
(2008) 10 DEL CK 0143

In the Delhi High Court

Case No : R.C. Revision No. 44 of 2004

Smt. Sudesh Kumari Soni and Another

APPELLANT

Vs

Smt. Prabha Khanna and Another

RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1), 4

Citation : (2008) 153 DLT 652

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Amarjit Singh, for the Appellant; Ajit Singh, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The present revision petition has been filed against the dismissal of the eviction petition filed by the petitioners, by the court of learned Additional Rent Controller, Delhi vide order dated 24.5.20004.

2. Brief facts necessary for disposal of this revision petition are that the petitioner is the landlady of the respondents in respect of the premises No. F-61, Radhey Puri, Krishna Nagar, Delhi, (for short ?disputed property?) comprising of two rooms, one kitchen, bathroom with a common latrine and common courtyard and common back courtyard at a monthly rent of Rs 500/-. The disputed portion was let out to the respondents in the year 1987 for residential use.

3. It is stated that the family members of the petitioner consists of herself, her husband i.e. petitioner No. 2, two married sons namely Praveen Kumar Soni and Sunil Kumar Soni and one divorced daughter Seema, her son Sunil Kumar Soni and his wife Rekha having two sons namely Bharat Soni and Deepanshu; another son Praveen Kumar Soni and his wife Neeru having two children namely Jatin and Ritika; her two daughters namely Seema married with Shri Kewal Gandhi who was divorced in the year 1987, having one major daughter Jyoti.

4. All family members of the petitioner are residing in small house No. F-20/17, measuring 100 sq. yds., Krishna Nagar which is less than half kilometer away from the disputed property which is in possession of the respondent. The said house consists of two small room set on the ground floor, two small rooms set on the first floor and two small room set on the second floor besides amenities of kitchen, toilet and bathroom. The said six rooms are very short and not suitable for residence of nine adult members and three minor children.

5. There is no separate study room for her grandchildren, separate drawing room and separate pooja room in the property where the petitioner is residing. It is admitted that the petitioners have no other property in Delhi for the use of residence. Her two sons are doing the business in trans yamuna area in the other properties mentioned by the respondent. It is stated that the petitioners want to spend their remaining life with her divorced daughter and her girl in their own house, as it is very difficult to live together in the joint family and their sons are also interested to live separately their independent lives.

6. The trial court while dismissing the eviction petition held on the basis of evidence and the case proved by the petitioner that the petitioners are the owners-landlords of the property in dispute, the property in question was let out for residential purposes only and the premises in question is required by the landlord for the occupation of themselves and other family members dependent upon them.

7. However, the learned trial court has dismissed the eviction petition merely on the reason that the adjoining two rooms which were previously in possession of another tenant namely Sh. Ram Rich Pal Singh which are admittedly in dilapidated condition and without roof, can be treated as an another residential suitable accommodation.

8. The learned trial court further held that there is nothing, which could have prevented the petitioners/landlords to carry out necessary repairs in the vacated portion, which is presently in their control and to make the same into habitable condition.

9. Now it is to be considered as to whether the finding of learned trial court are correct in giving direction to landlord to get necessary repairs in the vacated portion and to make the same into habitable condition in the petition filed u/s 14(1)(e) of the Delhi Rent Control Act and even if the portion vacated by Shri Ram Rich Pal Singh i.e. two rooms are available with the petitioners with habitable condition the requirement of the petitioner would be sufficient or not. I have heard the learned Counsel for the petitioner and also perused the written submissions of the parties.

10. It was alleged by the learned Counsel for the respondent that the premises in dispute was let out to the respondent for residential-cum-commercial purposes. In the month of September 1992 the petitioner asked the respondent to vacate the tenanted premises and it was again let out to the respondents in December

1992.

11. It was further averred by the respondents that the petitioners in addition to the suit property is in possession of the following other properties namely:

1. One room set in property No. 9/716 Mahavir Gali, Gandhi Nagar, Delhi.
2. Property No. 781, Jheel Kharanja, Delhi
3. Property No. 383/13-b, East Azad Nagar, Delhi

The petitioner No. 1 while appearing as PW-1 deposed that they have not shifted in the portion which was vacated from Shri Ram Rich Pal Singh consisting of two rooms and the said portion of the property was still lying vacant.

12. It is categorically submitted by PW-1 in his deposition that the property No. 9/ 716, Mahavir Gali, Gandhi Nagar, Delhi stands in the name of his father-in-law vide sale deed Ex.PW1/3 and PW1/4 in favour of his father-in-law. The said property is in possession of tenants of his father-in-law. The property No. 781, Jheel Kharanja, Delhi is a shop purchased by his son Mr. Praveen Soni, sale deed for the same is Ex.PW1/5 to Ex PW1/7. He is doing the business of auto repair in the shop from 1997 till date. Another property No. 383/13 East Azad Nagar, Delhi is also a shop purchased by the sons jointly, copy of the sale deed is Ex.PW1/8 and PW1/9. His other son Sh. Sunil Kumar is running his business of sale and purchase of motor cars in this shop.

13. In view of the evidence produced by the petitioner, in respect of other properties, the defence raised by the respondent has no force as the respondents have failed to disclose any property available with the petitioner for residence and for residence of her family members dependent upon her.

14. It is not in dispute that the family consists of 12 members. It is argued by the learned Counsel for the petitioner that even if a portion which has been vacated by Shri Ram Rich Pal Singh which consists of two rooms, if considered to be in the possession and control of the petitioners, then also the requirement of the petitioners cannot be fulfilled.

15. RW-1 Shri Kamal Khanna had admitted in his cross examination that the portion which was in possession of Ram Rich Pal Singh has fallen down after 2002. He further stated that there was a support given by Sh. Ram Rich Pal Singh with wooden ballies below thereof of the said two rooms and further stated that when the said ballies were removed by the petitioners, the roof of the said rooms immediately fallen down. In his statement he further admitted that the said two rooms cannot be used for residential purposes in the present circumstances. RW-2 in her cross examination has made almost the similar statement.

16. Admittedly the alternative accommodation which is available and in possession of the petitioners is in dilapidated condition and the said portion is not in habitable condition. It is also an admitted fact that one of the wall of the said

portion is just adjoining wall of the disputed property so no proper repair work can be done.

17. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, , at pg-2512 in para 14 & 15, Supreme Court held that:

14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) of Section 14 which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factOrs. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.

15. A few decided cases apposite to the point may be referred. A Division Bench of Madhya Bharat High Court in Motilal v. Badrilal ILR (1954) 1. interpreted Clause (g) of the Madhya Bharat Sthan Niyantaran Vidhan Samvat, 2006 whereunder a landlord was entitled to eject a tenant if he "really needs a house for himself and he possesses no other accommodation belonging to him elsewhere", (t was held that the landlord was made the sole arbiter of his own requirements but he must prove that he in fact wants and genuinely intended to occupy-the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the premises. As to alternative accommodation disentitling the landlord to the relief of possession it was held that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. This statement of law was cited with approval before a Full Bench of the High Court of Damodar Sharma and Another Vs. Nandram Deviram, Pandey,

J. recording the majority opinion emphasised the distinction between the expressions "genuinely requires" and "reasonably requires" and said:

It is wrong to say that "genuinely requires" is the same as "reasonably requires". There is a distinction between the two phrases. The former phrase refers to a state of mind; the latter to an objective standard. "Genuine requirement" would vary according to the idiosyncrasy of the individual and the time and circumstances in which he lives and thinks. Reasonable requirement belongs to the "knowledge of the law" and means reasonable not in the mind of the person requiring the accommodation but reasonable according to the actual facts. In my opinion, in this part of Section 4(g), the landlord is made the sole arbiter of his own requirements but he must prove that he, in fact, wants and genuinely intends to occupy the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the premises.

18. In *Sarla Ahuja Vs. United India Insurance Company Limited*, this Court has held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bonafide. When the landlord shows a prima facie case a presumption that the requirement of the landlord is bonafide is available to be drawn. It is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bonafides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

19. In *Prativa Devi Vs. T.V. Krishnan*, this Court has held that in considering the availability of alternative accommodation, not availability merely but also whether the landlord has the legal right to such accommodation has to be considered. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.

20. In *J.K. Saxena Vs. Shri Madan Lal Khurana*, it was held in para 13 at pg-771 as follows:-

13. This Court in the judgment reported as *R.K. Bhatnagar Vs. Sushila Bhargava and Another*, clearly defined the concept of the "family". Operative portion of paragraph 8 of the judgment reads as follows:

However, the concept of family is not that rigid as to always exclude the married daughters from the family of their parents inasmuch as there can be genuine cases where married daughters are in fact living with their parents for one reason or the other and they may be said to be dependent on their parents for residential accommodation. It is now well settled that the expression "family" has to be interpreted reasonably and fairly giving due regard to the social, religious and economic conditions of life in our country as also peculiar circumstances of each case. As held by a Division Bench of this Court in *Govind Dass and Others*

Vs. Kuldip Singh, , an extended meaning is to be given to the word "family".
Observed the Division Bench:

The word "family" has not been defined in the Act and we feel advisedly so. The concept of what constitutes family when a number of persons are related or are living together is not something static or capable of concise definition. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons Constituting that society and the religious and socio-religious customs of the community to which such persons may belong.

21. In Yadvendra Arya and Another Vs. Mukesh Kumar Gupta, it was held under para 12 at pg-775 as under:

12. In Ragavendra Kumar Vs. Firm Prem Machinery and Co., it was held as follows:

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.

22. In view of the well settled position of law and the circumstances of the present case it is not in dispute that petitioner is in possession of six rooms overall and there are 12 family members in the disputed property living. It is also not in dispute that the petitioner's two sons were married and have two children each. Looking at the size of the family availability of six rooms in which the landlord is living is no doubt not fulfilling even though basic need of the landlord. The petitioner also has one divorced daughter with her daughter staying in the same property. Each member of the family of petitioner requires one room. Such a large family cannot be accommodated in six rooms. In my opinion even if the two rooms vacated by Sh. Ram Rich Pal Singh, another tenant as alternative accommodation is taken into account, but the accommodation of petitioner's family in eight rooms is not sufficient, hence, requirement of the petitioner in the suit premises is bona fide.

23. It is very natural and consistent that the petitioner requires more space for affording atleast a basic standard of living with a sense of decency. A drawing room, pooja room and guest room are the bare necessities for a comfortable living. In 1982 RLR 33 Tilak Raj v. Krishan Lal it was held that the married daughter keep on visiting their father's home and are well entitled to some accommodation (guest room) and hence landlord was entitled to say that he wanted some accommodation for their use also.

24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

25. Suitability has to be seen from the convenience of the landlord and his family

members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement. In view of well settled law, I hold that accommodation available with the petitioner is insufficient as against total family members. Hence the petitioner has made out a case u/s 14(1)(e) of Delhi Rent Control Act and is entitled for relief claimed.

26. It appears clearly that learned trial court has not adopted the correct approach in dealing with the issue in hand and I am of the considered view that the trial court has incorrectly rejected the eviction petition of the petitioners on the ground that there is alternative vacant accommodation available to him. In these circumstances the impugned order is set aside on the reasons explained above. The present petition is allowed, order of eviction is passed accordingly. However, this order shall not be executed and the respondents shall not be evicted before expiry of period of six months from today. The respondents are directed not to part with possession of the suit property in favour of any third party or cause any damage to the same and continue to make regular payment of rent etc. to the petitioner.