

(1984) 05 DEL CK 0043

In the Delhi High Court

Case No : Civil Revision Appeal No. 388 of 1981

Ashok Karam

APPELLANT

Vs

A.T. Jotwani

RESPONDENT

Date of Decision : 11-05-1984

Acts Referred:

Citation : (1984) 7 DRJ 121

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : R.K. Makhija, Alok Kumar and M. Wadhwani, for the Appellant;

Judgement

J.D. Jain, J.

(1) This Revision Petition is directed against order dated 31st January, 1981 of an Additional Rent Controller dismissing the eviction petition which had been filed by the petitioner/landlord on the ground of bona fide personal requirement under clause (e) to the proviso of Section 14(1) of the Delhi Rent Control Act (hereinafter refer to as The Act.)

(2) C.R. 388/81 The facts of this case in brief are that Government but property bearing No. 42/7, East Patel Nagar, Municipal No. 839 was allotted to late Sh. Jai Ram Dass, grand-father of the petitioner by the Department of Rehabilitation in the year 1950. The adjoining property No. 42/6, which too was Government built property, was allotted to Sh. J.J. Karam, father of the petitioner. Both these properties had similar type of accommodation. The premises in dispute comprising three rooms, a kitchen, a both room, a lavatory, back courtyard and one half of the front courtyard etc. was let out by the deceased Jai Ram Dass to the respondent in January 1963. Thereafter, Sh. Jai Ram Dass gifted , the property in question to the petitioner vide registered gift deed dated 16th April, 1964. Jai Ram Dass died in the year 1970. The respondent has been paying the rent to the petitioner since then.

(3) The remaining two rooms in the property in question are in the occupation of

the petitioner. However, he does not possess any kitchen, bath room or lavatory and he has been availing of these facilities in the house of his father which as stated above adjoins the property in question. Admittedly, the two rooms which are in possession of the petitioner adjoins the party-wall between the properties 42/6 and 42/7 and there is a door in the intervening wall so that the petitioner has a direct access to the house-of his father and he does not have to go from outside the house.

(4) The eviction petition was filed by the petitioner on the ground that he required the premises in question bonafide and he was not in possession of any other reasonably suitable accommodation. He explained that his father was opposed to further continuance of the arrangement which had existed over the years and as such he had no option but to seek eviction of the respondent for his legitimate] need.

(5) The eviction petition was contested by the respondent on" the ground that both the houses 42/6 and 42/7 in fact constitute one single unit and the petitioner had been living with his father. Of course, it was admitted that the petitioner was in occupation of two rooms of property in question and no independent kitchen, bath room or lavatory was available to the petitioner in the property in question. The respondent denied that the relations between the petitioner and his father were strained and therefore, it was no longer possible for him to continue with the arrangement which had existed for over a decade.

(6) Learned Additional Rent Controller has found that the petitioner and earlier his grand-father during his life-time had been using the facility of kitchen etc. of property No. 42/6 ever since 1963 and further that the father of the petitioner, being a widower the wife of the petitioner was looking after him also so he could not believe that the relations between the petitioner and his father were in any way strained consequently he arrived at the conclusion that the alleged requirement of the premises in question by the petitioner was not bonafide or even genuine. Hence, he dismissed the eviction petition.

(7) The sole question which falls for determination in this Revision petition is whether the petitioner requires the premises in question bonafide as residence for himself and the members of his family and whether he has no other reasonably suitable residential accommodation. Learned counsel for the petitioner has at the outset canvassed fervently that the petitioner has been availing of the facility of kitchen, bath room and lavatory etc. in the house of his father with the letter's courtesy and goodwill and as such he, being at best a licensee, could not continue user of the same as of right especially when his father has already told him that the said arrangement cannot continue any longer on account of temperamental incompatibility. Reliance in this connection has been placed by him on various decisions of this Court, namely, Smt. Basi Devi v. FaqirChand 1971 Plr (Del) 19, Sh. Parkash Chandra v. Shri Nirpendra Kumar Aggarwal. 1971 RCJ 474, Mjs. Jagatjit Industries Ltd. v. Sh. Rajiv Gupta 1980 (2) Rcj 769 1980 Drj (1) 147, Gurbachan Singh v. Rajpa 1981 (1) Rcj 745,

1981 Drj (2) 109 and M/s. J.K. Industries Ltd. v. Lt. Col. M.M. Lal 1981 (2) Rcr 178, 1981 Drj (2) 218. In Smt. Basi Devi Shri B.C. Misra J. observed that the connotation of the phrase "landlord does not have other reasonably suitable residential accommodation" implies three essential things (1) the landlord must have a legal right to reside in the said accommodation, (2) the residential accommodations must be in fact available for occupation and (3) the same must be reasonably suitable for the landlord." Similarly, in Parkash Chandra v. Nirpendra Kumar Aggarwal, V.S. Deshpande, J., as then was. said that the landlord having no right to stay in the house of his father, he had no suitable residential accommodation apart from the premises in question for his own residence. The remaining three decisions are of Sultan Singh, J. and in all three of them, following the above mentioned decisions, the learned Judge held that the phrase "landlord does not have any other reasonably suitable residential accommodation" as used in Section 14(1)(e) of the Act implies that the landlord must have " a legal right to reside in the said accommodation and that the same must be suitable for him. He further observed (that if a landlord has no legal right to keep the existing premises in his possession, it cannot be said that he has got suitable accommodation for his residence. In the cases of Gurbachan Singh and M/s. Jagatjit Industries Ltd. his Lordship sought to fortify this view further from the following observations of the Supreme Court in Phiroze Bamanji Desai Vs. Chandrakant N. Patel and Others, . "If a person is in occupation of the other premises on leave and license, they are obviously not available to the landlord for occupation and cannot be taken into account for negating the need of the landlord for the premises in question." In M/s. Jagatjit Industries Ltd. the landlord was residing with his father at 30, Chatra Marg, Delhi. His Lordship said that the landlord had no right, title in the property which belonged to his father and he, at best can be said to be a licensee of his father while in occupation of that property.

(8) With great respect, I may say that I do not feel persuaded to subscribe to the broad proposition that when a son lives with his father in the letters "house his status is merely that of a licensee. It is for the simple reason that this view completely overlooks the family bond which is a great uniting factor between the father and the son and which instills a feeling of oneness between the father and the son. If purely on legalistic considerations, the relationship of father and son is reduced to that of a licensor, and a licensee, which to say the least, is generally speaking not the position, the whole concept of family is denigrated and reduced to mere farce. One can, of course, visualise a situation where relationship between a father and a son may be that of a licensor and a licensee or even of a landlord and a tenant. For instance, where a permissive user of father's property by the son is allowed but it cannot be laid as a broad proposition and that when a son lives with his father in the house of the latter, his occupation must necessarily be that of a licensee. There is no such strait jacket legal formula. In my view, Therefore,, where a son has been living as a member of the family of the father for over years, the concept of family ties

would militate against his being just a mere licensee. Such a conclusion would deleteriously erode the concept of a family and make a mockery of socio-religious structure of Hindu society. Hence, the question whether the relationship between the father and a son is that of a licensor and a licensee or for that matter of landlord and tenant will depend upon facts of each case and such a conclusion would be possible only when it is held that a son has not been or is not living with the father as a member of his family or that he has ceased to be a member of his family on account of estrangement between them or any other plausible reason.

(9) The crucial question, however, still remains to be answered, i.e. whether the phrase "has no other reasonably suitable residential accommodation" postulates possession of existing accommodation with the landlord as of right especially whether such right must necessarily be a legal right to hold the premises. The dictionary meaning of the word "have" which is both a transitive and intransitive verb and of which "has" is present singular tense used in the third person inter alia, is "to hold in possession as one's property or at one's disposal" (see the concise oxford Dictionary). The property in one's possession may belong to him or even it may merely be at his disposal. The expression "at one's disposal" as per the same dictionary means "available for one's use, subject to one's orders or decisions". According to Chambers 20th Century Dictionary the expression "at one's disposal" inter alia means "availability for one's own use or control"- So in the context of residential accommodation it would be quite appropriate and fit to construe the phrase "has no other reasonably suitable residential accommodation" has to imply that the landlord who seeks eviction of the tenant from the demised premises does not have at his disposal any other accommodation, over which he can exercise some kind of control. Mere availability of residential accommodation without any power of control or semblance of a right to use the same would be meaningless. It would not amount to having any other residential accommodation as contemplated in the said phrase. To any mind the word "has" is used in this phrase in a sense different from having mere physical possession. It connotes something more than mere occupation, because without some kind of a security of tenure an element of uncertainty shall hang on the landlord all the time like a democle's sword and it could hardly be intended of the makers of the law that mere residence, howsoever, precarious be its tenure in any other residential accommodation, would be enough to deprive the landlord of his right to live comfortably in his own house. In other words the existing accommodation with the land- lord must be of a type in which he can live with some sense of security and he does not apprehend eviction there from any time at the whim or fancy of the owner of that property. However, as stated above, he need not have an absolute legal right to stay in the existing accommodation and it would be enough that he has some semblance of right which instills a sense of confidence and security in him that he can stay there comfortably for a sufficient period.

(10) It may be pertinent to add here that the concept of a family as a single unit

has been in terms recognised under Clause (e) of the proviso to Section 14(1) itself, That is why a right has been conferred on the landlord to seek eviction of a tenant if he needs residential accommodation for himself or for any member of his family dependent on him. Thus, the law sacrifices the interest of the tenant to preserve the unity of the landlord's family. Indeed the expression "for himself" has itself been interpreted as including the family of the landlord. In other words the necessity of the landlord includes the necessity of the persons living with him as family members. Thus, the concept is firmly rooted in our society that the grown up sons and parents form one homogeneous family and living separately is accepted only when it is inevitable. Looking at the matter from this angle too there is no escape from the conclusion that the possession of a son who is living with his father as a member of his family would be attributable to his status as a member of his father's family and not to mere permissive user. In a way, Therefore, the identity of the son is merged into that of his father who constitutes the head of the family.

(11) This question has been recently considered by another learned Judge of this Court, T.P.S. Chawla, J. in *Sh. Sat Pal v. Sh. Nand Kishore and another*, C.R. 523/1980 decided on 3rd November, 1982. This decision has been reported in part in 1983 R.L.R. 19. Adverting to the dictionary meaning of the word "have" as also the word "disposal" the learned Judge has formulated what may be called test of availability for use. He says :

" I think ,the true test is whether, on an overall and reasonable view, it can be said that the landlord has suitable accommodation "available for his use". In deciding this question one should certainly have regard to the fact that the landlord has no legal right to the other accommodation ; but, that is only a factor and not the end of the matter. For instance, if a landlord has been residing with his father for decades, and there is no cogent reason for the discontinuance of that arrangement, I think, that in actuality the landlord's need is met. He "has" other accommodation "available for his use", though theoretically he can be turned out at any time".

The learned Judge then noticed the decision of the Supreme Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel and others* (supra). In that case one of the two bungalows owned by the appellant/landlord was called Truth Bungalow. A portion of that Bungalow had been given by the landlord to one Dr. Bharucha on leave and license, on payment of compensation of Rs. 501- per month. The High Court, while considering the availability of Truth Bungalow, had observed that since the Truth Bungalow had been given on leave and license to Dr. Bharucha, it was in the possession of the appellant/landlord and largely on the basis of this view the High Court came to the conclusion that the requirement of the appellant for the ground floor premises was not reasonable and bona fide disapproving the view taken by the High Court the Supreme Court observed that :

"IT is true that when premises are given on leave and license, the licensor continues from a juridical point of view, to be in possession of the premises and

the licensee is merely given occupation, and Therefore, strictly speaking the High Court was right in observing that the Truth Bungalow which was given on leave and license to Dr. Bharucha, was in the possession of the appellant. But for the purpose of determining whether the requirement of the appellant for the ground floor premises was reasonable and bona fide, what is necessary to be considered is not whether the appellant was juridical in possession of the Truth Bungalow was available to the appellant, for occupation so that he could not be said to need the ground floor premises. If the Truth Bungalow was in occupation of Dr. Bharucha on leave and license, it was obviously not available to the appellant for occupation and it could not be taken into account for negating the need of the appellant for the ground floor premises. The appellant could not obtain for himself the occupation of the leave and license of Dr. Bharucha and compelled him to vacate the occupation of the Truth Bungalow. That might involve a long litigation with Dr. Bharucha....."

(12) Relying on this passage the learned Judge concluded that "the correct basis for deciding whether the requirement is "reasonable and bona fide" is not whether he has a juridical" right to other accommodation , but whether it is "available" to him for use. Or, in other words, the reality of the situation. If the argument which has been addressed to him were right, the Supreme Court should have affirmed the view of the High Court.

(13) The learned Judge also pointed out that Sultan Singh, J. in *Gurbachan Singh v. Rajpal* (supra) and *M/s. J.K. Industries Ltd. v. Lt. Col. M.M. Lal* (supra) had misapprehended the ratio of judgment of the Supreme Court. From the aforesaid passage the Judge has wrongly inferred that the landlord is in occupation of the other accommodation "on leave and license" basis, he cannot be said to have "other reasonably suitable residential accommodation.

(14) I am by and large in respectful agreement with the view expressed by Chawla, J. in *Sat Pal v. Nand Kishore & another*. It is true that in the case before Supreme Court the landlord was not in actual occupation of any accommodation in Truth Bungalow and the aforesaid observation was made by the Supreme Court to refute the contention of the tenant that the landlord had other reasonably suitable residential accommodation because he had "juridical" possession of the bungalow which had been given to Dr. Bharucha "on leave and license" basis. Thus, the judgment of the Supreme Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel and others* "did not warrant the conclusion which had been arrived at by did my learned brother Sultan Singh, J. It is, however, not possible to construe the said judgment as laying down that availability of any other residential accommodation for use to the landlord, at a given time, would be parse enough to disentitle him to an order of eviction. Such a view of the phrase "has no other reasonably suitable residential accommodation" would simply mean that whenever the landlord is found to be in possession of any other residential accommodation, subject of course to the condition that it is otherwise suitable, the landlord would be liable to be non-suited. It will have disastrous

effects because even when the tenure of the landlord in respect of the other accommodation is very much precarious and he is merely there at the whim and mercy of the landlord he would still not be entitled to ask for his own residential premises which is in the occupation of a tenant. Indeed, I do not think that Chawla, J. was contemplating such a result when he laid the criteria of availability for use" in determining whether the landlord has any other residential accommodation. This would be manifest from his further observation, "the real test is actual "availability" understood in a realistic, practical and reasonable sense". That Chawla, J. was quite conscious of the intrinsic weakness of such a construction is further demonstrated by the note of caution sounded by him that "It should mean that the present house was available to him and he was not occupying the same on make shift or emergency basis". For obvious reasons the realistic and practical approach to the problem would necessitate a probe into whether the possession of the landlord over the other residential accommodation is in exercise of some kind of right which would ensure a reasonable stability and security of tenure.

(15) If I am right in what I have said there can be no escape from the conclusion that the petitioner in the present case must be held to have other suitable residential accommodation. It bears repetition that the genesis of his occupation is evidently traceable to the family ties with his father and his status as a member of the latter's family rather than no permissive user of the lavatory, bath and kitchen by the latter, as is sought to be made out. This conclusion is further borne out by the fact that even during the lifetime of the grand-father of the petitioner they used to cook food in the same kitchen in House No. 42/6 and since then the said arrangement has continued. It is significant to note that J.J. Karam, father of the petitioner, is about 70 years old. He lost his wife in November, 1971. Although he has got 4 sons and 5 daughters but none of them is, at present, living with him excepting the petitioner. It is further stated by the petitioner's father that there is no lady member in his house except the wife of the petitioner. She is not working anywhere and is a whole time housewife. He even admitted that she was doing cooking for him also. However, he asserted that he had got a part time maid servant to clean the utensils and sweep the house etc. Be that as it may, on a broad commonsense view it clearly emerges that the petitioner and his wife are virtually living with his father and looking after him in the evening of his life. Services of other sons and daughters, not being apparently available to the father of the petitioner at the moment, it does not appeal to common sense that he would forego the comforts and services which are rendered by the petitioner and his wife to him at a time when he needs them most. Hence, the learned Additional Rent Controller has rightly found that the story of strained relations between the petitioner and his father is imaginary and a mere make believe. Having regard to all the circumstances of the case mere ipse dixit of the petitioner or for that matter his father that their relations are no longer cordial on account of growing temperamental incompatibility cannot be accepted at its face value. Consequently the petitioner cannot be said

to be precariously perched.

(16) That apart, in order to be entitled to an order of eviction under Clause (e) of the proviso to Section 14(1) the landlord must, inter alia, prove that the premises are required by him bona fide for occupation as his residence. It is well settled that the word "required" signifies more than a mere, wish or desire, and it has in it an element of need, i.e. to say that the landlord must prove that he is in fact in need of the premises for his residence. Further, the expression "bona fide" implies an element of sincerity of purpose and honesty or to put it differently, the absence of any extraneous motivation. It also connotes that the need of the landlord must be genuine one and not merely sham or fake. All these essential ingredients of Clause (e) of the proviso to Section 14(1) of the Act have to be established on a preponderance of probabilities. As has been held consistently by this court the landlord is not an arbiter of his needs and his assertion that he requires the premises bona fide for his own use has to be judged by the Court on the touchstone of objectivity. The petitioner has evidently failed to prove these essential ingredients and satisfy the conscience of the court that he genuinely requires the premises in question for use as a residence.

(17) C.M. 3340/83 During the pendency of this Revision Petition C.M. No. 3349 of 1983 was made by the petitioner under Order 7 Rule 7 read with Section 151\ \133 of the CPC for taking certain subsequent events and developments into consideration. He inter alias averred that after dismissal of the application for eviction his father demolished the house No. 42/6 thereby depriving him of the facilities he had hitherto availed of in that house, even though in a very tense atmosphere. Thus, according to him he is now in occupation of only two small rooms in his own house. One of the rooms, being no better than a store, is at present used for cooking, washing and storage and he and the members of his family have to visit the house of a neighbour for availing of the facilities of bath and lavatory. The respondent/tenant has denied this contention and dubbed it as a travesty of facts. While he admits that after demolishing house No. 42/6 the father of the petitioner has constructed a new house of modern design, he asserts that the whole of the said building is still available to the petitioner for his use. He goes to the extent of saying that in fact the two rooms in the occupation of the petitioner in the property in question are not being used at all by the petitioner. The court can no doubt take into account subsequent events in order to grant proper relief when justice requires to be done but where the facts are in dispute the revisional court will be hardly justified in embarking upon a fresh inquiry to find out real facts. In view of the rival contentions of the both the parties in the instant case it is not possible to make out on which side the truth lies. Hence, I feel disinclined to go in to this aspect of the matter at this stage.

(18) To sum up, Therefore, I find no merit in this Revision Petition. It is accordingly dismissed with costs.