

(2011) 11 DEL CK 0309
In the Delhi High Court
Case No : RC. Rev. 99 of 2009

Joti Prasad Gongel

APPELLANT

Vs

Chand Bihari Lal (Decd) thru Lrs.

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126, 131
Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (2011) 11 DEL CK 0309

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : S.D. Dixit, for the Appellant; S.P. Jha, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The landlord-Jyoti Prasad Gongel has filed the present eviction petition u/s 14(1)(e) of the Delhi Rent Control Act (DRCA). The Additional Rent Controller (ARC) after granting leave to defend to the tenant had permitted the parties to lead evidence; the landlord in support of his case had examined himself as AW1; AW2 was the superintendent from M/s Instrumentation Limited i.e. the company where his son Yogesh Gongel was purportedly working. AW3 was the Computer Operator from the Bank of Baroda. The tenant in support of his case had examined nine witnesses; RW-1 was Mohd. Rafiq himself. RW2 and RW3 were the officers i.e. the Record Clerk and Record Keeper from the MCD who had brought the summoned record; RW3 had produced his house tax record of the disputed property i.e. property bearing No. 2622-2639, Nai Sarak, Delhi evidencing the fact that the premises since 1960-67 was being used for commercial-cum-residential purpose. RW9 was also from the House Tax Department; RW5 the summoned witnesses from the Custodian of Evacuee property Cell had deposed that the purpose of letting of the said property is for an office-cum-residence. RW4 and RW6 had produced the record from the Delhi University to substantiate the submission that Chand Behari Lal

was a law graduate. RW7 and RW8 living in the vicinity of the property had deposed that the property is a three storied building.

2. Record shows that the Petitioner is the owner of the disputed premises. The disputed premises are comprised of two rooms, one tin-shed, bathroom and latrine on the first floor and a tin-shed on the second floor of the property bearing No. 2633, Nai Sarak, Delhi. AW1/1 was the sale certificate issued by the Custodian of Evacuee Property Cell evidencing the purchase of this property by the Petitioner; the Respondent has in fact not disputed the contention of the Petitioner that he had purchased this property in the year 1964; testimonies of AW1 and RW1 had also evidenced that tenant Mohd. Rafiq had not disputed the landlord and tenant relationship. Ownership of the suit premises has thus been proved before the ARC.

3. The Additional Rent Controller had also noted that although the premises had been taken for a commercial purpose but in view of the judgment of the Supreme Court reported in III (2008) SLT 553 titled as Satyawati Sharma v. Union of India the distinction between residential and non-residential has lost its significance and the objection of the tenant that the premises having been let out for the commercial purpose would not fall within the ambit of Section 14(1)(e) of the DRCA had been rejected.

4. Both these issues were decided in favour of the landlord. Landlord had however lost out before the ARC on his plea of bona fide requirement. The case set up by the landlord in his eviction petition is that he is the owner, landlord of the disputed premises and the Respondent Mohd. Rafiq is a tenant of the said area as noted (supra). Premises had been let out for a residential purpose; they are required bonafidely by the Petitioner for himself and his family members who are dependent upon him for their residence. The contention in the eviction petition was that the family of the landlord- Jyoti Prasad Gongel comprises of himself, his wife and two sons; Petitioner was at that time residing at 303 A, Pocket II, Mayur Vihar, Delhi a rented premises where he was paying a monthly rent of Rs. 950/-; his elder son Yogesh Gongel is married; his younger son is also of marriageable age; he has a married daughter who often comes to visit the Petitioner; his wife is working in Choori Walan and the aforementioned premises which are located at Nai Sarak, Delhi are even otherwise suitable and convenient for her to travel to her work place; Petitioner has no other accommodation; the premises are required bonafidely for himself and for the aforementioned family members who are dependent upon him.

5. Written statement had been filed by the tenant; in the first instance, he had denied the ownership; dispute was also raised about the purpose of letting. Both these issues as noted supra have been decided in favour of the landlord; it is the landlord who is in appeal before this Court not the tenant; it is not necessary for this Court to delve into these issues any further, those having already been decided in favour of the landlord.

6. The only issue which arises for consideration before this Court is as to whether the need of the landlord Jyoti Prasad Gongel was a bona fide need at the time when he had filed his eviction petition; i.e, if he had no other alternate accommodation at that time. As noted supra three witnesses have been examined by the landlord and nine witnesses have come to the witness box on behalf of the Respondent.

7. Record has been perused. There is no dispute about the ownership of the suit premises which had been purchased by the landlord namely Jyoti Prasad Gongel vide Ex.AW-1/1 (a registered sale deed of the year 1963); present eviction petition has been filed in the year 1986. There is also no dispute that the landlord had purchased a plot of land measuring about 138 sq. yards bearing No. S-17, School Block, Shakar Pur, Delhi on 16.12.1988 upon which construction was raised; his contention was that he could not shift to this property because of astrological advise; he had sold this property to his daughter namely Indu Singhal vide general power of attorney which he has proved as Ex.1/X-1; this document has been examined by the court below; admittedly a general power of attorney does not transfer any interest in immovable property; further the fact that this property had been purchased by the landlord on 26.12.1988 upon which a construction has been raised of a three storied building and which had then purportedly been sold to his daughter on 01.5.1991 were all facts which were hidden and concealed from the court of the Additional Rent Controller where this eviction petition was pending. Eviction petition was admittedly filed in the year 1986; the trial court relying upon evidence both oral and documentary has rightly concluded that this property which was admittedly a built up three storied structure has been concealed as had this fact been brought to the knowledge of the court the bonafide need of the Petitioner would then be effected; there was no other reason why this fact had not been informed to the court; this alternate accommodation was thus available with him. The further submission of the landlord that he had sold this property to his daughter Indu Singhal when admittedly the name of his daughter was Mridula Singhal; contention being that Mridula Singhal having got married to Sashank Singhal had after marriage changed her name from Indu Singhal to Mridula Singhal was not supported by any documentary evidence; even presuming this position to be correct that the person of Mridula Singhal and Indu Singhal are one and the same yet even then a general power of attorney (Ex.AW-1/X1) qua this property i.e S- 17, School Block, Shakarpur, Delhi did not definitely create any transfer of property in favour of Indu Singhal.

8. To rebut this submission of the landlord that Indu Singhal had purchased this property from her father; RW-9 had come into witness box who was a witness from House Tax Department who had on oath deposed that notice u/s 131 of the DMC Act had been issued in the name of Jyoti Prasad Gongel; so also another demand notice u/s 126 of the DMC Act; this documentary evidence had been proved as Ex.PW-9/1 to Ex. PW-9/4; house tax bills as also survey report of this property also showed that this property continued to be vest in the name of Jyoti

Parsad. This was also admitted by Jyoti Prasad Gongel when he came into witness box in his capacity as AW-1.

9. This property i.e. S-17, School Block, Shakarpur, Delhi was admittedly in physical occupation of the elder son of the Petitioner namely Yogesh Gongel; further contention of the landlord being that his daughter Indu Singhal had created a company lease deed 10.6.1999 in favour of M/s Instrumentation Ltd. and Yogesh Gongel being an employee of M/s Instrumentation Ltd. had been to permitted to occupy this property; to substantiate this submission AW-2 has come into witness box to prove the company lease. In this context AW-1 had deposed that vide lease deed dated 10.6.1991 his daughter Indu Singhal had leased out this property to M/s Instrumentation Ltd where his elder son Yogesh Gongel was an employee. These lease deeds, Ex.AW-2/1 and Ex.AW-2/2, however, do not state that Indu Singhal is the owner of this property which fact also has been admitted by AW-1 in his cross-examination. The employment of Yogesh Gongel with M/s Instrumentation Ltd was also not substantiated by any document; admittedly Yogesh Gongle was in physical occupation of the property but his contention that he was in occupation as a employee of the M/s Instrumentation Ltd. was not substantiated. He is admittedly the son of the landlord Jyoti Prasad Gongel and if he was not occupying this property in his capacity as an employee of M/s Instrumentation Ltd. the next obvious corollary is that he was in possession of this property in his capacity as the son of his father who continued to remain the owner of this property. This fact was deliberately concealed by the father. Trial court had rightly noted that had this fact been brought to the knowledge of the court the bonafide need o the landlord would be effected. A man who comes to the court must come with clean hands and if he does not; he deserves little sympathy from the court. Court has also noted the contention of Yogesh Gongel that he had resigned in the year 1988 which averment was contradicted by the documents Ex.AW-1/X-2 and Ex.AW-1/X-4.

10. Contention that Indu Singhal and Mridula Singhal are one and the same person had also not been substantiated by any documentary evidence; Indu Singhal even otherwise did not derive any interest in the property S-17, School Block, Shakarpur, Delhi by virtue of a general power of attorney alone; lease deed dated 10.6.1969 leasing out the property to M/s Instrumentation Ltd. also does not speaks of her as an owner. All this shows nothing but the inevitable conclusion that this property continued to be retained by Jyoti Prasad Gongel; he had not effected any sale of the said property; the municipal records also negated this submission; the physical occupation of the property continued with Yogesh Gongel which was not in his capacity as an employee of M/s Instrumentation Ltd. but as son of the owner namely Jyoti Prasad Gongel.

11. Reliance by the learned Counsel for the Petitioner on the judgment reported in 2009 VIII AD (Delhi) 445 Mukesh Kumar v. Rishii Prakash is misplaced. This was a case where leave to defend had been refused as the bonafide requirement of the landlord had been made out and no triable issue had been raised by the

tenant. Parameters of that case are clearly distinct as also the ratio deduced therefrom.

12. Interference in a revision petition is called for only if there is a manifest error on an illegality which has emanated from the record which is not so in the instant case. Impugned order dismissing the eviction petition in these circumstances suffers from no infirmity.

13. Dismissed.