THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Rent Control Act

R.C.REV. No.95/2012

Date of Decision: 17.08.2012

NARESH KUMAR AND SURESH KUMAR …. Petitioners
Through: Mr. Adarsh Ganesh, Adv.

Versus

MAHESH CHAND AND SONS. (HUF) ….Respondent
Through: Mr. Sandeep Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present revision petition has been preferred under Section 25 B (8) of the Delhi Rent Control Act (herein after referred to as "Act") against the order dated 26.07.2011 passed by the learned ACJ cum ARC (North), whereby the application filed by the petitioners-tenants seeking leave to contest eviction petition no. 53/2009, was dismissed and accordingly an eviction order was passed in favour of the respondent-landlord.

2. The respondent-landlord had filed the abovementioned eviction petition in respect of shop no. 5871(tenanted shop), forming part of suit property no. 19 A, U.A. Jawahar Nagar, Delhi on the ground of bonafide requirement as provided under Section 14 (1)(e) of the Act. It was submitted by the respondent in the eviction petition that he is a Karta and member of HUF Mahesh Chand & Sons and had purchased the suit property in the year 1975 and after retiring as Additional District Judge from RHJS had started practicing as an advocate at Delhi High Court. It was further stated by the landlord that the tenanted shop was let out to Sahib Ram at a rent of Rs. 200/- p.m. and after his death the tenanted shop was in occupation of Naresh Kumar and Suresh Kumar (present petitioners). It was also submitted by him that he was currently sharing the office of M/s Harish Chandra (India) Ltd., a contractor and engineers company at 113/ A, Kamla Nagar and the same was

not suitable for his legal practice, and hence the tenanted shop was required by him for meeting his bonafide requirement of office space. A legal notice dated 03.06.2008 was served on the petitioners-tenants whereby their tenancy was terminated. The petitioners-tenants had duly responded to the legal notice, but refused to vacate the tenanted shop. It was lastly submitted by the respondent- landlord that the adjacent shops are also required by him and for which separate petitions were being filed by him.

3. Upon receiving the summons, the petitioners-tenants filed an application for leave to contest the petition, along with an affidavit stating that the requirement of the landlord is not bona fide and he had concealed material facts from the ld. trial Court. The landlord filed reply to the application as well as the affidavit filed by the petitioners. The petitioners filed yet another counter affidavit contending that there were several triable issues which merit the grant of leave to defend. Rejecting the contentions, the ld. ARC opined that the petitioners failed to raise any triable issue that would non-suit the landlord and passed the eviction order dated 26.07.2011.

4. The order granting eviction decree to the respondent has been challenged by the learned counsel for the petitioners-tenants on the ground that the findings of the learned Rent Controller are not according to the law and the learned Trial Court had failed to consider the fact that the respondent-landlord had not come with clean hands and had concealed the fact of owning several other properties which are sufficient to meet his requirements. It has been further urged that the learned Rent Controller had erred in overlooking the fact that no document of title have been produced by the landlord to prove that he was the owner of the suit property. It has been further urged that the learned Trial Court had not considered that besides owning six shops in the suit property, the landlord t has four rooms available on the first floor and second floor of the suit property which has not been disclosed by him. Lastly, it has been submitted that eviction petition is misconceived and was filed with the ulterior motive of getting the property vacated and for letting out at higher rent by the landlord.

5. On the other hand, the learned counsel for the landlord has submitted that there is no requirement of interference with the well reasoned and speaking order of the learned Rent Controller. It has been submitted that no triable issue was established by the petitioner, which would merit the grant of leave to defend application to him. It has been submitted that in case of ample

proof of bona fide requirement by the landlord, the application for leave to defend deserves to be dismissed.

6. I have heard the rival submissions and perused the record.

7. Before adverting to the submissions made by the learned Senior Counsel for the parties, this Court must reiterate that the power of this Court under Section 25 –B (8) Act are not as wide as those of Appellate Court and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, the High Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller. In Sarla Ahuja vs. United India Insurance Co. Ltd. AIR 1999 SC 100 the Apex Court has held as under:
"The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law." In other works, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available."

8. Now, I may examine the facts and circumstances of the case in order to arrive at the conclusion that whether the impugned order confirms to the settled parameters of law or it requires interference by this Court. The ownership of the respondent over the suit property has been challenged by the petitioners. In order to prove his ownership, the respondent had placed on record the registered sale deed executed in his favour in respect of the suit premises. This proves the contention of the petitioners that no document of title have been produced by the respondent, to be utterly false. Moreover, it does not lie in the mouth of the petitioners-tenants to question the ownership of the respondent over the suit property, when they have been paying rent to him and rent receipts issued by the respondent are a part of record. Once the petitioners had started paying rent to the respondent, they are deemed to have accepted the respondent as the owner of the suit premises and are barred from questioning the respondent's ownership over

the suit premises. When a tenant denies ownership of landlord, he is obliged to disclose who was the owner/ landlord and to whom rent was being paid. The proceedings under the Act cannot be converted and utilized by a tenant to prevent eviction merely on the ground that he seeks to cast doubt on the title of the property which has been acquired when there is really no one else claiming right to the property. Consequently, this defence taken up by the petitioners fails.

9. In Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450 , a bench of this Court while dealing with a similar objection and on the concept of ownership in proceedings under Section 14 (1)(e) of the Act had noted thus:
"It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly."

10. The next contention raised by the petitioners was that the respondent-landlord is in possession of several other properties. Without a single shred of evidence or details regarding the properties allegedly owned by the respondent, I am afraid much cannot be read into this contention and it is clearly erroneous.

11. The learned counsel for the petitioners had further urged that besides owning six shops in the suit property, the respondent has four rooms available on the first floor and second floor of the suit property which has not been disclosed by him. The perusal of record points otherwise. In the counter affidavit filed by the respondent, the details of his family members are provided and it is submitted that the rooms on the two floors of the suit property are being utilized by his family for residential purposes. Naturally,

they are not available to the respondent for setting up an office and this fact was duly noted by the learned Rent Controller. Regarding the six shops in the suit premises, the respondent has deposed that they are in occupation of tenants and he has also filed eviction petition in respect of two of the said shops, as they are also required by him for converting them into his office. It is not that by making wild allegations, without any shred of evidence, refuted by the landlord in his affidavit, the tenant becomes entitled to a leave to defend. These contentions taken up by the petitioners are nothing, but bald statements which are liable to be rejected.

12. In the absence of any iota of evidence, such false averments cannot be accepted as gospel truth and were rightly discarded by the ld. Controller. Section 25-B was inserted by the legislature in the Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction. Where a tenant pleads, in leave to defend preposterous prepositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to show to the Controller that all facts stated in leave to defend, were palpably false, the Controller is not precluded from considering the falsity of such facts on the basis of material placed before it by the landlord.

13. It is settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial Court which can be adjudicated by consideration of additional evidence. The whole purpose and import of summary procedure under Section 25-B of the DRCA would otherwise be defeated. In Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjan Deva Tayal (1982) 3 SCC 270, the Apex Court has held that the prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of the tenant having disclosed a prima facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend. In Nem Chand Daga Vs. Inder Mohan Singh Rana, 94 (2001) DLT 683, a Bench of this Court had noted as under:

“That before the leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent

to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows."

14. In the instant case, the petitioners have miserably failed to raise any important triable issues that could merit grant of leave to defend, whereas the respondent has succeeded in proving his bonafide requirement of the tenanted shop for setting up an office and has proved beyond doubt that he has no other suitable property in his possession which could be utilized by him. In Siddalingamma & Anr. Vs. Mamtha Shenoy (2001) 8 SCC 431, the Hon'ble Supreme Court while considering the reasonable and bona fide requirement of landlord, held that the question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record, the need to occupy the premises can be said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide.

15. In view of my above discussion I could not find any infirmity or illegality in the impugned order of the learned ACJ cum ARC warranting any interference by this Court. The petition is devoid of any merit, and is hereby dismissed.

Sd/-
M.L. MEHTA, J.

AUGUST 17, 2012