
(2014) 10 DEL CK 0265

In the Delhi High Court

Case No : RC. Rev. Nos. 164 and 225/2014

Satish Gupta and Others

APPELLANT

Vs

Mohan Goyal and Others

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1), 14(1) (e), 14(1) (f), 25-B(8)

Citation : (2014) 10 DEL CK 0265

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : S.N. Kumar, Senior Advocate and K.B. Soni, Advocates for the Appellant; Mukesh Sharma, Narendera Gautam, Jaiveer Chauhan and Manish Tanwar, Advocates for the Respondent

Judgement

Valmiki J. Mehta, J.—This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958(hereinafter referred to as "the Act") is filed against the impugned judgment of the Additional Rent Controller dated 6.1.2014 by which the Additional Rent Controller has dismissed the leave to defend application and decreed the bonafide necessity eviction petition filed under Section 14(1) (e) of the Act with respect to the tenanted premises being the first floor of property bearing no. 3655, Chawri Bazar, Delhi - 110006. It may be stated that the area of the plot on which the tenanted premises are situated is just about 24 square yards as stated before me by the counsel for the respondent/landlord.

2. The eviction petition for bonafide necessity was filed by the respondent/landlord pleading that his daughter-in-law is an MBA in Finance and she therefore requires the tenanted premises for opening of her office of consultancy business. It was stated that the tenanted premises are in dilapidated condition and the landlord intends to reconstruct the same. The son of the respondent was stated to be owning a godown admeasuring 20" x 30" in Kucha Daya Ram, Chawri Bazar but that premises are not available as it is let out and that too at a substantial rent of Rs. 20,000/- per month. There are no other alternative

suitable vacant premises which are available to the respondent/landlord for his daughter-in-law to carry on her consultancy business, and therefore, bonafide need was stated to exist with respect to the suit/tenanted premises.

3. The petitioner herein was the respondent no. 2 in the eviction petition. He had filed his leave to defend application seeking leave to contest the eviction petition. Besides the petitioner, another respondent in the eviction petition namely Atul Gupta, respondent no. 1 in the eviction petition, had also filed a leave to defend application. Since both the applications have been dismissed by the self-same impugned judgment of the Additional Rent Controller dated 6.1.2014, the present petition as also the connected rent control revision petition no. 225/2014 filed by Sh. Atul Gupta & Ors. Vs. Sh. Mohan Goyal are being disposed of by this judgment.

4. There were two main contentions urged by the petitioners before me for seeking leave to defend. Firstly it was pleaded that the respondent/landlord had many premises including the second floor portion situated above the tenanted premises and thus the landlord had alternative suitable accommodation and consequently the bonafide necessity eviction petition was liable to be dismissed. The second defence which was raised was that since the tenanted premises are said to be in a dilapidated condition the eviction petition could not have been filed for bonafide necessity but could only be filed under the sub-Section (f) of Section 14(1) of the Act which provided for eviction of a tenanted premises found to be in a dilapidated condition. Accordingly, the eviction petition for bonafide necessity is prayed to be dismissed because it is not maintainable with respect to a dilapidated premises.

5. Let me first take up the case of whether the respondent/landlord can be said to have an alternative suitable vacant accommodation and hence the bonafide necessity eviction petition was not maintainable.

6. The petitioner pleaded that the respondent had the following properties:

(i) Property no. 3497, Chawri Bazar, Delhi in which the respondent/landlord is doing the business under the name and style of M/s. Bath "N" Doors.

(ii) Property no. 3632, Gali Piao Wali, Chawri Bazar, Delhi where the business in the name of M/s. Sanjay Goyal & Sons is being run.

(iii) Property nos. 3593-94, Brij Mohan Market, Chawri Bazar, Delhi where the business under the name and style of M/s. Subash Goel & Co. is being run.

(iv) The second floor above the tenanted first floor portion of 3655, Chawri Bazar, Delhi.

(v) Property no. 3522, Kucha Daya Ram, Chawri Bazar, Delhi which is a godown.

(vi) Property no. 3498, Gali Bajrang Bali, Bazar Sita Ram which according to the petitioner has been recently let out to a tenant by the respondent and his son.

(vii) Property no. 3083, Mohalla Dassan, Chawri Bazar, Delhi taken by the landlord from Sh. Ram Narayan Jindal.

7. Before I turn to each of the properties, and most of which have been pleaded by the landlord as not owned by him or any of his family members, it is necessary to reiterate that a premises cannot be an alternative suitable premises unless it is pleaded to be a vacant premises which can be put to use for the purpose for which bonafide necessity eviction petition is filed. A reference however to most of the properties which are averred by the petitioners to be alternative suitable accommodation show that even as per the leave to defend application filed by the petitioner/tenant most of these properties are not pleaded to be vacant and are those where businesses are admittedly stated to be carried on. Therefore, even for the sake of argument it is assumed that the various premises as pleaded by the petitioners belong to the respondent/landlord, since however they are not vacant and available, hence, the stated premises cannot be considered as alternative suitable accommodation.

8. So far as the property no. 3497, Chawri Bazar, Delhi is concerned, admittedly the business of Bath "N" Doors is being carried out from the said premises and which as per the respondent is a partnership concern of the respondent/landlord and one Sh. Baldev Gupta. Therefore, these premises cannot be said to be an alternative suitable premises because the landlord is not expected to vacate the premises from where he is carrying on the business so that another family member can carry on business. The second and a more important aspect is that these premises are not owned by the landlord but are owned by Smt. Aarti Gupta w/o Sh. Baldev Gupta No. 29-A, Engineer Apartment, Patparganj, Delhi and the landlord has filed such certificate of the partnership firm of Bath "N" Doors.

9(i) So far as the properties being property no. 3632, Gali Piao Wali, Chawri Bazar, Delhi, and property nos. 3593-94, Brij Mohan Market, Chawri Bazar, Delhi are concerned, these premises are said by the petitioner/tenant to belong to the respondent/landlord, but, not only the assertion of the ownership of these properties of the petitioner is only a bald assertion which cannot raise a triable issue, but also the respondent has filed certificates issued by Sanjay Goyal and Subhash Goyal that these two properties are owned by Sh. Sanjay Goyal (carrying on the business of Sh. Sanjay Goyal & Sons as per income tax return having PAN No. AAAHS2293F filed on record) and Subhash Goyal (carrying on business as sole proprietor of M/s. Subhash Goyal & Co. as per income tax return with PAN No. AADPG4287E filed on record). The income tax return copies of these businesses of Sh. Sanjay Goyal and Sh. Subhash Goyal as filed show the carrying on of their businesses from these two properties.

(ii) It is also relevant that the respondent in the reply to the leave to defend application had specifically stated that not only the above premises belong to Subhash Goyal, and Sonia Goyal, but also that they are not vacant inasmuch as businesses are being carried on in these properties in the name of M/s. Sanjay Goyal & Sons belonging to Sanjay Goyal with respect to property no.3632), and

Subhash Goyal having business in the name of Subhash Goyal & Co. with respect to property nos.3593-94.

10(i) So far as the second floor above the suit premises no. 3655 is concerned, the same cannot be considered as an alternative suitable premises firstly because admittedly the same is in dilapidated condition and hence cannot be put to use. Secondly this portion being situated on the higher second floor, consequently, the tenanted premises on the first floor will be more suitable inasmuch as a tenant cannot dictate to the landlord's family members that they should not carry out the consultancy business from a more convenient portion on the first floor.

(ii) Since we are dealing with the premises no.3655, thus at this stage itself I may also refer to and deal with the second ground which is urged on behalf of the petitioner for seeking dismissal of the bonafide necessity eviction petition that the entire premises being dilapidated and are required to be re-constructed thus the bonafide necessity eviction petition under Section 14(1) (e) of the Act cannot lie and the eviction petition could only have been filed under Section 14(1) (f) of the Act.

In my opinion, the Additional Rent Controller has rightly held that there is no illegality in the demand for the tenanted premises and to use the same after re-construction inasmuch as surely a landlord if he finds a premises dilapidated he can after occupying the same, thereafter in accordance with law, seek re-development and re-construction and it is not the law that once the premises vacated on the ground of bonafide necessity then the landlord is legally prevented from reconstructing a property to make it a modern building. Therefore, the argument urged on behalf of the petitioner of the premises being dilapidated, and on that ground the same cannot be a subject matter of the bonafide necessity eviction petition, is misconceived, and is rejected along with the argument that the second floor is a an alternative suitable accommodation.

11. So far as the property no. 3522, Kucha Daya Ram, Chawri Bazar, Delhi is concerned, admittedly, the same though is owned by the son of the respondent but the same stands let out at a handsome rent of Rs. 20,000/- per month, and therefore, again this property cannot be said to be a vacant available premises to carry on the business of consultancy work by the daughter-in-law of the respondent/landlord. After all the landlord's son is not expected to sacrifice the substantial rent of Rs. 20,000/- per month by evicting his tenant.

12. So far as the two properties being property no. 3498, Gali Bajrang Bali and property no. 3083, Mohalla Dassan, Chawri Bazar are concerned, these two properties are neither vacant and nor owned by the respondent. The property no. 3498 is being occupied and used as a godown by the business of M/s. Om Prakash Goyal & sons and it is owned by S.N. Nigam and Vishal Nigam and Akhil Nigam. The copy of rent agreement dated 18.8.2009 of the Nigams with M/s. Om Prakash Goyal & sons is filed on the record. The property no. 3083 is being

occupied and used as a godown of the business of Bath "N" Doors and has been taken on rent from Ram Narayan Jindal vide rent agreement dated 14.8.2008 and copy of which is also filed on record. Thus having of two properties no. 3498 & 3083 cannot be said to be available alternative suitable accommodation as neither they are owned by the respondent and nor are vacant.

13. In view of the above, the position which emerges is that the premises which are pleaded by the petitioner to be alternative suitable premises are either not vacant or they are found not to belong to the respondent or any of his family members, and therefore, these premises cannot be said to be alternative available suitable accommodation.

14. No other argument or issue is pressed before this Court.

15. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.