



2024 : DHC : 4010



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 09.05.2024
Judgment pronounced on: 17.05.2024

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RC.REV. 274/2023 & CM APPL. 51645/2023**VANDANA GUPTA**

..... Petitioner

Through: Ms Shalini Kapoor and Ms
Divyanshi Saxena, Adv with
petitioner in person.

versus

SURENDER KUMAR SINCE DECEASED THR LRS

..... Respondents

Through: Mr Amarnath Saini, Ms Neelam, Mr
Karan Gupta, Ms Sarita Kumari, Md.
Sufiyan and Mr Rohit Singh, Adv.

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, 1958, the petitioner/landlord has assailed the order passed by learned Additional Rent Controller, Central District, 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/tenant entered appearance through counsel. I heard learned counsel for both sides.

RC.REV. 274/2023

Page 1 of 8 pages

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

2.1 The petitioner, claiming himself to be the owner of shop bearing no. 2063, Ground Floor, Main Road, Bazar Sita Ram, Delhi (hereinafter referred to as “the subject premises”), filed eviction petition pertaining to the same against the respondent/tenant under Section 14(1)(e) of the Act, broadly pleading that the respondent was inducted as a tenant in the subject premises by the erstwhile owners and subsequent to purchase of the subject premises by the petitioner, the tenancy of the respondent in the subject premises continued on the same terms; that despite being informed about the said change of ownership of the subject premises by way of registered sale deed, the respondent stopped paying rent and became a habitual defaulter w.e.f. 20.05.2011; that the subject premises are required *bona fide* by the petitioner for her husband to start his business of sale of computer stationery and allied products including gift items, for which the petitioner and her family members have no other reasonably suitable alternate accommodation; that the entire first floor and second floor above the subject premises are under tenancy of an old tenant; that the petitioner and her family are residing on the first floor of property no.2064-2071, Bazar Sita Ram, Delhi, which property is owned by petitioner’s husband and on ground floor of the said property, the petitioner is running her business of sale of iron sheets under the name and style M/s Ashavan Steel Corporation and adjoining the said shop is a garage, which is used by petitioner and her family for parking their car and two wheeler scooter; that the shop and



godown in the premises no. 2064-2071 are occupied by an old tenant namely Fizzers Foods & Beverages Pvt. Ltd. and a tenancy litigation is pending between the said tenant and petitioner's husband; that earlier petitioner's husband was employed as part time salesman on daily basis with Balaji Steel Traders in Naraina, Loha Mandi, Delhi but was thrown out of the job in June 2017, after which petitioner is the sole earning member for entire family.

2.2 On service of summons in the prescribed format, the respondent appeared before the learned Additional Rent Controller and filed an application for leave to contest the proceedings, broadly pleading that the property no.2064-2071, owned by husband of petitioner, consists of seven shops on ground floor, all of which are occupied by petitioner's husband; that on the rear side of the subject premises exists a big room occupied by the petitioner; that the petitioner has concealed the accommodation actually available with her and site plan filed by her is incorrect; that husband of petitioner is not unemployed and is running the business of tin and iron sheets/articles, using rear portion of the property no.2064-2071 as godown; that son of the petitioner is only 18 years old, so cannot be expected to own a motorbike or park the same in the garage; that even if two out of seven shops in the property no.2064-2071 are used for parking the vehicles, remaining five shops and one shop on rear side would remain vacant; that the entire first and second floor above the subject premises are occupied by petitioner and her family and not by any tenant; that all seven shops in property no.2064-2071 are occupied by petitioner's husband for his



business and there is no tenant in the same; that these aspects raise triable issues so leave to contest ought to be granted.

2.3 The petitioner filed reply to the application for leave to contest denying the pleadings of the respondent and reaffirming the petition contents. In the said reply, the petitioner also offered that the respondent may shift from the subject premises to the portion behind the same at his own peril.

2.4 After hearing both sides, learned Additional Rent Controller passed the impugned order granting the respondent leave to contest. In the impugned order, the learned Additional Rent Controller accepted all but one contentions of the petitioner on factual as well as legal aspects. It is only on one aspect that the learned Additional Rent Controller allowed the leave to contest and that aspect was crystallized in paragraph 23 of the impugned order. That being so, it is only paragraph 23 of the impugned order which has been sought to be tested in these proceedings.

2.5 Hence, the present petition.

3. During final arguments, learned counsel for both sides confined themselves to paragraph 23 of the impugned order, which is the basis of grant of leave to contest, as mentioned above. In the said paragraph 23, broadly speaking the learned Additional Rent Controller accepted the contention of learned counsel for respondent that the garage in property



no.2064-2071 which is owned by husband of the petitioner can be used by him as a shop and the vehicles can be parked elsewhere outside, so in that regard a triable issue exists.

3.1 Learned counsel for petitioner contended that the impugned order is not sustainable in the eyes of law because it is trite that the landlord is the best judge of suitability of premises and cannot be directed by the court to run business from garage, parking his vehicles elsewhere. In support of her contention, learned counsel for petitioner placed reliance on the judgment of a coordinate bench of this court in the case of **Krishan Lal vs R.N. Bakshi**, 2010:DHC:2799.

3.2 On the other hand, learned counsel for respondent supported the impugned order and contended that the petition is devoid of merits. Learned counsel for respondent argued that parking of vehicles can be carried out by the petitioner in the portion behind the subject premises.

4. The paragraph 23 of the impugned order, which is the only controversy in the present case is extracted below:

“23. However, in regard to portion marked as Mark B in the site plan filed by the petitioner of the property bearing no.2064-2071, it is stated by the petitioner that the same is used by the petitioners as garage for parking their vehicles. The petitioner has filed photographs showing their vehicles parked in the said garage. It is not in dispute that the portion Mark B in the property bearing no.2064-2071 is situated on the front side along with the shops of the petitioner as well as the shops of the tenant in the portion Marked A, C and C1. The dimension of the said garage is not only equivalent to a shop but also from the photographs filed by the petitioner herself, it appears that the



portion Mark B, can be used as a shop. The respondent has also taken a specific objection in this regard. Therefore, in the opinion of this court, a triable issue arises in respect to the alternative accommodation at ground floor at portion shown as Mark B in the property bearing no.2064-2071 being available to the husband of the petitioner for the bona fide need the present petition has been filed.”

5. It is no longer *res integra* that landlord is the best judge when it comes to deciding suitability of the premises available to him for his requirement. Neither the tenant nor even the court can dictate the landlord as to which of the premises available to him should be used to meet his requirement.

6. The contention of learned counsel for respondent that the petitioner can park her vehicles in the portion behind the subject premises is not sustainable also because the portion behind the subject premises is the property of someone else, as clearly depicted in the site plan at *pdf* page 63 of the paperbook. The learned Additional Rent Controller, on the basis of site plan filed by the petitioner and the site plan annexed with the sale deed held in paragraph 21 of the impugned order that there is no portion owned by the petitioner or her husband behind the subject premises. And those findings remain not challenged.

7. There being no other portion in the properties owned by the petitioner or her husband, expecting the petitioner to park her vehicles in the streets and use the garage for business of her husband instead of seeking vacation of the subject premises would not be fair and justified. In the case of **Krishan Lal** (supra), a coordinate bench of this court while dealing with



similar situation observed thus:

*“10. It is a matter of common knowledge that the roads in Delhi are spilling over with vehicular traffic. While vehicles on the road are ever increasing in numbers, the parking space available on the roads has shrunk on account of development work and road expansion activities undertaken by the civic authorities. Thus, the stress and strain of living in a metropolitan city is most visible on the roads, where competing claims are often sought to be resolved by use of muscle power. Every other day there are reports of altercations and ugly disputes, sometimes resulting in physical assault and murder, sparked off from paucity of parking space for vehicles. In such circumstance, the insistence on the part of the petitioner/tenant that the respondent/landlord, who is a senior citizen, aged 82 years, ought not to use the space available as a garage in his own premises, for purposes of parking his car, and instead, put it to use for running a shop, is wholly untenable and cannot be sustained. **In today's day and time, parking of the car by the respondent/landlord in a portion of his residence facing the road, which he has designated as a garage, cannot be called a luxury, but a sheer necessity, particularly, when even the civic authorities have woken up to the need of imposing road tax on users of public space for the purposes of parking private vehicles.***

*11. The submission made on behalf of the petitioner/tenant that the respondent/landlord ought to park his car in the drive way is therefore, unacceptable and turned down. **The landlord is the best judge of his requirements. He is justified in stating that the ingress and egress to his residence would be jeopardized/obstructed if the car was to be parked permanently in the drive way. In any case, as noted above, it is the choice of the respondent/landlord where to park his vehicle and if the room facing the main road is available for being used as a garage for parking his car, he cannot be asked to put it to a different use, only to ensure that status quo with regard to the tenanted premises is maintained in favour of the petitioner/tenant. Nor can the need of the respondent/landlord be treated to be mala fide or non-genuine. The grounds raised by the petitioner/tenant for seeking leave to defend, if accepted, would amount to depriving the respondent/landlord of the garage for the purposes of parking his vehicle, which are neither bona fide, nor reasonable. The judgment cited by the counsel for the petitioner/tenant also does not advance his case. The respondent/landlord is not under any obligation to use the garage as a shop, as suggested by the petitioner/tenant. His refusal to do so,***



cannot be treated as unreasonable. Nor can the space being put to use as a garage, be treated as an “reasonably suitable alternate accommodation”, so as to disentitle the respondent/landlord to the relief sought under Section 14(1)(e) of the Act.”

(emphasis supplied)

8. The findings of the learned Additional Rent Controller in paragraph 23 of the impugned order as extracted above are clearly perverse and cannot be sustained. As mentioned above, there is no other ground on which the leave to contest was granted by the learned Additional Rent Controller.

9. In view of above discussion, I am unable to uphold the impugned order, so the same is set aside and this petition is allowed and the pending stay application is disposed of.

10. Accordingly, eviction order in favour of the petitioner is passed with respect to the shop no.2063, Ground Floor, Main Road, Bazar Sita Ram, Delhi as shown in the site plan annexed with the eviction petition. However, in view of Section 14(7) of the Act, the petitioner shall not be entitled to obtain possession of the subject premises before the expiration of a period six months from the date of this judgment.

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(JUDGE)**

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