

(2006) 10 DEL CK 0142

In the Delhi High Court

Case No : C.R.P. No. 49 of 1989 and 337 of 2000

Mahabir Parshad and Another

APPELLANT

Vs

Ved Wati Pathak and Others
 Manohar Lal (Now deceased) through Legal Representatives Vs Mahabir Parshad and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (2006) 135 DLT 453

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Sushma, Adv in C.R.P. No. 49 of 1989 and Rakesh Mahajan, C.R.P. No. 337 of 200, for the Appellant; Rakesh Mahajan in C.R.P. No. 49 of 1989 and Sushma, in C.R.P. No. 337 of 2000, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The two civil revision petitions pertain to different portions of the same property bearing No. 4315, Gali Bhaironwali, Jogiwara, Delhi and arise from two different impugned orders passed by the Additional Rent Controller (for short, "ARC") in respect of the petitions filed for bona fide requirement by the landlord u/s 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as, "the said Act").

2. The first petition C.R.P. No. 49/1989 pertains to one room and kitchen on the ground floor. An eviction petition was filed on 17.10.1980 and was dismissed on 14.11.1985. The aggrieved landlord has filed the civil revision petition.

3. The other petition C.R.P. No. 337/2000 was filed on 23.10.1984 and there were certain subsequent developments as a result of which by an amendment on 05.10.1987, these subsequent developments were brought on record. The eviction petition was allowed on 02.11.1999 and the subject matter is a hall, kitchen and room on the ground floor of the property. The eviction petition being allowed, the tenant has impugned the order.

4. In order to appreciate the scope of the controversy, it is necessary to reproduce the relevant provisions of the said Act:

14. Protection of tenant against eviction

1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court of Controller in favor of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:

...

e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence 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 residential accommodation.

5. Learned senior counsel for the parties fairly stated that, in the present cases, there is no dispute either about there being a landlord-tenant relationship or about the purpose of letting being residential. The dispute pertains to the bona fide requirement of the landlord and the availability of sufficient accommodation in the same building. In a nutshell, the plea of the tenants is that it is an artificial scarcity, which is sought to be created by the landlord even though the landlord has sufficient accommodation for himself and his family, especially taking into consideration the developments, which have taken place even during the pendency of these petitions. The emphasis is also on the fact that the status of the families has to be seen while considering the requirement of residential accommodation.

6. On the other hand, the submission on behalf of learned Counsel for the landlord is that the landlord is in genuine need of the accommodation and does not have sufficient number of rooms available in the building to satisfy the requirements of the family. There is also an issue that co-owners of the building are in occupation of certain portions and it is the stand of the landlord that those portions are not available to the landlord. The tenant in C.R.P. No. 49/1989 filed an affidavit on 01.02.2005 setting out the additional accommodation, which had become available to the landlord and decrease in the requirement of the family. It is stated in the affidavit that the wife of one of the landlords, Mahabir Parshad died during the pendency of the revision petition. His mother also passed away. The brother of Mahabir Parshad, namely, Rajinder Parshad shifted with his family from the premises to his own flat at Rohini and vacated the two rooms, which are in possession of Mahabir Parshad. One tenant, Roshan Lal Kapoor, was also stated to have vacated a room under his tenancy. The family of Mahabir Parshad was stated to consist of himself, his two sons and daughters-in-law and five

minor grand-children. The family of Kailash Parshad, the brother of the landlord, consists of himself, his wife and one his son as members. The accommodation stated to be available with the landlord was alleged to be of twelve rooms, four kitchens, three bathrooms and three tin-sheds out of which, two of the tin-sheds were being used for commercial / godown purposes. By reference to the plan, it was stated that separate rooms were in occupation of Mahabir Parshad and his family and also for the use of Kailash Parshad and his family. It is this affidavit, which has been relied upon by learned senior counsel for the tenant.

7. On the other hand, in response to the aforesaid, the landlord has filed an affidavit dated 30.07.2005. The landlord has not disputed that certain supervening facts have come into being by passage of time, but the plan submitted by the tenant at this stage is stated not to be reliable nor could the same form part of the adjudication. This is so since the tenants never produced site-plan before the ARC and the petitioners proved the plan as Exhibit AW 1/1. It has been emphasized that the portions shown in "Red" colour are in possession of the tenants, while the portion shown in "Green" colour is in possession of the landlord. An Explanation has been given in respect of the portions being used as a godown, which is stated to have no connection with the residential property and is being used for commercial purposes. In fact, what is stated is that the tenants even seek to show some portions as part of the property, while those portions form part of the separate property.

8. The landlord does not dispute the demise of his wife and the mother and that Rajinder Parshad has shifted from the property on account of paucity of accommodation. It is, however, stated that the elder son of the landlord, Parveen Kumar has been blessed with two children, who are aged 15 years and 2" years, while the second son has since been married and has three daughters aged 17" years, 12" years and 4" years. The son of Kailash Parshad, the brother of the landlord, has since become a major. Roshan Lal Kapoor is stated to be still a tenant and is paying rent despite having shifted.

9. The petitioners have given a list of a large number of members of the family. This consists of both the family of Mahabir Parshad and the family of Ambe Parshad. The landlord has also stated that he has an extremely large number of visitors in view of the strength of the family of his brother, sisters and other collaterals. The landlord has three sisters out of which, two have passed away and all the three have their family who keep coming to the landlord. Apart from this, Ambe Parshad also keeps coming to Delhi.

10. There is a specific denial on affidavit that the portion in possession of the family of Ambe Parshad is available for the benefit of Mahabir Parshad. Ambe Parshad has been transferred to Mumbai, but as a co-owner, he has kept the possession of his own portion. His son, in fact, lived in a portion of the same and was assessed to Income Tax at Delhi, but subsequently shifted to Mumbai and Ambe Parshad and his family keep on using their portion off and on. The extent of accommodation available with the landlord has been set out as under:

S. No. Nature of the Item No. of Length and Floor area Remarks accommodation
the Petition Width in sq. ft. in Plan GROUND FLOOR 1. Room 7 8".0" x 11".6"
92.8

2. Tin Shed 8 13".0" x 11".6" 150.8

3. Puja Room 6 6".0" x 19".6" 117.6

4. Room 5 8".0" x 19".6" 156.8 Height 6"

5. Bath Room 9 4".0" x 5".6" 22.4 Height 6"

MEZZANINE FLOOR / MIANI FLOOR

6. Room 12 8".0" x 10".6" 181.2 Height below 7"

9".0" x 9".6"

7. Small Room 11 9".0" x 9".6" 86.4 Height below 7"

8. Store 16 12".0" x 4".0" 48 Got possession from Sh. Shri Kishan FIRST
FLOOR 9. Room 14 26".0" x 8".9" 231.4 Got possession during pendency of
the eviction petition from Sh. Shyam Lal Khandelwal

10. Room 15 6".0" x 15".4" 92.4 Got possession after the decision of the case
from Sh. Shri Kishan 11. Kitchen 17 4".5" x 5".0" 18 Got possession after the
decision of the case from Sh. Shri Kishan SECOND FLOOR 12. Room 25 8".0" x
10".6" 128 9".0" x 9".6"

13. Room 26 7".0" x 9".9" 69.3

14. Kitchen-cum-bath 27 4".0" x 11".0" 44

15. Kitchen 28 8".0" x 10".0" 80

16. Tin Shed 29 8".0" x 8".0" 64

17. Tin Shed 30 8".0" x 8".0" 64 Vacated by Sh. Om Prakash, tenant during
the pendency of the case THIRD FLOOR

18. Tin Shed 31 8".0" x 10".0" 80 There is no staircase. Only a wooden ladder
is used The requirement of the family is mentioned as under:

S. No. Name Age (in years) Accommodation Required

1 Sh. Mahabir Parshad 78 1 Room 2 Sh. Praveen Kumar 46 3 Smt. Kamlesh
40 1 Room

4 Ms. Pallavi 15

5 Master Sankalp 2" 1 Room

6 Sh. Naveen Kumar 41

7 Smt. Urmila 36 1 Room

- 8 Miss Shagun 17"
- 9 Miss Gharima 12"
- 10 Miss Deepali 5" 2 Rooms
- 11 Sh. Kailash Chand 67
- 12 Smt. Santosh Devi 62 1 Room
- 13 Sh. Manoj 22 1 Room
- 14 Sh. Ambe Parshad 75
- 15 Sh. Anil Kumar Khemka 49
- 16 Smt. Manju 45
- 17 Sh. Sushil Kumar Khemka 32
- 18 Ms. Sneh Lata 45
- 19 Sh. Abhishek 23"
- 20 Sh. Atul 22"
- 21 Ms. Radhika 19 3 Rooms

22 Further accommodation required 2 Guest rooms 1 Drawing room 1 Dining room 1 Pooja room 1 Study room 1 Servant room -----
TOTAL 18 Rooms 11. It has been emphasized that a room of size less than 100 sq. ft. or mezzanine floor having height of less than 7 ft. cannot be described as living room and cannot be said to be habitable. The claim, thus, is that there are only four habitable living rooms in possession of the landlord. The landlord is stated to be a man of means paying Income Tax.

12. Before proceeding to analyze the extent of accommodation, the general principles must be kept in mind. The requirement of the landlord cannot be fanciful, but at the same time, the tenant cannot choose to tell the landlord how he should live. If brothers are staying together, they cannot be compelled to live apart to accommodate the tenant. Simultaneously, a co-owner of the property cannot be directed to vacate the accommodation in his possession to facilitate the requirement of the other co-owner in order to enable a tenant to continue to occupy the tenanted accommodation.

13. Before the trial court, the only plan produced was by the landlord, which was exhibited. It is no-one's case that there has been large construction or demolition changing the nature and character of the property. Thus, it is not permissible for the tenants to set up a different plan at this stage and try to derive the extent of accommodation available from the same. It is the plan of the landlord, which would have to be considered, which has been proved before the trial court as Exhibit AW 1/1.

14. It is not disputed that Ambe Parshad and his family shifted to Mumbai. It is the case of the tenants that Ambe Parshad has made available the accommodation for the benefit of the co-owner, Mahabir Parshad, but the same is denied by Mahabir Parshad. It is, thus, one affidavit against the other. Be that as it may, the fact remains that both of them are co-owners. In such a situation, can it be said that one of the co-owners must vacate the accommodation in his possession on having shifted out of Delhi for the benefit of the co-owner so that the tenant is not evicted. In my considered view, the answer to the same is in the negative. The accommodation of the co-owner, Ambe Parshad cannot be considered as available to Mahabir Parshad.

15. It is the case of Mahabir Parshad that his brother Kailash Parshad stays with him. No other property of Kailash Parshad has been proved on record. The brothers or their families cannot be compelled to part merely to accommodate the tenant and the requirement of Kailash Parshad would have to be taken into account as rightly observed in C.R.P. No. 337/2000 by the ARC. The sizes of the rooms are given in the plan. The plan has been proved. Thus, once again, the tenants cannot merely claim that sizes of the rooms are more than what has been stated in the plan. In fact, the requirement of the family has been discussed in the impugned order in C.R.P. No. 337/2000. Each of the adult members / the member along with his wife would require certainly one room. As the age of the children increased, they would also be requiring bedrooms. Again the requirement of a dining room, a drawing room, a pooja room or a guest room can hardly be said to be fanciful. The demise of the wife of Mahabir Parshad would make no difference as in either eventuality there would be a requirement of one room. The pooja room would continue to be used as such even if the mother of Mahabir Parshad passed away. Again the landlord cannot be compelled to convert a commercial use into residential in respect of the business being run to accommodate the tenant.

16. Learned senior counsel for the tenants sought to place reliance on the judgment of learned Single Judge in *Puran Chand and Anr. v. Yashpal* 2005 (1) RCR 328. The said judgment dealt with a case where each time a room fell vacant, the landlord converted the same into a godown to use it for commercial purposes and it was held that paucity of accommodation was self-created. This would hardly apply to the facts of the present case where there is no such allegation of continued conversion of user of residential accommodation, which was vacated.

17. Reliance placed on the judgment in *Shambhu Nath Vs. Surinder Kumar Sharma*, again is of not much use to the tenants to the extent it placed reliance for the purpose of advancing the proposition of self-inflicted deprivation of the landlord or the falsity of a landlord in setting up his requirement. The ARC in the order impugned in C.R.P. No. 337/2000 has not included the requirement of Ambe Parshad and his family and has still come to the conclusion that there is paucity of accommodation.

18. The affidavits filed on behalf of the landlord and the submissions of learned senior counsel have explained the use of the godown, which is shown as Item No. 10 in the plan filed by the tenant and is stated to be identical to Exhibit AW - 1/1 (plan of the landlord). The said godown has been throughout used as a godown. The same is stated to be forming part of distinct Municipal Nos. 4316-4317 having separate and independent entrance gates and was stated to be in possession of a tenant prior to the purchase of property by the landlord and was vacated about 2-3 years after the purchase. Thus, there is no question of consideration of the same for the purpose of residential requirement of the landlord. The landlord has also proved the purchase separately of this portion and the portion continues to be used as a godown. The landlord is not expected to stop the user of godown and convert it to residential purpose to accommodate the tenant. It can hardly be called an artificial scarcity created by the landlord. The landlord, in fact, has continued to use it for commercial purposes for the purpose of his livelihood.

19. It may be noticed that there is a plea of delay and laches in filing C.R.P. No. 49/1989, but it is not a case of bar of time since if the period for obtaining the certified copy is taken into account, the revision petition has been filed within a period of three years. The Explanation given by the landlord was that he was earlier advised that since the other case was still pending, there was no need to file this revision petition and to await the decision in the other eviction case, but subsequently he was advised to the contrary. Be that as it may, the matter has been pending for all these years and, thus, must be examined on merits.

20. Learned senior counsel for the landlord emphasized that as to who would be treated as "dependent" on the landlord for the purpose of residence has been enunciated in *Shri Gobind Dass and Ors. v. Shri Kuldip Singh* 1970 R.C.R. 511 where the Division Bench of this Court held that in the socio-religious structure of Hindu society, it is common for all the members of a family of brothers to live together while some men-folk in the family may go out of town to earn a livelihood and even remit their savings to the family. Thus, the Courts should not shut their eye to the structure of the society to give a restricted meaning to the word "dependent" where the Legislature itself has not deemed it appropriate to restrict it so. It is, thus, rightly submitted that the requirement of his children and his brother must be taken into consideration.

21. Insofar as Ambe Prashad is concerned, learned senior counsel had pointed out that he has a legal right as a co-owner to keep the occupation of his portion of the property as held in *Prem Deva Niranjana Deva Tayal (HUF) Vs. Precision Steel and Engg. Works and Another*, .

22. As far as the requirement of the landlord is concerned, learned senior counsel emphasized that the requirement of a room for pooja, a storeroom and a room for visiting daughters is something, which has been accepted as a right of the landlord. Learned senior counsel submitted that in *Smt. Prabhu v. K. Sharma* 1997 RLR 242, the landlord who keeps a servant was held entitled to ask a room

for the servant. Again in *Sudershan Dutta v. Krishan Narain* 1997 RLR 534 , it was held that the very purpose of owning a house would be defeated and of no avail if the landlord cannot get his own house when he needs it. The requirement of a pooja room was held to be valid in *Chander Sain Jain Vs. Shri Sumer Chand*, and in *Ram Partap Sharma Vs. Smt. Rukmani Devi*, . In fact, it was held that in the society in which we live having the religious and social ethos, the landlord cannot be compelled to have a pooja room in the dining or bedroom.

23. Insofar as the size of the room is concerned, in *Om Parkash v. Dev Raj* 1997 RLR 539, learned Single Judge of this Court held that if the accommodation is less than 100 sq. ft., that accommodation may not even be disclosed as it is not capable of being use as a living room and to the same effect is the observation in *Chander Mohan v. Ujjagar Singh* 2000 RLR 44 . On the strength of these judgments, there is force in the contention of learned senior counsel for the landlord that while considering the accommodation mentioned aforesaid, rooms of less then 100 sq. ft. have to be ignored so far as the living room is concerned. Such a room cannot be said to fall within the definition of a living room as per the judgment in *Brij Mohan Vs. Sripal Jain*, .

24. It is trite to say that the landlord is the best judge of how he would wish to live with comfort in his own house unless it is an attempt to create an artificial paucity of accommodation. The law does not command or compel a landlord to squeeze his requirement tightly into lesser premises protecting the tenants occupation and observations to this effect have been made in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* 80 (1999) DLT 731 (SC) by the Apex Court. It would be useful to quote what the Supreme Court has observed on a genuine and bona fide requirement, which is the pre-requisite for a landlord to succeed in an eviction petition u/s 14(1)(e) of the said Act:

13. Chambers 20th Century Dictionary defines "bona fide" to mean "in good faith " genuine". The word "genuine" means "natural : not spurious : real : pure : sincere". In Law Dictionary, Mozley and Whitley define "bona fide" to mean "good faith, without fraud or deceit". Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bona fide" is suggestive of legislative intent that a mere desire which is outcome of whims or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm- chair of the landlord and then ask the question to himself " whether in the given facts substantiated by the landlord

the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the Court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the Court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

25. The increase or decrease of the extent of requirement of the accommodation can always be taken into account. Learned senior counsel for the landlord referred to the judgment of learned Single Judge of this Court in Suraj Prakash Vs. Sri Gopal, to advance the proposition but, in fact, it is nobody's case that the same cannot be taken into account as the tenants have sought to plead that there is a decrease in the requirement of the landlord, which must be taken into account.

26. Learned senior counsel for the landlord invited the attention of this Court to judgment of the Apex Court in c. The said case dealt with the factual matrix where it was held that a family of a landlord or a tenant would include his brother or mother, who was staying with him.

27. The conspectus of the aforesaid judgments lead to the same conclusion that there cannot be any hard and fast rule and the bona fide requirement has to be judged in terms of the broad parameters laid down by the Apex Court in Shiv Sarup Gupta's case (supra).

28. The landlord has given by reference to the plan Exhibit AW - 1/1 the present position in respect of each of the items in the said plan, which shows as to what portion is occupied by a tenant and what portion is available with the landlord. The same are as under:

Item No. Name of the Occupant Nature of accommodation as given in the Plan with the petitioners 1 Shri Rattan Lal Verma, Tenant --- 2 Shri Rattan Lal Verma, Tenant --- 3 Smt. Ved Wati Pathak, respondent --- 4 Smt. Ved Wati Pathak, respondent --- 5 Shri Mahabir Parshad Habitable room 6 Shri Mahabir Parshad

Pooja room 7 Shri Mahabir Parshad Non-habitable room 8 Shri Mahabir Parshad Tin shed, non-habitable 9 Shri Mahabir Parshad Bath room 10 --- Not forming part of property in suit 11 Shri Ambe Parshad, Non-habitable room petitioner No. 2 12 Shri Ambe Parshad, Habitable room petitioner No. 2 13 Shri Roshan Lal Kapur, tenant --- 14 Shri Mahabir Parshad Habitable room

15 Shri Mahabir Parshad Non-habitable room

16 Shri Mahabir Parshad Store

17 Shri Mahabir Parshad Kitchen

18 Shri Manohar Lal, petitioner in the other case --- 19 Shri Manohar Lal, petitioner in the other case --- 20 Shri Ram Kishore, tenant --- 21 Shri Ram Kishore, tenant --- 22 Shri Ram Kishore, tenant --- 23 Shri Ram Kishore, tenant --- 24 Shri Ram Kishore, tenant --- 25 Shri Mahabir Parshad Habitable room 26 Shri Mahabir Parshad Non-habitable room 27 Shri Mahabir Parshad Kitchen 28 Shri Mahabir Parshad Kitchen 29 Shri Mahabir Parshad Tin shed, non-habitable 30 Shri Mahabir Parshad Tin shed, non-habitable 31 Shri Mahabir Parshad Tin shed, non-habitable 29. The result of the aforesaid is that, really speaking, the habitable rooms are only four apart from the pooja room, bathroom, store and kitchen. The tin-sheds can hardly be taken into account and the godown mentioned in Item No. 10 does not even form part of the suit property. In any case, the landlord cannot be asked to convert the same into residential use.

30. If the test of a reasonable and bona fide requirement of the landlord is applied to the aforesaid available accommodation as compared to even the basic requirement of the landlord for himself and his family members, there is no doubt in my mind that the landlord suffers from paucity of accommodation. It cannot be said that the landlord is not entitled to a room or each of his sons along with the daughters-in-law are not entitled to a room each for the couple. Similar is the requirement of grown-up grand-daughters and the three grand-daughters cannot be thrust into one room, especially taking into consideration that the elder grand-daughter is 17" years old. Similarly, the requirement of a guest room, a drawing room, a dining room and a pooja room cannot be ignored. The family is also entitled to keep at least one servant quarter. Even if the requirement of a guest room is reduced to one, still the same would not make any difference. The brother of the landlord, Ambe Parshad is entitled to retain the portion under his possession, though his requirement is not liable to be taken into consideration as he resides at Mumbai.

31. The requirement of the landlord being bona fide and there being lack of sufficient accommodation available with the landlord and the other test of Section 14(1)(e) of the said Act not even being disputed, the landlord is entitled to succeed in the eviction proceedings against both the tenants. The result would be that C.R.P. No. 49/1989 is liable to be allowed, while C.R.P. No. 337/2000 is liable to be dismissed. Ordered accordingly.

32. The tenants are granted six months time to vacate the portions in their respective possession.

33. Parties are left to bear their own costs.