenant *prima facie* show that the landlord would be disentitled from obtaining the eviction order and not that the defence may fail in the end. At the same time, the court also



has to be conscious that a leave to contest cannot be granted for mere asking or in a routine manner, as that would defeat the object behind Chapter IIIA of the Act. It is only when the pleas and contentions raised by the tenant in the application seeking leave to contest make out a triable issue and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth through cross-examination of witnesses that leave to contest must be granted. Each case has to be decided on its merits and not on the basis of any generalized suppositions. The court also cannot ignore a situation where the case set up by the tenant has been so set up with the sole object of protracting the proceedings so as to lead to the landlord giving up in frustration, which would in turn frustrate the process of law. Where the tenant seeks leave to contest, pleading anything and everything, pulled out of thin air and claims to have raised a *prima facie* case, the court is under a duty to read between the lines so as to ensure justice to the process established by law.

4.3 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.



4.4 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.

4.5 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.

5. Falling back to the present case, as mentioned above, the ownership of the present respondent over the subject premises and *jural* relationship of tenancy between the parties is not in dispute. In his application for leave to contest, the present petitioner testified that his father-in-law was founder trustee of the present respondent and later on he also was inducted as a member, but the trustees of the present respondent surreptitiously expelled him from membership. Although, in response the present respondent clarified that the present petitioner continues to be member of the trust, but in view of categorical factual matrix pleaded and testified by both sides, the *jural* relationship of tenancy between the parties remains admitted. The issue as to whether the present petitioner was expelled from membership and if so, the legality thereof, is completely beyond the domain of relevance to the present *lis*.

6. In the case of ***Sarla Ahuja vs United India Insurance Co. Ltd.*** (1998) 8 SCC 119, the Supreme Court held that the Rent Controller shall not proceed on the assumption that the requirement set up by the landlord for occupation of the tenanted premises is not *bona fide*; and that the principle to be kept in mind is that the tenant is not to dictate terms to the landlord as



to how the property could be utilized and how the landlord has to adjust himself. As observed in the case of ***John Impex (P) Ltd. vs Dr Surender Singh & Ors***, 135 (2006) DLT 265, it has to be kept in mind that the landlord is the best judge of his requirement and cannot be dictated by the tenant, terms on which the landlord should live and “*the requirement of law is not that every desire of the landlord has to be looked at with suspicion and the matter proved beyond reasonable doubt applying the test of criminal jurisprudence*”. In the cases of ***Prativa Devi (Smt.) vs T.V. Krishnan***, (1996) 5 SCC 353; and ***Ragavendra Kumar vs Firm Prem Machinery & Company***, (2000) 1 SCC 679, the Supreme Court held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live.

7. Then comes the argument on behalf of the present petitioner about availability of alternate accommodation in the form of the portion in middle of the ground floor and the halls available on the first floor of the said larger premises. As mentioned above, on the basis of material on record the learned Additional Rent Controller arrived at the findings that the said portion in the middle of the ground floor being an open area cannot be used for the purposes of storage or office, which is the primary requirement for the present respondent. As further mentioned above, the learned Additional Rent Controller also took a view that it would be unjust to expect the present respondent to use the halls on the first floor of the said larger premises because those halls are lent out to the clients for holding their personal and public functions, so the same are the only source of earning for the present respondent. Neither of these findings can be held to be perverse or of such a



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nature that no reasonable person with objectivity would have arrived at the same. I am in complete agreement with the learned Additional Rent Controller that the present petitioner has failed to set up any triable issue.

8. In view of above discussion, I am unable to find any infirmity in the impugned order, so the same is upheld and the revision petition is dismissed.

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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 16, 2024/RV