



\$~1 (SB)

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

Judgment reserved on: 21.02.2024

Judgment pronounced on: 17.05.2024

+ **RC.REV. 156/2018, CM APPL. 15175/2018**

NIRMALA KUMARI & ORS Petitioner

Through: Mr Mahesh K Chaudhary, Adv.

versus

GIRISH KAKKAR & ANR Respondents

Through: Dr Arun Mohan, Sr. Adv. with Mr
Arvind Bhatt, Ms Ritika Choubey and
Mr Yugant Kakar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, (J)**

1. This is a petition under section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “DRC Act”) seeking setting aside of the order dated 21.11.2017 (“impugned order”) passed by the learned Additional Rent Controller-I, Central District, Tis Hazari Courts, Delhi, wherein an eviction order was passed in favour of the respondents and against the petitioners u/s 14(1)(e) r/w section 25B of the Delhi Rent Control Act in respect of part of premises bearing no 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi-110005.



BACKGROUND OF THE CASE

2. Ms. Nirmala Kumari (petitioner No.1), Mr. Sushil Talwar (petitioner No.2), Mr. Rajesh Talwar (petitioner No.3), Mr. Rakesh Talwar (petitioner No.4), Mr. Deepak Talwar (petitioner No.5), Ms. Kiran Wadhawan (petitioner No.6) and Ms. Indu Chatkara (petitioner No.7) are the tenants in part of premises bearing no. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi-110005 (shown in red in the site plan, attached with the Eviction Petition, hereinafter referred to as “tenanted premises”).

3. Respondent No.1 and 2 are husband and wife and are stating themselves to be the landlords of the tenanted premises.

4. It is stated that one Mr. Om Prakash (husband of petitioner No.1 and father of petitioner Nos. 2-7) was inducted as a tenant in the tenanted premises. However, after his death on 31.01.1996, the tenanted premises is being used and occupied by the petitioners and their family members.

5. An Eviction Petition was filed by the respondents under section 14(1)(e) of the Delhi Rent Control Act (hereinafter called “DRC Act”) against the petitioners. As per the Eviction Petition, it was the case of the respondents that they require the tenanted premises *bonafidely* for themselves and their family members' use and occupation as their residence. The respondents have two sons who are students of Bal Bharti Public School at Ganga Ram Hospital Marg, New Delhi. Respondent No.1 has two sisters who also visit him regularly with their respective husbands and children. It was submitted that the respondents and their children are residing at a rented accommodation at third floor of property bearing no. F-444, New Rajinder Nagar, New Delhi-110060 comprising of one drawing-cum-dining room besides three bedrooms. It was further submitted that the children require sufficient and suitable space for their studies which is scarce in the



residential accommodation of the respondents. It was averred that the residence of the respondents is on the 3rd floor of F-444, New Rajinder Nagar, New Delhi and it is difficult to climb three floors, while the tenanted premises from which eviction is sought is on the ground floor. Additionally, it was stated that the respondents have to vacate the premises in which they are residing and handover the possession of the same to their landlord since a suit for possession had already been filed by the landlord for obtaining the possession of the property. It was stated that respondents are desirous of shifting to their own house which shall be not only convenient for them, but also economical.

6. A notice of the Eviction Petition was served upon the petitioner Nos. 1-7 and an application seeking leave to defend was filed by the petitioners.

i. It was the case of the petitioners that there is no relationship of landlord and tenant between the petitioners and the respondents. It was stated that the tenanted premises, which is a shop, was let out to Late Mr. Om Prakash Talwar by the original owner (Late Mr. Ram Lal Kakar) and after his demise, the father of the petitioners started paying rent to Mr. Krishan Gopal Kakar (son of Late Ram Lal Kakar). It was further stated that after the demise of Mr. Krishan Gopal Kakar in the year 2010, the petitioners have never paid any rent to the respondents.

ii. It was submitted that the tenanted premises were let out for commercial purposes and currently, a car accessory business is being run by the petitioners from the tenanted premises. It was further submitted that the tenanted premises have been used as a shop for commercial purposes and cannot be used for residential purposes since it does not have a kitchen, toilet or bathroom.

iii. It was averred that there is sufficient alternate accommodation for the respondents which was with one other tenant Mr. Rajender



Aggarwal, who was in occupation of large residential portion of the tenanted premises and eviction orders against the other tenant has already been passed and hence now the respondents are only seeking additional accommodation which is not really required by them. It was also averred that the petitioners are occupying a very small portion of the total tenanted premises as compared to the other tenant, Mr. Rajender Aggarwal.

iv. It was stated that after the demise of Ms. Surendra Kakar (mother of respondent No.1) on 20.10.2013, the respondents have become the absolute owners of another property bearing no. 2290-91, Abdul Aziz Road, Karol Bagh, New Delhi and the Eviction Petition is not maintainable in view of section 14(6) of the DRC Act. It was contended that the respondents are in occupation of 3rd floor of F-444, New Rajinder Nagar, New Delhi and suit filed by Ms. Pooja Mehta (owner of F-444, New Rajinder Nagar, New Delhi) for this property was a collusive suit.

v. It was stated that the respondents wish to evict the petitioners from the tenanted premises as they wish to sell the same. It was further stated that the respondents are comfortably living in their own houses, i.e 2290-91, Arya Samaj Road, Karol Bagh, New Delhi and 26/8, Second Floor, Old Rajinder Nagar, New Delhi and the alleged *bona fide* need of the respondents is *mala fide*.

7. After hearing both the parties, the learned ARC was of the view that there existed a landlord-tenant relationship between the parties and the respondents/landlords were competent to file the Eviction Petition as they were the owners as well as the landlords in respect of the tenanted premises. The learned ARC was also of the view that the respondents had made out a case of *bona fide* requirement. As far as the availability of alternate suitable



accommodation with the respondents was concerned, the learned ARC took the view that there was nothing on record which disclosed that the respondents owned any of the properties as was averred by the petitioners which could be utilized as a suitably alternate accommodation. The order dated 21.11.2017 was passed by the learned ARC wherein a decree for eviction was passed in favour of the respondents and against the petitioners, directing them to vacate the tenanted premises.

8. Hence, the present petition. After filing of the leave to defend, the petitioners had filed certain additional documents/submissions before the learned ARC.

SUBMISSIONS ON BEHALF OF THE PETITIONERS/TENANTS

9. Mr.Chaudhary, learned counsel for the petitioners disputes the existence of a landlord-tenant relationship between the parties by stating that as per the Eviction Petition filed by the respondents, it was alleged that the relationship of landlord and tenant was between the petitioners and Late Mr. Krishan Gopal Kakar(not the respondents) and hence, there is clear admission that no landlord-tenant relationship exists between the petitioners and the respondents. He also disputes the landlord-tenant relationship on the ground that no rent was paid to the respondents by the petitioners and hence, there is no attornment.

10. It is argued that the respondents have given an incorrect description of the tenanted premises and the tenanted premises is in fact, a shop. It is further argued that there is a contradiction in the statement of the respondent No.1 in the Eviction Petition and in the case titled "*Pooja v. Surender Kakar*". It is stated that in the Eviction Petition, the respondent No.1 has stated that his sisters along with their husband and children are regular visitors to the residence of the respondents, while in the case of "*Pooja v. Surender*



Kakar”, a statement of respondent No.1 was recorded on 28.10.2014 which reads that *“I am the defendant No. 2 in the present case. I state that my mother who was defendant No. 1 in the present case had died on 20/10/2013 leaving behind only me as a legal heir. My father has already expired and I have no brother or sister being the only LR of defendant No. 1.”* Hence, the *bona fide* requirement of the respondents that they require the tenanted premises because sisters of respondent No.1 along with their family are regular visitors to the respondents is false.

11. Learned counsel for the petitioner submits that a portion of tenanted premises which is residential, comprises of 6 Rooms, besides Kitchen, Toilet and Open Courtyard, which was being used by another tenant named Mr. Rajender Aggarwal is lying vacant since 30.06.2021 and hence, the requirement of the respondents stands satisfied on vacation of above premises. It is stated that despite the premises lying vacant since the year 2021, the respondents have not occupied the said residential premises. He further submits that in addition, two more Eviction Orders dated 03.11.2017 and 08.11.2017 have been passed in respect of two shops which were under the tenancy of Mr. Shyam Sunder Batra and Mr. Ram Kishan Kapoor which are also part of the tenanted premises. Following these Eviction Orders, a large residential premises and two shops would become available to the Respondents which would satisfy the need of respondents.

12. He states that a perusal of the rent agreement dated 10.12.2010 executed by respondent No.1 for the property no.F-444, New Rajinder Nagar, New Delhi shows the rate of rent as Rs.11,000/- per month and lift maintenance charges as Rs.1,000/- per month, showing the existence of a lift in those premises.

13. He states that the alleged *bona fide* requirement of the respondents is a sham. It is stated that the suit filed by Ms. Pooja Mehta against respondent



No.1 is a collusive suit. He states that a sale deed in respect of F-444, New Rajinder Nagar, New Delhi was executed in favour of Ms. Pooja Mehta on 05.01.2010 for a sale consideration of Rs. 20 lakhs. Thereafter, the said 20 lakhs were reimbursed to Ms. Pooja Mehta by respondent No.1 by means of two cheques dated 27.03.2010 and 06.04.2010 of Rs. 10,00,000/- each. The explanation given by learned senior counsel of the respondents that the said sum of Rs. 20,00,000/- was a security amount paid to Ms. Pooja Mehta while taking the premises no. F-444, New Rajinder Nagar, New Delhi on rent is inconsistent with the rent amount of Rs. 11,000/- per month. He further states that a question arises as to how could the residential address of the respondent No.1 be shown as 3rd floor, F-444, New Rajinder Nagar, New Delhi in the two sale deeds dated 11.02.2010 and 08.09.2010 executed by respondent No.1 as attorney of his two sisters (Ms. Madhu Preet Chahal and Ms. Payal Dower) when the rent agreement for this property was executed in favour of respondent No.1 only on 25.12.2010. Hence, it is submitted that the entire transaction between the respondents and Ms. Pooja Mehta with respect to 3rd floor of F-444, New Rajinder Nagar, New Delhi is a collusive transaction only to defeat the rights of the petitioners. It is further stated that despite the respondent having address of F-444, New Rajinder Nagar, New Delhi, the respondents continued to show their address proof as Property No. 2290-91, Karol Bagh, New Delhi in the sale deeds executed in the year 2012-2018 in respect to properties of Pandav Nagar, Trans Yamuna, Delhi. Hence, the respondents have come to court with unclean hands. In this view, learned counsel for the petitioners places reliance on the judgement of “***S.P. Chengalvaraya Naidu v. Jagannath***” [(1994) 1 SCC 1], wherein the Hon’ble Supreme Court observed that:-

“5... The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean

RC.REV. 156/2018

Page 7 of 34



hands. We are constrained to say that more often than not, process of the court is being abused.

6... A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

14. Learned counsel places reliance on ***Deepak Gupta v. Sushma Aggarwal*** [2013 SCC OnLine Del 2793]; ***Arjun Uppal v. Seth & Sons Pvt. Ltd*** [2012 SCC OnLine Del 4635]; ***Bharat Glass and Plywood Co. v. Sushan Pal Soni*** [2014 SCC OnLine Del 1232] ;***Khem Chand v. Arjun Jain*** [2013 SCC OnLine Del 3648]; ***Kishan Chand Rathi v. Uzma Sajid*** [2019 SCC OnLine Del 10909]; ***Sanjay Chug v. Opendar Nath Ahuja*** [2014 SCC OnLine Del 80]; ***Vijay Nayyar v. Om Prakash Malik*** [2011 SCC OnLine Del 2821] to support his arguments. He also relies upon ***Pasupuleti Venkateswarlu v. Motor and General Traders*** [(1975) 1 SCC 770]; ***Hasmat Rai v. Raghunath Prasad*** [1981) 3 SCC 103]; ***Punjab Stainless Steel House v. Sangeeta Kedia*** [2014 SCC OnLine Del 7692] on the issue of amendment of pleadings on subsequent facts.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/LANDLORDS

Bona fide need

15. Dr. Arun Mohan, Learned Senior Counsel on behalf of the respondents submits that the respondents wish to live in their own house. Firstly, the owners cannot be compelled to reside in rented accommodation



while the tenants continue to occupy and enjoy the tenanted premises and the need of the respondents and their family is paramount.

16. It is further argued that the respondent No.1 requires a personal office for his consultancy work, while his wife, Sarita, a part-time tutor on account of paucity of space cannot take tuitions at her residence. It is averred that the two sons of the respondents have also grown and need separate rooms for living and studying. The needs of respondents are:-

- i. Drawing-cum-dining room;
- ii. Reasonable size kitchen;
- iii. Master bedroom with attached bathroom for Girish & Sarita;
- iv. One bedroom with attached bathroom for elder son Yugant;
- v. One bedroom with attached bathroom for younger son Somin;
- vi. One guestroom with attached bathroom;
- vii. Small pooja room;
- viii. Study room for son Somin;
- ix. Lawyers' Chamber for son Yugant who has cleared his LLB from Amity University and is in the process of enrolling as an advocate;
- x. Consultancy room for Girish;
- xi. Teaching room for Sarita;
- xii. One room as a gym / yoga to maintain health;
- xiii. One store-room; and
- xiv. Place is also required for servant quarters, parking of cars, etc.

17. It is stated that the existing rooms are inadequate in size, necessitating the utilization of the entire property (including tenanted property). It is further stated that only upon dismissal of all petitions and full possession of the property, that an extensive reinforcement and renovation can be carried out to meet the accommodation needs of the respondents.



Forced to live in a rented accommodation

18. Execution Case No. 599396/2016 was initiated by Ms. Pooja Mehta, but at the request of Respondent No.1, the execution was temporarily suspended. Ultimately, Ms. Pooja Mehta executed warrants for possession, resulting in the respondents being forcefully evicted from F-444 Third Floor, New Rajinder Nagar, New Delhi by the bailiff on 09.08.2018. Following this eviction, the respondents were compelled to store their household belongings in a rented basement nearby and temporarily stay in a hotel namely Hotel Sopan Heights along with their children. Subsequently, the respondents took on rent the Second Floor at H-335, New Rajinder Nagar for Rs.60,000/- per month on 16.08.2018, where they resided until 31.12.2022. Upon the expiry of this lease, the respondents had to move to another premises being R-829, Upper First Floor, New Rajinder Nagar at a monthly rent of Rs.67,000/- where they currently reside. It is stated that the petitioners continue to make profit and enjoy the property of the respondents, while the respondents are forced to live in a rented accommodation themselves.

Premises vacated by Mr. Rajender Aggarwal

19. Mr. Mohan, learned senior counsel for the respondents states that the premises vacated by the tenant Mr. Rajinder Agarwal are insufficient to meet the needs of the respondents even if extensive reinforcements are carried out. He states that the premises occupied by Mr. Rajender Aggarwal were constructed about 100 years ago and the same do not meet the modern-day requirements of the respondents since the coverage of space and utilities in the old structure are outdated. It is submitted that given the room sizes of the



said premises vacated by Mr. Rajender Aggarwal, the same will not only be insufficient, but will also affect children's growth.

20. It is further submitted that the property vacated by Mr. Rajender Aggarwal is a dangerous structure and poses a danger for habitation. The respondents cannot jeopardize their safety by moving in, as there is a risk of the building collapsing since it is a 100-year-old residential building. It is argued that the said premises have exceeded their expected lifespan. Mr. Mohan sates that the petitioners have made various complaints to the Delhi Development Authority (DDA) to seek cancellation of conveyance deed in respect of tenanted premises. He further states that the petitioners have amassed huge wealth and properties.

ANALYSIS/CONCLUSION

21. I have heard learned counsel for the parties.

22. Before I proceed, I would like to reiterate the settled law in Rent Revision Petitions.

I. Scope of a Rent Revision Petition

23. The revisional jurisdiction of the High Court against an order of the learned ARC is limited in its scope. In fact, it is limited to the touchstone of "whether the order of learned ARC is according to law". This has been stated by the Hon'ble Supreme Court in "*Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*" [(1999) 6 SCC 222] and "*Abid-Ul-Islam vs. Inder Sain Dua*" [(2022) 6 SCC 30] and more particularly para 23 of *Abid-Ul-Islam* (supra) which reads as under:-

"23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the

RC.REV. 156/2018

Page 11 of 34



decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

24. It is clear that the jurisdiction of this Court can only be exercised if the impugned order suffers from any illegality.

II. The Delhi Rent Control Act has somewhat outlived its utility

25. The Hon’ble Supreme Court in “*Satyawati Sharma v. Union of India*” [(2008) 5 SCC 287] opined that:-

“31. In H.C. Sharma v. LIC of India [ILR (1973) 1 Del 90] the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those uprooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the



Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set-up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes has substantially increased.”

26. The Rent Control Legislation has somewhat outlived its utility and the tenants today have enjoyed this protection for more than 65 years.¹

III. The learned ARC is only required to sift/comb through the application for leave to defend

27. The learned ARC is not required to take a magnifying glass and minutely scrutinize the averments made in the Eviction Petition. Once the landlord has stated that he requires the tenanted property for a particular use, the Courts are required to believe the statement to be true and genuine, unless and until it is shown by the tenant through cogent material that the requirement is fanciful or whimsical. The learned ARC is further required only to sift/comb through the averments made in the leave to defend application and see whether the tenant has established with cogent and material defence, facts which disentitle the landlord from an Eviction order. This Court in “*Sarwan Dass Bange v. Ram Prakash*” [2010 SCC OnLine Del 351] has clearly held that:-

¹Praveen v. Mulak Raj, 2023 SCC OnLine Del 7721, para 46 and 47



“7... The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

IV. The Court must presume the need of the landlord to be ‘*bona fide*’

28. It is a settled law that the Court must presume the requirement of the landlord to be *bona fide*. The Hon’ble Supreme Court in “**Sarla Ahuja v. United India Insurance Co. Ltd.**,”[(1998) 8 SCC 119] observed that:-

“14. 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 is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. 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.”

V. The Court is not to sit in the armchair of the landlord

29. The Hon'ble Supreme Court as well as this Court has repeatedly held that the Courts are not to sit in the armchair of the landlord and dictate as to how the available property of the landlord is to be best utilized by him. The landlord is the absolute owner of his property and is the best person to decide which property is to be utilized in what way. The respondent cannot dictate as to how the landlord is to utilize his property. If the respondents/landlord states that the alternate premises are unsuitable to meet his/her needs, the Court is to believe the same. The landlord possesses the prerogative to determine their specific requirements, exercising full autonomy in this regard.²

30. With these five parameters, I will proceed to deal with the arguments of the petitioners/factual matrix of this case.

31. In order to succeed in a petition under section 14(1)(e) of the DRC Act, the landlord is required to establish:-

- i. Landlord- Tenant relationship between the parties
- ii. The tenanted premises must be *bonafidely* required by the landlord either for himself or for his family members,
- iii. There should not be any other alternate suitable accommodation available with the landlord.

EXISTENCE OF A LANDLORD-TENANT RELATIONSHIP

32. The petitioners have disputed the existence of landlord-tenant relationship between the parties on the ground that as per the Eviction

²Tarun Kumar v. Parmanand Garg [2023 SCC OnLine Del 7398], paras 51-53
RC.REV. 156/2018



Petition filed by the respondents, it was alleged that the relationship of landlord and tenant was between the petitioners and Late Mr. Krishan Gopal Kakar and hence, there is no admission regarding the existence of a landlord-tenant relationship between the petitioners and the respondents. In addition, it is alleged that no payment of rent was made by petitioners to the respondents.

33. It is not in dispute that Late Mr. Ram Lal Kakar was the owner of the tenanted premises. Mr. Ram Lal Kakar died leaving behind his three sons, namely Mr. Krishan Gopal Kakar, Mr. Prem Nath Kakar and Mr. Pran Nath Kakar. The respondent No.1 is the son of Mr. Prem Nath Kakar. In this regard, the learned ARC has correctly observed that:-

“22.It is not in dispute that Late Shrl Ram Lal Kakar, grandfather of the petitioner Girish Kakar was the owner of the tenanted premises and he had inducted Mr. Om Prakash Talwar as tenant in the tenanted premises and was receiving rent for his own benefit. He died leaving behind and was survived by his three sons. A renewal lease was granted by DDA in favour of the three sons. The father of the petitioner Mr. Prem Nath Kakar also died leaving behind his wife Smt. Surendra Kakar, the petitioner Girish Kakar, and his two daughters who became co-owners in respect of the property in question by way of intestate succession. The respondent has no right to object to the same. The daughters sold their share in respect of the tenanted premises to their mother late Smt. Surendra Kakar by registered sale deed, a copy of which has been placed on record. Smt. Surendra Kakar also died. She executed a Will by



virtue of which the present property devolved upon the petitioners Girish Kakar and his wife Smt. Sarita Kakar. Thus, they are now the owners of the tenanted premises.”

34. As far as the argument that the petitioners never paid any rent to the respondents is concerned, the learned ARC has held:-

“24. Section 116 of the Evidence Act is a complete answer to the plea taken by the respondent. The Hon'ble Supreme Court in the case of Bansraj Laltaprasad Mishra v. Stanley Parker Jones (2006) 3 SCC 91 held following:

“... 13. The underlying policy of section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time ...”



35. The tenant cannot dispute the title of his landlord or his successor in interest. It is not disputed that the respondents are the successors in interest of Late Sh. Ram Lal Kakar. The petitioners have themselves admitted that their ancestor, i.e. Mr. Om Prakash (husband of petitioner No.1 and father of petitioner Nos. 2-7) was inducted as a tenant in the premises let out by Late Sh. Ram Lal Kakar (grandfather of respondent No1). Consequently, it is not for the petitioners to challenge the ownership of respondents and/or dispute the landlord-tenant relationship. The reliance of the learned ARC on the judgement of “**Ramesh Chand v. Uganti Devi**” [2008 SCC OnLine Del 1187] and “**Rajender Kumar Sharma v. Leela Wati**” [2008 SCC OnLine Del 1085] is well placed.

36. The operative para of **Rajender Kumar Sharma** (supra) reads as under:-

“12. It is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. In this case, the landlady had placed on record the documents by which she became owner. The atornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition under Section 27 of Delhi Rent Control Act acknowledging the landlordship of landlady. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it.”

37. I am of the view that the respondents/landlords have a title superior to that of the petitioners and that is all the respondents are required to show in an Eviction Petition. It has been held that in landlord-tenant disputes, the



landlord does not have to establish his title as if it were a suit seeking declaration of title, instead, he only must show that his/her claim over the title better than that of the tenant. This Court in “*Babu Ram Gupta v. Chander Prakash*” [2023 SCC OnLine Del 1467] observed that:-

“27. The law is well settled to the effect that it is not open for the tenant to question the title of the landlord. It is also well settled that while deciding the eviction petition, the Rent Controller is not required to adjudicate intricate questions of title. All that the landlord needs to establish is that he is something more than a mere tenant.”

38. Hence, in light of the above discussion, the relationship of landlord-tenant stands established between the petitioners and respondents.

BONA FIDE REQUIREMENT OF THE LANDLORD

39. With respect to the *bona fide* requirement, it is submitted by the respondents that the respondents themselves are residing in a rented accommodation and they require the tenanted premises for themselves and their children to live comfortably. On the other hand, the petitioners argue that the respondents do not have a *bona fide* requirement of the tenanted premises and the Eviction Petition has been filed with a *mala fide* intention only to evict the tenants.

40. It is a settled law that the Court must presume the *bona fide* requirement of the landlord³ and the landlord is only required to show that the requirement of the tenanted premises is a *bona fide* requirement and not merely a whimsical or a fanciful desire by him.⁴

³Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119]

⁴Deena Nath v. Pooran Lal [(2001) 5 SCC 705]



41. In the present case, there is no material on record which shows that the needs of the landlords are either *mala fide* or fanciful or whimsical. The allegation that the need of the respondents is not *bona fide* and the Eviction Petition was filed with a *mala fide* intention is bald and vague.

42. The learned ARC has correctly observed that:-

“52. In view of the settled legal position it is not for the respondents to dictate to the petitioners that they should manage their family in whatever accommodation is available with them. The tenanted premises belongs to the petitioners and it is for the petitioners to see that how they can manage their family. It is the right of the petitioners to look after their comfort and comfort of their family and if the tenanted premises, even if it is a one room shop, is suitable as per their needs, they have every right to possess the said premises and the respondents cannot contend that they should manage their family otherwise. The petitioners are themselves facing eviction since a suit for possession has already been filed against them by their landlady. In order to sustain themselves and their children it is normal for the petitioners to contend that they require the tenanted premises and it cannot be said that the demand of the petitioners for it is not bonafide. While deciding the question of bonafide requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlords could have adjusted.”

43. In the present case, the respondents have clearly stated that the tenanted premises is required by them for living comfortably with their two grown-up children who at time of filing the Eviction Petition were 13 years and 8 years of age.

44. It is also stated that the respondent No.1 requires rooms for his sisters



and their family who visit him regularly. The petitioners pointing out the contradiction in the statement of respondent No. 1 made in the Eviction Petition that *“They are ideally located for the residence of the petitioners and in particular the children, as well as their progeny, including the two married sisters of the petitioner No.1 who along with their husbands and children are regular visitors to the residence of the petitioners, in as much as the petitioners, jointly as well as severally, have acute love and affection for the said married sisters of the petitioner No.1, as also their respective family members (including their husbands).”* and the one made in the case of *“Pooja v. Surender Kakar”* that *“My father has already expired and I have no brother or sister being the only LR of defendant No. 1”* do not carry much weight as the primary need of the respondents is for *bona fide* use for himself and his immediate family members. The question whether there are married sisters of respondent No.1 or not, in my view, cannot be a ground to raise any triable issue.

45. Once the respondents have stated that they require the tenanted premises for leading a comfortable life, the same is enough to draw a presumption in the respondent’s favour.

46. Furthermore, this Court in **“Mohd. Yameen v. Mohd. Saleem Khan”** [2002 SCC OnLine Del 618] also observed that:-

“11...A landlord/owner living in a rented house but intending to shift to his own property is certainly in bona fide need of his premises.”

47. It will be a perversity of Rent Control legislation to permit a tenant to occupy the property of a landlord while the landlord himself is living in a rented accommodation. There can be no more *bona fide* need than the need of the landlord to give up his rented premises and shift to his own premises.

48. I find no reason to disbelieve the averments made by the respondents



regarding their *bona fide* need of the tenanted premises. I am of the view that the respondent's assertions that they require the tenanted premises for themselves as well as their children for living a comfortable life, coupled with the reason that the respondents themselves are living in a rented accommodation, falls within the category of a *bona fide* requirement. Hence, by no stretch of imagination can this need be classified as whimsical or fanciful. I find no infirmity in the order of learned ARC on this count.

ALTERNATE SUITABLE ACCOMMODATION

49. According to the petitioners, following properties are under the ownership of the respondents which can be used as an alternate suitable accommodation to meet the needs of the respondents:-

- a. Premises vacated by the other tenant, namely Mr. Rajender Aggarwal
- b. Two shops which form a part of the tenanted premises
- c. Property no. 2290-91, Abdul Aziz Road, Karol Bagh, New Delhi
- d. Property no. F-444, Third Floor, New Rajinder Nagar, New Delhi
- e. Properties bearing no. E-175 and E-176, admeasuring around 300 sq. yards in Patparganj, Pandav Nagar, Illaqa Shahadara, Delhi-110091.

a. Premises vacated by the other tenant, namely Mr. Rajender Aggarwal

50. It is stated by learned counsel for the petitioners that a portion of the tenanted premises comprising of 6 Rooms besides Kitchen, Toilet and Open Courtyard which was being used as a residential area by the other tenant (Mr. Rajender Aggarwal) is lying vacant since 30.06.2021 and the same can be a suitable alternate accommodation for the respondents. Per contra, the



respondents in this regard have denied it being a suitable accommodation on the ground that the same is insufficient to meet the needs even if extensive reinforcements are carried out. They have also stated that the said premises are dangerous for habitation as the building experienced a roof collapse on 05.04.2021. Hence, I am of the view that the respondents have given a reasonable and satisfactory justification as to why the said property is not suitable to them. The ingredient of “suitability” is a crucial element for alternate accommodation and the petitioners have failed to show the suitability aspect of the abovesaid alternate premises. The petitioners/tenants cannot be permitted to dictate to the landlord as to how the landlord is to best utilise his property. The landlord has complete freedom in this regard.

b. Two shops which form a part of the tenanted premises

51. Additionally, the petitioners state that two Eviction Orders were passed in favour of the respondents with respect to two shops which form a part of the tenanted premises and could be used as an alternate accommodation. I have already observed that the Courts are not to sit in the armchair of the landlord and dictate as to how the available property of the landlord is to be best utilized by him. The same is the total prerogative of the landlord. The respondents have clearly stated that they need the entire premises for their use and occupation including these two shops.

c. Property no. 2290-91, Abdul Aziz Road, Karol Bagh, New Delhi

52. The petitioners further state that the respondents are owners of property no. 2290-91, Abdul Aziz Road, Karol Bagh, New Delhi which can be used as residence by the respondents. In this regard, it is clearly stated by the respondents in their reply to leave to defend that after 17.12.2009, the



respondents have no interest whatsoever in this property as the same was sold. The relevant portion reads as under:-

“11. The contents of para 11 of the Affidavit is admitted to the extent that Smt. Surendra Kakar had 1/3rd share in 2290 Arya Samaj Road, Karol Bagh New Delhi. It denied however that Smt Surender Kakar purchased the remaining share of other co owners in 2008.

12. The contents of para 12 under the heading 'Grounds' set-forth in the application under reply are apparently an attempt to over-reach this Hon'ble Court. The purported document whereby the petitioners (Smt. Surendra Kakar (deceased) and others)) had allegedly purchased the remaining share of the other two co-owners in the year 2008 in 2290-91, Arya Samaj Road, Karol Bagh (as alleged in para under reply) has not been placed on the present record by the respondents-tenants.

12.1 The reason is very simple. There is no such document in existence. Shri Prem Nath Kakar branch had made attempts to acquire the remaining share of the other co-owners, but their attempts in the aforesaid direction were thwarted by others. They could not acquire the remaining 2/3rd share of the property. No Sale Deed of the aforesaid 2/3rd share was ever executed by the other co-owners in their favour. Rather the Prem Nath Kakar branch as well as the other two co owners were constrained to sell their 1/3rd undivided share each to M/s. Dynamic Buildwell Pvt. Ltd., the terms of which were approved by the Hon'ble Delhi High Court in its final decree of partition dated 5.02.2009. The funds from the sale of 1/3rd share were used by Prem Nath branch to purchase the interest of the other then co-owners in 2269-70 and



2281 Abul Aziz Road Karol Bagh, the suit properties. With this sale of 17.12.2009 the petitioners, jointly as well as severally ceased to have any right, title or interest in the premises bearing No. 2290-91, Arya Samaj Road, Karol Bagh, New Delhi.”

53. In this regard, the learned ARC has also correctly observed as under:-

“37. The premises bearing No. 2290-91 was sold by the petitioners much prior to filing of the present eviction petition and by a registered sale deed. The circumstances in which it was sold cannot be said to have been done for the purpose of creating artificial scarcity by the petitioners for obtaining possession of the tenanted premises.

38. The court is of the view that mere mention of address of certain property as the residential address of the petitioners does not confer title of the property to the petitioners. Copy of the sale deed executed in favour of M/s Dynamic Buildwell Pvt. Ltd. of property bearing house no. 2290 and 2291, Arya Samaj Road is on record. The sale deed is a valid document that has transferred the title of the property to another person. The Petitioners cannot be said to be owners of this property any longer. There is nothing to disbelieve the petitioners on this count. No further material has been brought on record by the respondents in their rejoinder to substantiate that the petitioners are owners of the any other property.”

54. Hence, the said property is not available with the respondents.

d. Property no. F-444, Third Floor, New Rajinder Nagar, New Delhi

55. It is also alleged by the petitioners that the respondents have premises bearing no. F-444, Third Floor, New Rajinder Nagar, New Delhi available



for their residence. Respondents, on the other hand, state that in mid-December 2009, they were inducted as tenants in the said premises and on 28.10.2014, a decree of ejectment was passed. Thereafter, execution proceedings were initiated, and ultimately, the bailiff threw out the respondents on 09.08.2018, upon which, they had to shift to a hotel. The respondents further stated that they proceeded to take another premises, being H-335, New Rajinder Nagar, New Delhi, on rent until 31.12.2022 and presently reside at R-829, upper first floor, New Rajinder Nagar, New Delhi on rent. Therefore, in this context, it would be apposite to hold that the respondents were not the owners of property no. F-444, Third Floor, New Rajinder Nagar, New Delhi. The learned ARC has correctly appreciated that:-

“43. The assertion made by the respondents that the petitioners own the property F-444, Third Floor, New Rajinder Nagar, New Delhi appears to be a bald assertion. There is nothing on record including title documents of this property for believing that the petitioners are owners of this property. No material has been brought on record by the respondents to substantiate that the petitioners are owners of this property. The mere fact that the landlady Pooja Mehta has not enforced her right to obtain possession of the premises at F-444, New Rajinder Nagar despite having decree of possession in her favour and despite settlement that the premises will be vacated till 30.11.2015, does not by itself indicate that petitioner Girish Kakar is the real owner of the premises at F-444, New Rajinder Nagar.”

56. Hence, this property is also not available with the respondents.



e. Properties bearing no. E-175 and E-176, admeasuring around 300 sq. yards in Patparganj, Pandav Nagar, Illaqa Shahadara, Delhi- 110091.

57. Even if the additional submissions made by the petitioners are taken on record, the same also do not help them. There is one additional property bearing no. E-175 and E-176, admeasuring around 300 sq. yards in Patparganj, Pandav Nagar, Illaqa Shahadara, Delhi- 110091 which has not been mentioned in the leave to defend but is mentioned in a subsequent application. It is stated by the petitioners that respondent No.1 is one of the co-owners of this property.

58. However, as per the respondents, long before filing of the eviction petition, in 2011-12, this property was sold on a Power of Attorney basis. Later, the purchasers requested for execution and registered of sale deeds whereafter, sale deeds were executed from 2011 to 2015. In support of this contention, respondents have placed several sale deeds on record dated 03.06.2013, 31.10.2011, 19.11.2011, 20.12.2011, 16.02.2015, 17.10.2015 and 18.10.2015, whereby the respondents have sold different portions of the aforesaid premises to different people.

59. The learned ARC in another eviction petition being E. No. 77325/2016, decided on almost similar facts on 31.10.2017, has held asunder:

“32. The court is of the view that mere mention of address of certain properties as the residential address of the petitioners does not confer title of these properties to the petitioners. Copies of the sale deeds executed in favour of other persons of properties 'bearing house no. 2290 and 2291, Arya Samaj Road, house no. 26/8, Old Rajinder Nagar and house no. E-175 and 176, Pandav Nagar; Delhi are-on record. The sale deeds are valid documents that have transferred the title of the properties to other persons. The Petitioners cannot be said to be owners of these properties; There is nothing to disbelieve the petitioners on this count.”



60. Therefore, this property was also not under the control or ownership of the respondents at the time of filing of the eviction petition as the property had already been sold on Power of Attorney basis in 2011-2012 and subsequently by registered sale deeds between 2011-2015.

61. In light of the above discussion, I am of the view that the respondents/landlords have satisfied the ingredients of section 14(1)(e) of the DRC Act.

62. I will now proceed to discuss the submissions of the petitioners. As regards the question that how the address of F-444, New Rajinder Nagar, New Delhi could have found mentioned in the Sale Deeds executed prior to the execution of the Rent Agreement dated 10.12.2010 or that the suit filed by Ms. Pooja Mehta against the respondent No.1 is a collusive suit, I am in agreement with the observations of the learned ARC. The relevant portion reads as under:-

“43... There is no reason to believe that the suit of possession filed by Ms. Pooja Mehta against the petitioner Girish Kakar is collusive and that the Petitioners are owners of the property no. F-444, Third Floor, New Rajinder Nagar, New Delhi. This Court cannot sit in appeal against the decree of possession passed by another Court by holding that it was a collusive decree. It has been stated by Ld. Counsel for the petitioners that the petitioners have been residing at property bearing no. F-444, New Rajinder Nagar since much prior to 25.12.2010 and that's how in sale deeds dated 17.12.2009 and 08.09.2010, their address is stated to be that of property at F-444, New Rajinder Nagar. Even otherwise, the assertion of the respondents as made in the written statement dated 20.11.2017 that the premises at F-444 was given on rent by Ms. Pooja Mehta to the petitioner Girish Kakar on 25.12.2010, vide agreement dated



10.12.2010, cannot be taken into consideration as these dates do not find mentioned in application for leave to defend. Also, merely because the landlady Pooja Mehta did not object to the statement made by petitioner Girish kakar in the case pending between them that he does not have any brother or sisters and is the only LR of his late mother, also does not imply that it is a collusive suit. Such statement could have also been made because there was no need for the sisters of Girish Kakar to have been made a party in the case since they had not inherited the tenancy rights of Late Sh. Surendra Kakar in property no. F-444, New Rajinder Nagar. Even otherwise and more importantly, there is nothing on record which discloses that it is indeed petitioner Girish Kakar who is the owner of property F-444, New Rajinder Nagar.”

63. The stand of the respondents that they have been residing at F-444, New Rajinder Nagar, New Delhi much prior to 25.12.2010 and that's how the sale deeds dated 17.12.2009 and 08.09.2010 find the address of respondent as F-444, New Rajinder Nagar, New Delhi is a plausible and acceptable explanation.

64. The learned ARC has also correctly held that non-mention of the sisters of respondent No.1 in the suit between Ms. Pooja Mehta and respondent No.1 could also be because the tenancy rights regarding F-444, New Rajinder Nagar, New Delhi were not inherited by the sisters of respondent No.1. The said explanation is also, in my view, plausible.

65. The submissions made by learned counsel for the petitioners recorded in para 13 hereinabove relate to the property No. F-444, New Rajinder, New Delhi and to a suit between Ms. Pooja Mehta and respondent No.1. It is not for the petitioner-tenant to challenge the legality of the decree or the suit between Ms. Pooja Mehta and respondent No.1. Even assuming for the sake



of arguments that the suit was collusive, a Court in Eviction proceedings or a Rent Revision cannot decide the legality or illegality of a decree passed in another case. This power lies with the Appellate Court. At the time when the present Rent Revision was filed, i.e. on 16.04.2018, the respondents were indeed staying in F-444, New Rajinder Nagar, New Delhi. However, a lot has transpired in the subsequent years and circumstances have changed. The respondent No.1 has moved to another rented accommodation. Hence, this argument is misconceived and fallacious and is rejected. There can be no quarrel with the proposition that if a person is staying in a tenanted accommodation and wishes to shift to his/her own accommodation, there cannot be a requirement more *bona fide* or genuine. That is what the respondents are seeking to do by virtue of the Eviction Petition.

66. I am also not to delve into the issue with regard to the sale consideration of Rs. 20 lakhs as it is a subject matter of another suit. The same cannot be a subject matter of a landlord-tenant dispute.

67. The contention that the respondents have given an incorrect description of the tenanted premises and that the tenanted premises is a shop and not a residential accommodation, is of no merit. I am of the view that the purpose for which the tenanted premises are presently utilized bears no relevance. Even if the original intent behind leasing the premises was for commercial activities, the same does not impinge the rights of the respondent to utilize the space for residential purposes. In essence, regardless of whether the premises were initially designated for commercial or residential use, the respondents have the right to use the space for their residence based on their individual needs, requirements and preferences. The learned ARC has rightly placed reliance on the judgement of *Satyawati Sharma* (supra) to state that the purpose for which the tenanted premises



were let out is irrelevant. The relevant para of the impugned order reads as under:-

“31. The conveyance deed executed by the DDA by virtue of which the petitioners became owners of the tenanted premises categorically describes the property as a residential property. Even otherwise, the purpose for which the property is being used is inconsequential. The petitioners need the tenanted premises for their residence. Even if the tenanted premises is for commercial use, there is no bar on its usage by the petitioners for their residence. Also, after the decision of the Hon'ble Supreme Court in the case of Satyawati Sharma by LRs Vs. Union of India, Appeal (Civil) No. 1897 of 2003 dated 16.04.2008, the purpose for which the tenanted premises was let out is irrelevant.”

68. It is contended that the respondents' initial rented accommodation (F-444, New Rajinder Nagar, New Delhi) had a lift and therefore, the assertion by the respondents that they require the tenanted premises due to difficulty in climbing stairs is false. Even assuming that there is a lift in the said premises and without commenting on the aspect whether the same is operational/non-operational, I am of the view that as of today, the respondents have shifted to another rented premises and they have substantiated their other *bona fide* needs which would entitle them to the possession of the tenanted premises. The argument of learned counsel for the petitioners regarding the existence of a lift in the property no. F-444, New Rajinder Nagar, New Delhi by showing bills for lift maintenance do not find favour with me. Even assuming the best case of petitioners that property no. F-444, New Rajinder Nagar has a lift, the fact remains that this property is a tenanted premises *qua* the respondents. The respondents have expressed a desire to shift to their own premises and the same cannot be said



to be a fanciful or a whimsical desire by any stretch of imagination.

69. The judgements relied upon by learned counsel for the petitioners are distinguishable.

- i. **Deepak Gupta** (supra)- In this case, the Court was of the view that if the tenant filed a leave to defend application along with an affidavit questioning *bona fide* need of the landlord stating that he is the owner of other two shops, the Rent Controller simply could not have brushed aside these facts as inconsequential in nature, unless plausible explanation comes from the landlord as to how the same are not reasonably suitable accommodation. The Court also observed that the Controller has a statutory duty to grant leave to defend if the affidavit discloses such facts which could raise suspicion on the genuine need of the landlord. In the present case, the respondents have given a satisfactory explanation that the portion of the tenanted premises which is available with them is insufficient to meet their needs. I also have no doubts regarding the *bona fide* needs of the respondents. In **Deepak Gupta** (supra), the Court was also of the view that the proviso of section 14 of the DRC Act is an exception and the tenants need protection from unjust and unreasonable evictions. The said basic fulcrum of this judgement has undergone a drastic change. The Hon'ble Supreme Court has stated that much water has gone under the bridge with regard to the protection that were required to be given to the tenants.⁵ I have also held that the DRC Act has somewhat outlived its utility.⁶
- ii. **Arjun Uppal** (supra)- In this case, the learned ARC was of the

⁵Satyawati Sharma v. Union of India, (2008) 5 SCC 287

⁶Praveen v. Mulak Raj, 2023 SCC OnLine Del 7721, para 26



view that triable issues have been raised by the tenants, while in the instant case, the learned ARC was of the view that no triable issue has been raised by the tenants. In addition, in **Sarla Ahuja** (supra), the Hon'ble Supreme Court has held that the need of the landlord is to be presumed to be *bona fide*.

- iii. **Bharat Glass and Plywood Co.** (supra)- In this case, one of the reasons which weighed with the Court was that the need of the son of the landlord was not in *presenti*, but upon “likelihood and in future”. In present case, the need of the respondents and their family members is in *presenti*.
- iv. **Khem Chand** (supra)- In this case, the Court was of the view that the need of the son and daughter of the landlord and their likelihood of joining the landlord's business was doubtful, which is not the case here. The need of the landlords in this case is in *presenti*. No doubts have been created regarding the *bona fide* need of the landlords.
- v. **Kishan Chand Rathi** (supra)- This judgement is regarding the business needs of the landlords. The Court was of the view that there is no material to show that the business of the landlords had grown thereby requiring the tenanted premises. In present case, the tenanted premises are required by the landlords-respondents for their residential purposes.
- vi. **Sanjay Chug** (supra) and **Vijay Nayyar** (supra)- These judgements also relate to business requirements of the landlords. In the present case, the landlords require the tenanted premises for residential purposes. The landlord is the best judge of his requirement and no fetters can be put in this regard.



70. The reliance on the judgements of *Pasupuleti Venkateswarlu*(supra), *Hasmat Rai* (supra) and *Punjab Stainless Stell House* (supra) are not relevant as I have already considered the subsequent facts.

71. For the above stated reasons, no reliance can be placed upon the judgements relied upon by the petitioners.

72. The order dated 21.11.2017 does not suffer from any illegality or infirmity. The learned ARC has correctly dismissed the leave to defend application and has also rightly appreciated the settled law and the facts of the case.

73. With these observations, the order dated 21.11.2017 passed by the learned Additional Rent Controller-I, Central District, Tis Hazari Courts, Delhi passing an eviction order in respect of part of premises bearing no. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi in favour of respondents and against the petitioners, is upheld.

74. Accordingly, the petition is dismissed and the interim order stands vacated.

JASMEET SINGH, J

MAY 17th, 2024/st