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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13.03.2024
Judgment pronounced on: 21.03.2024

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RC.REV. 5/2016**RAKESH KUMAR****..... Petitioner**Through: **Mr U.M. Tripathi, Adv.**

versus

KAMLESH & ORS**..... Respondents**Through: **Mr. M.K. Sharma, Mr. Abhinav
Sharma and Ms. Vishakha Sharma,
Advs.****CORAM:****JUSTICE GIRISH KATHPALIA****GIRISH KATHPALIA, J.:**

1. This petition brought under proviso to Section 25B(8) of the Delhi Rent Control Act assails order dated 19.08.2015 of the learned Rent Controller whereby application of the present petitioner for grant of leave to contest the eviction proceedings under Section 14(1)(e) of the Act was dismissed, holding that no triable issue was raised on behalf of the present petitioner. On service of notice of these proceedings, the present respondents entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes, as extracted from rival pleadings and records are as follows.

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2.1 The present respondents, claiming themselves to be the owner of property bearing No. WZ-883, Khazan Basti, Part of property No. WZ-2, Nangal Raya, Delhi (hereinafter referred to as “the subject premises”) filed a petition under Section 14(1)(e) of the Act seeking eviction of the present petitioner/tenant, pleading therein that the present respondent no. 1 aged about 56 years had suffered a heart attack and knee problems, due to which she is unable to move; that the present respondents no. 2 and 3 are her married sons; that the present respondent no. 2 has two daughters while the present respondent no.3 has one daughter; that the petitioners are residing in property bearing No WZ-1549 Khazan Basti, Nangal Raya, New Delhi consisting of ground floor, first floor, second floor and third floor, each floor consisting of one bedroom, one drawing room cum lobby and one bathroom and one toilet; that the said residential accommodation under occupation of the present respondents is not sufficient for them insofar as the present respondent no. 1 requires one puja room and a bedroom, the present respondent no. 2 requires one bedroom for himself and for his wife and two bedrooms for his children, and the present respondent no. 3 requires one bedroom for himself and his wife and one bedroom for his daughter, in addition to which the present respondents also require one drawing room and one dining room; that the present respondents also need one additional bedroom for visiting relatives; that the subject premises are in dilapidated condition, so the present respondents intend to get the subject premises demolished after the same are vacated and thereafter reconstruct the same according to their requirement; that the present respondents have no other reasonably suitable alternate accommodation.



2.2 On being served with summons in the prescribed format, the present petitioner filed an application seeking leave to contest the proceedings. In his affidavit seeking leave to contest, the present petitioner did not dispute the ownership of the present respondents over the subject premises and the relationship of tenancy between the parties, and testified that the present respondents intend to demolish the entire larger premises including the subject premises and construct multiple shops in the same for commercial benefit; and that the area of the subject premises is not sufficient enough to meet the requirement projected by the present respondents.

2.3 In their reply to the leave to contest application, the present respondents reaffirmed their pleadings of eviction petition and denied that after demolition of the subject premises, they would construct shops for commercial benefits. That followed a rejoinder from the present petitioner, reiterating his stand as taken in the application for leave to contest.

2.4 After hearing both sides in the backdrop of above mentioned rival pleadings, learned Rent Controller passed the impugned order, thereby dismissing the application for leave to contest. In the impugned eviction order, the learned Rent Controller after detailed discussion delivered the findings that ownership of the present respondents over the subject premises and *jural* relationship of tenancy between the parties was not in dispute; that the contention of the present petitioner to the effect that the present respondents are already residing in sufficient accommodation in property no.

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WZ 1549, Khazan Basti, Nangal Raya, Delhi, so their requirement of the subject premises for residential purposes is not *bona fide* was liable to be rejected since size of the families of the present respondents is not disputed by the present petitioner and no material has been brought by the present petitioner to show that the eviction petition was filed with *mala fide*; and that despite specific denial of the present respondents qua the alleged ownership of the Sagarpur property, no material was produced by the present petitioner in that regard.

2.5 Hence, the present petition.

3. During final arguments, learned counsel for petitioner/tenant in all fairness did not challenge the ownership of the present respondents over the subject premises and relationship of tenancy between the parties. However, learned counsel for petitioner/tenant laid strong emphasis on his contention that the present respondents admittedly want to demolish the entire property and reconstruct the same, so they ought to have filed eviction petition under Section 14(1)(g) of the Act and the petition under Section 14(1)(e) of the Act is not even maintainable. It was also argued on behalf of petitioner/tenant that the subject premises are admittedly in dilapidated condition, but the present respondents have failed to explain as to how they would reside there. Learned counsel for petitioner/tenant also argued that the present respondents concealed availability of one room on the rooftop above the subject premises and the same can always be used by them. Learned counsel for petitioner/tenant also contended that the present respondents had



constructed three shops and let out the same, which shows that their requirement of the subject premises is not *bona fide*.

4. On the other hand, learned counsel for respondents/landlords supported the impugned order, contending that as per settled legal position, the tenant cannot dictate the landlord to live in dilapidated premises, so there can be nothing objectionable if the respondents/landlords plan to reconstruct the subject premises after eviction of the petitioner/tenant. Learned counsel for respondents/landlords also referred to the large family of the respondents/landlords to demonstrate that need of separate rooms for growing up children of respondent no.2 and 3 cannot be held to be unreasonable. In support of his arguments, learned counsel for respondents/landlords placed reliance on the judgments in the cases titled ***Ramniglal Pitambardas Mehta vs Indradaman Amratlal Sheth***, (1964) 8 SCR 1; ***Arya Samaj, Sagar & Ors vs Pinjamal & Anr.***, (1986) 4 SCC 3; and ***Rajbir Pal and Another vs Kanwar Partap Singh***, 2023 SCC OnLine Del 2320.

5. As mentioned above, the petitioner/tenant does not dispute that the subject premises are owned by the respondents/landlords and that there exists *jural* relationship of tenancy between the petitioner and the respondents.

6. As further mentioned above, petitioner's main ground of challenge to the impugned order is that since the respondents/landlords admittedly want



to demolish the subject premises and reconstruct the same, the eviction petition under Section 14(1)(e) of the Act is not maintainable and they should have filed the eviction petition under Section 14(1)(g) of the Act. I am unable to accept this contention.

7. The provisions under Section 14(1)(g) and Section 14(1)(e) of the Act operate under completely different spheres. The landlord is the master of his choice of grounds laid down under the Act on which in his estimation the eviction can be sought; and the landlord cannot be dictated to come under a particular provision. What is to be seen is as to whether the case set up by the landlord seeking eviction of the tenant satisfies the ingredients of the ground sought to be invoked.

8. Section 14(1)(e) of the Act stipulates the landlord to plead and establish that the tenanted premises are required *bona fide* by the landlord for occupation for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held; and that the landlord or such person has no other reasonably suitable accommodation. It would be significant to note that there is no embargo laid down under Section 14(1)(e) of the Act that once vacated, the tenanted premises would have to be used by the landlord in the same condition as the same exists. In other words, there is no bar under Section 14(1)(e) of the Act or any other law for the time being in force, which prohibits a landlord obtaining possession of the tenanted premises after eviction, from renovating or reconstructing the same. It is the use of the



tenanted premises after vacation which is relevant and not the structure of the tenanted premises. The only embargo on possession of the tenanted premises obtained by the landlord after eviction of tenant is stipulated under Section 19 of the Act, as per which after recovering possession of the tenanted premises under Section 14(1)(e) of the Act, the landlord shall not except with permission of the Rent Controller re-let whole or any part of the premises within three years from the date of obtaining such possession; and where the landlord after obtaining possession of the tenanted premises under Section 14(1)(e) of the Act does not occupy the premises, or the person for whose benefit eviction was ordered does not occupy the premises within two months of obtaining possession, the Rent Controller may direct the landlord to put back the tenant in possession of the premises or to pay such compensation as the Controller may think fit.

9. On the other hand, Section 14(1)(g) of the Act operates in completely different circumstances, in the sense that the *bona fide* requirement here is not for the personal use of the landlord or any dependent member of his family, but for the purpose of building or rebuilding or making thereto any substantial additions or alternations, which cannot be carried out without the premises being vacated. The embargo placed on Section 14(1)(g) of the Act is that before passing an order of eviction, the Controller has to record satisfaction that the proposed reconstruction will not radically alter the purpose for which the premises were let or that such radical alternation is in the public interest, and the plans and estimate of such reconstruction have been properly prepared and that necessary funds for the purpose are



available with the landlord. Further, vide Section 20 of the Act, while passing an eviction order under Section 14(1)(g) of the Act, the Rent Controller shall ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repair or building or rebuilding.

10. In the present case, the respondents/landlords have categorically pleaded that they *bona fide* require the subject premises for being used for their own residential purposes. It is nobody's case here that the respondents/landlords want eviction of the petitioner/tenant only for the purposes of reconstruction of the subject premises, after which they would allow re-entry of the petitioner/tenant into the newly constructed premises. That being so, I am unable to accept the contention of learned counsel for petitioner/tenant that the respondents/landlords ought to have come under Section 14(1)(g) and not 14(1)(e) of the Act.

11. As regards availability of room on the rooftop above the subject premises, in view of clear case of the respondents/landlords that they have to demolish the entire structure of the subject premises and reconstruct the same to suit their requirement, availability of that small room pales into insignificance. As regards the allegation of the petitioner/tenant that the respondents/landlords constructed three shops and rented out the same, in



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view of specific denial on the part of the respondents/landlords, it was incumbent upon the petitioner/tenant to place on record some reliable documentary material to that effect, which was not done, so it cannot be taken as a ground to grant leave to contest. In view of the elaborate pleadings of the respondents/landlords qua their large family coupled with need of rooms for growing daughters, I find no reason to suspect *bona fide* of the requirement projected.

12. In view of the aforesaid, I am unable to find any infirmity in the impugned eviction order, so the same is upheld and the petition is dismissed.

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