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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 20.03.2024
Judgment pronounced on: 03.04.2024

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RC.REV. 570/2015**RAJ KUMAR VERMA & ORS****..... Petitioners****Through: Mr. Aly Mirza, Advocate****versus****LATE NANAK CHAND THR LRS****..... Respondents****Through: Mr Sandeep Kapoor with Mr. M.K.
Kardam, Advs.****CORAM:****JUSTICE GIRISH KATHPALIA****J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioners/tenants have assailed the eviction order passed by the learned Additional Rent Controller after full dress trial under Section 14(1)(e) of the Act. On notice of these proceedings, the respondents/landlords entered appearance through counsel. I heard learned counsel for both sides.

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

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2.1 Shri Nanak Chand, predecessor of the present respondents during his lifetime filed eviction petition against the present petitioner Shri Raj Kumar Verma, proprietor of Verma Electricals under Section 14(1)(e) of the Delhi Rent Control Act pertaining to premises bearing No. 22, Bhogal Road, Bhogal, New Delhi (hereinafter referred to as “the subject premises”), pleading that being absolute owner and landlord of the subject premises he had inducted the present petitioner as a tenant therein at a monthly rent of Rs. 300/-; that his family consisted of his wife, two sons Yograj and Trilok Chand and two daughters Sunita and Sarita; that except Trilok Chand all his children were married and had their own respective families; that the accommodation available with him was three rooms, open kitchen, one WC toilet on ground floor and four rooms with WC and bath on first floor; that the subject premises are a shop measuring 16 feet x 14 feet on front of his house; that without his permission, the respondent/tenant partitioned the subject premises with a temporary wooden wall and unauthorizedly sublet the same to Vimco Electronic Pvt Ltd and Meenakshi Computers; that he is aged 70 years and suffering with several diseases including paralytic attack while his wife Smt. Roopwati aged 67 years continues to be bedridden after paralysis; that being religious persons, they also need a *puja* room and one drawing room; that his sons Yograj and Trilok Chand as well as his granddaughter Bharti also need separate rooms; that the four small rooms on first floor with common WC and common bath were let out to tenants, so not available and even otherwise he and his wife are unable to climb stairs; that he and his wife need help of their sons at odd hours, so all of them need to stay on ground floor; that his sons were engaged in business of shoe



trading under the name and style Karan Boot House in Molarbandh, Badarpur, New Delhi but the entire market was demolished by the government, so they also need space for starting their business.

2.2 On service of summons in the prescribed format, the present petitioner entered appearance and filed application for leave to contest, which was allowed by the learned Additional Rent Controller vide order dated 22.11.2011.

2.3 Thereafter, the present petitioner filed written statement and after completion of trial, the proceedings before the learned Additional Rent Controller culminated into the impugned eviction order. In the course of proceedings before the learned Additional Rent Controller, vide order dated 25.08.2012, application of the present respondents under Order I Rule 10 CPC was allowed, thereby impleading the partnership firm Raj Kumar Verma & Sons of Shri Raj Kumar Verma (*petitioner no. 3 herein*).

2.4 In the impugned order, the learned Additional Rent Controller after examining the entire record and after hearing both sides arrived at the findings that according to the rival pleadings and evidence, ownership of Shri Nanak Chand over the subject premises and relationship of tenancy between the parties stood clearly established; that looking into the above described circumstances of Shri Nanak Chand, his wife and their sons, the requirement for the subject premises as projected in the eviction petition is *bona fide* and there is no reasonably suitable alternate accommodation



available to the present respondents for residential and/or commercial purposes.

2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioners/tenants took me through above records and contended that the impugned eviction order is not sustainable in law. Learned counsel for petitioners/tenants contended that there is no material on record to show that the Badarpur shop of sons of Shri Nanak Chand got demolished. It was also argued on behalf of petitioners/tenants that there is no explanation as to why the respondents/landlords cannot use four rooms available on first floor of the premises. Learned counsel for petitioners/tenants submitted that according to the pleadings, the respondents/landlords need only four rooms but subsequently, without amending the eviction petition, they increased the need to atleast six rooms.

4. On the other hand, learned counsel for respondents/landlords supported the impugned eviction order and contended that the present petition is devoid of merits. Learned counsel for respondents/landlords took me through testimony of RW1 and pointed out that the witness was completely evasive. It was also submitted by learned counsel for respondents/landlords that the evidence on record clearly establishes that the rooms on the first floor have been let out to 15-20 tenants of labour class and there being a single common toilet on first floor, the respondents/landlords cannot be compelled to shift to first floor and share toilet with others.





5. 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.

5.1 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.



5.2 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.

5.3 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. In the case of ***Shiv Sarup Gupta vs Mahesh Chand Gupta***, (1999), 3 SCR 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.

6. Falling back to the present case, to recapitulate, the subject premises are a ground floor shop, in which the present petitioner no. 1 (*as proprietor of the present petitioner no. 2*) was inducted as a tenant and subsequently, petitioner no. 1 created a partnership firm in the name of petitioner no. 3 in the subject premises; and the legal representatives of the now deceased landlord are in *bona fide* requirement of the subject premises for residential and commercial purposes because sons of the now deceased landlord require



commercial premises since the entire market in Badarpur where they were running shoe business got demolished; further, at the time of filing the eviction petition, the then surviving landlord and his paralytic wife needed ground floor accommodation for themselves as well as their two sons and two daughters; the landlord clearly disclosed that first floor above the subject premises consisted of four rooms but the same were with common toilet and common bathroom let out to tenants, so not available.

7. Vide order dated 22.11.2011, the learned Additional Rent Controller granted the present petitioners leave to contest the proceedings on the grounds that the act of the then surviving landlord in letting out the four first floor rooms to different tenants creates a triable issue *qua bona fide* requirement; that there is no material on record to rebut the contention of the present petitioners that Badarpur shops of sons of the then surviving landlord had actually been demolished, so they have no place of business; and that it also was a triable issue as to whether the then surviving petitioner had sufficient accommodation because his sons were living with their respective families separately in Badarpur.

8. Keeping in mind the limited scope of the present proceedings, as described above, I have examined the impugned eviction order in the light of rival pleadings and evidence on record. The learned Additional Rent Controller has minutely examined the material on record and has arrived at the decision on the basis of cogent reasons and analysis.



9. As correctly pointed out in the impugned order, the present respondent no.1(b) Shri Yograj in his cross examination as PW1 categorically denied that he or his brother own two shops in Badarpur; on the other hand, the present petitioner in his testimony as RW1, what to say of adducing any evidence in that regard, could not even disclose address of either of those alleged two shops. Rather, in his cross examination, PW1 stated that he and his brother used to operate from footpath where Badarpur flyover is situated and they were removed from that spot after construction of the flyover.

10. Similarly as regards the allegation of the present petitioner that sons of the then surviving landlord are living with their families separately in Badarpur, this allegation was denied in the pleadings as well as evidence of the present respondent but what to say of adducing any documentary or even oral corroborative evidence, the present petitioner did not even disclose the specific address of the alleged residence of sons of the landlord in Badarpur.

11. So far as the issue regarding four rooms on first floor above the subject premises is concerned, according to the pleadings and evidence on record, the now deceased landlord as well as his wife suffered paralysis and are senior citizens, so unable to climb stairs. As correctly observed by the learned Additional Rent Controller, the landlord cannot be compelled to adjust in the space available despite his inconvenience. As also reflected from evidence on record, those four rooms on the first floor above the subject premises are occupied by different tenants of weaver/labour class all



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of whom share a common toilet and common bathroom. So those rooms are not available and even otherwise, the widow and/or children of the now deceased landlord cannot be compelled to share those first floor rooms.

12. The learned Additional Rent Controller has discussed threadbare the size of family of the petitioners in contrast with the premises currently available with them, justifying their requirement for the subject premises, from which space for residential and commercial premises would be carved out if the eviction petition is allowed.

13. I am unable to find any infirmity in the impugned order, so the same is upheld and consequently, the petition is dismissed.

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