



\$~8

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

+ **RC.REV. 120/2019 & CM APPL. 9371/2019**

MOHD YAHYA & ORS

.....Petitioners

Through: Mr. Trilok Nath Saxena, Dr. Shiv
Kumar Tiwari, Mr. K.K. Bhati and
Mr. Akashat Agrawal, Advocates.

versus

FARAT ARA & ORS

.....Respondents

Through: Mr. Ajay Kumar Gupta, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

05.08.2025

%

By way of the present revision petition filed under section 25-B (8) of the Delhi Rent Control Act 1958 ('DRC Act'), the petitioners impugn order dated 28.08.2018 passed by the learned CCJ-cum-ARC, Pilot Court, Central District, Tis Hazari Courts, Delhi in eviction petition bearing E. No.11/2018.

2. Though no formal notice has been issued on the present petition, *vide* order dated 18.03.2019 passed by a Predecessor Bench, execution proceedings were directed to be kept in abeyance till the next date of hearing.
3. Furthermore vide order dated 26.02.2020 it was inter-alia directed that subject to the petitioners paying use and occupation charges at the rate



of ₹10,000 per month with effect from 01.03.2019, the execution of the impugned order shall remain stayed.

4. The respondents have been participating in the present proceedings ever since.
5. The court has heard Mr. Trilok Nath Saxena, learned counsel appearing for the petitioners; as well as Mr. Ajay Kumar Gupta, learned counsel appearing for the respondents.
6. In support of the revision petition, Mr. Saxena has raised *one* principal contention, which is : that the eviction petition was not maintainable at the hands of the respondents, since the subject premises was Waqf property; and therefore the respondents were not title holders to the premises.
7. In this behalf, Mr. Saxena has drawn attention of this court to the impugned order, to submit that the learned Rent Controller has failed to address the issue arising from the character of the subject premises as Waqf property, which was a triable issue.
8. A perusal of the impugned order however shows, that having been raised by the petitioners (respondents in the eviction proceedings), this issue was considered and summarised by the learned Rent Controller in the impugned order, in the following manner:

“Ownership as well as existence of landlord-tenant relationship :-

14. In the present case, the respondents have disputed the ownership of the petitioners over the premises in question stating that the petitioner is neither the legal owner of the suit premises nor has any legal right to institute the present eviction petition. It is submitted that the petitioners have not substantiated their claim of ownership with registered documentary evidence. However, the petitioners have placed on record translated copy of the document



*of Mutawalliship/Managership in favour of Mohd. Maqbool, Abdul Wahab (deceased husband of petitioner no.1 and father of petitioners no.2 to 4) Mutawallis, by virtue of which all rights has been transferred to the above said joint Mutawallis with respect to wakf property (including the suit property) and they shall have rights to look after, let out and ejection of tenants and to receive rent amount. The petitioners have also placed on record the Agreement dated 14.05.2016 executed amongst the legal heirs of Late Abdul Wahad and Late Maqbool Ahmed after their demise, by virtue of which the premises in question fell into the share of the petitioners. The petitioners have also placed on record the photocopy of counterfoil of the rent receipt vide which the respondents have paid rent qua the tenanted premises in favour of father of the petitioners. Moreover, the respondents have themselves submitted in their leave to defend application that the respondents are very regular in making payment of rent and has paid rent upto September, 2017 against recent receipts and have also placed on record the certified copies of the rent receipts vide which the respondents had paid the rent qua the tenanted premises in favour of Maqbool Ahmed and Abdul Wahab (deceased husband of petitioner no. 1 and father of respondents no. 2 to 4). That being the case, once the respondents had paid rent qua the tenanted premises in favour of the Sh. Abdul Wahab (deceased husband of petitioner no. 1 and father of respondents no. 2 to 4), they are stopped u/s 116 of the Indian Evidence Act to dispute the title of the petitioners over the tenanted premises as after the demise of Late Sh. Abdul Wahab, they acquired the tenanted premises vide Agreement dated 14.05.2016, copy of which is placed on record, being the Lrs of Late Sh. Abdul Wahab. Even otherwise, under the DRC Act, the petitioner/owner/landlord is not required to prove his absolute ownership over the property and he is just required to show that his title is better than that of the tenant. Reliance in this regard is placed upon the case law titled as **Rajender Kumar Sharma & Ors. v. Leela Wati & others, 155 (2008) DLT 383**, wherein it was laid down that “a landlord is not required to prove absolute ownership as required under Transfer of Property Act and he is required to show only that he is more than a tenant.” Thus, from the documents placed on record by both the parties, the ownership of the petitioners over the premises in question as well as existence of*



landlord-tenant relationship between the parties stands duly proved for the purpose of the DRC Act.”

(bold in original)

9. As a sequitur to the above, the learned Rent Controller has opined that once it was the admitted position that the petitioners had paid rent to the respondents, which was evidenced by way of rent receipts to that effect, as a matter of law, the petitioners were not entitled to dispute the ownership of the respondents, regardless of any anomaly or other infirmity arising from the fact that the subject premises was part of Waqf property.
10. Furthermore, Mr. Saxena has also submitted, that since an earlier eviction petition bearing E. No.190/08 filed by the respondents under section 14(1)(e) of the DRC Act was compromised in terms of application dated 28.08.2008; and that since one of the terms of the compromise was that the respondents would not file an eviction petition on the ground of *bona-fide* requirement under section 14(1)(e) of the DRC Act, the respondents could not have filed a second eviction petition at all.
11. This aspect has also been dealt-with by the learned Rent Controller in the following manner:

“15. It is also contended by the respondents that the husband of the petitioner no. 1 Shri Abdul Wahab filed an eviction petition bearing no. E-190/08 u/s 14 (1)(e) r/w Section 151 CPC against Mohd. Ilyas (deceased) through Lrs., 1. Mohd. Yahya (respondent no. 1) 2. Mohd. Iqbal 3. Mohd. Ismail 4. Mohd. Ikhalas 5. Mst. Naseema 6. Ms. Rasheeda 7. Ms. Hajra @ Munni for their eviction from shop No. 5571, Gandhi Market, Sadar Bazar, Delhi. The case was compromised between the parties as per application for compromise dated 28.08.2008 Ex. C.1 on 03.09.2008. However, filing of earlier eviction petition by the husband of the petitioner



no.1 cannot debar the petitioners from filing the present eviction petition on the ground of bonafide requirement u/s 14 (1)(e) of the DRC Act as the bonafide requirement can arise at any point of time and the petitioners, being the owners/landlords are well within their rights to seek eviction of the tenant from the tenanted premises for their bonafide requirement. Thus, the said contention of the respondents is without any substance.”

12. Besides, the learned Rent Controller has also duly dealt-with the issue of *bona-fide* requirement on the part of the respondents in the following words:

“16. It is submitted by the petitioners that the tenanted premises is bonafidely required by the petitioner no. 1 for starting her own boutique business, for which the petitioner no. 1 does not have any other reasonable and suitable accommodation. It is submitted that the family of the petitioner no. 1 consists of petitioner herself, two sons being petitioner no. 2 and 3 and one daughter being petitioner no. 4. The petitioner no. 1 independently wants to start her own business of boutique. She requires one separate room for tailoring / stitching space from where the tailors would stitch the ladies’ clothes. She also requires separate private space for the purpose of taking measurements as she will be having female clients. She also requires separate room as changing room besides separate WC facilities and also requires separate space for waiting of customers as well as for display of ladies’ apparels. The tenanted premises is the most suitable and reasonable to petitioner no. 1. The portion situated at ground floor is most suitable to run the business.

“17. Per contra, it is averred by the respondents that the petitioner no. 1 to 4 are not in bonafide need of shop in question neither at the time of the previous petition filed, compromised and withdrawn by the deceased husband of the petitioner Shri Abdul Wahab and his brother Shri Maqbool nor the present petitioners no. 1 to 4 are in bonafide need of the shop in question. It is submitted that the petitioner no.2 and 3 are employed while petitioner no. 4 is a married house wife W/o Mohd. Kashif living with her in laws at Pataudi House Darya Ganj, Delhi i.e. matrimonial house and petitioner no. 1 is an old lady aged about 68 years suffering from various old aged disease. She cannot carry out the alleged business



of boutique nor she has any experience or carry on business of boutique in her life.

“18. It is not the case of the respondents that the petitioner no. 1 is presently doing any business or job in order to earn her livelihood. Thus, the petitioner no. 1, is well within her right to start his own boutique business, if she wants to do the same in order to engage herself in some work as well as to earn her livelihood in order to enhance her family income. Further, the age is no bar for any person to start any business and no experience is required by a person to start business. Reliance in this regard is placed upon the case-laws titled as **Aero Traders Pvt. Ltd. Vs. Mohan Singh & Anr., 2014 (140) DRJ 560**, wherein Hon’ble Delhi High Court has held that “No experience is required to start a new business and if a landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine.” Further, it has been held in **Shyama Bai, widow of Late Mulayam v. Murildhar, 2008 (2) RCR 119**, that merely the applicant is having old age, ipso facto, would not mean that the need is not bonafide. In view of the case-laws cited above, the petitioner cannot be denied of her right to start her own independent business of boutique just because she is an old aged lady and having no experience of business. Thus, the bonafide requirement of the petitioner qua the tenanted premises to start her independent business of boutique stands duly proved.”

(bold in original)

13. Insofar as the question of availability of suitable alternate accommodation is concerned, the learned Rent Controller has taken note of an Agreement dated 14.05.2016, whereby the properties of late Md. Maqbool Ahmed and Abdul Wahab were partitioned between the parties, with the following narration:

“24. Perusal of the record shows that vide agreement dated 14.05.2016, the properties were partitioned amongst the legal heirs of Late Sh. Maqbool Ahmed and Abdul Wahab, whereby the petitioners acquired Shop No. 5524 (Ground Floor), 5571 (Ground



Floor), 5522 (First Floor), 5522-A (Second Floor), 5522-D (Second Floor), 5522-E (Third Floor) and 5522-H (Third Floor), Gandhi Market, Sadar Bazar, Delhi, all of which are under tenancy of different tenants. Further, the petitioners have also placed on record the list of tenants occupying the said shops as well photocopies of the counterfoils of the rent receipts issued to the tenants, occupying the said shops. Thus, none of the said shops can be said to be lying vacant, which can be used by petitioner no. 1 to start her boutique business. Even otherwise, the petitioner, being the landlord is the best judge of his requirement and the tenant cannot dictate terms upon him as has been held in **Ragavendra Kumar v. Firm Prem Machinery**, AIR 2000 SC 534, the Supreme Court held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. The petitioner requires the tenanted premises as it is situated on the ground floor and thus, would be more suitable for the petitioner for carrying out her business of boutique, moreso, in view of the fact that the petitioner is an old aged lady. Reliance may be placed upon the law laid down in **Rajesh Jain v. Quazi Sammin Ahmad** 2015 (2) RLR 438 wherein it has been held that since eviction was sought for commercial purposes, it was rightly held that ground floor of the property would be more suitable. Thus, the respondents failed to prove the availability of any alternative suitable accommodation available to the petitioners for starting boutique business by petitioner no. 1.”

(bold in original)

14. It is based on the above discussion and reasoning that the learned Rent Controller has ruled that no triable issue has been disclosed in the leave-to-defend application.
15. In the opinion of this court, the learned Rent Controller has, with full deliberation and application of mind, decided all 03 issues, namely, the existence of landlord-tenant relationship between the parties, the *bona-fide* requirement of the respondents, as well as the non-



availability of suitable, alternate accommodation, in accordance with law.

16. Other things apart, it is also noticed that the petitioners have been in occupation of the subject premises, which is a shop in one of the busiest wholesale markets of the city, *since the 1940s*; and the *last paid rent was Rs. 2178/- per month*.
17. With the petitioners having occupied the tenanted premises for about *85 years*, the respondents had to litigate before the learned Rent Controller, which culminated in the passing of the impugned order on 28.08.2018; and thereafter the present revision petition has been pending since 2019, *i.e.*, for the last about 6 years.
18. On a conspectus of the foregoing facts and circumstances, this court is unable to discern anything remiss in impugned order dated 28.08.2018; which order has been passed in accordance with law and calls for no interference in the revisional jurisdiction of this court under section 25-B (8) of the DRC Act.
19. The petition is accordingly dismissed.
20. Pending applications, if any, also stand disposed-of.
21. Needless to add that the respondents shall be entitled to obtain eviction of the petitioners in execution proceedings, that are stated to have been filed, in accordance with law.

ANUP JAIRAM BHAMBHANI, J

AUGUST 5, 2025

V.Rawat