

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Rent Control Act

Date of Reserve: September 04, 2008

Date of Order: November 17, 2008

RCR 29/2006

Mohd. Usman ...

Petitioner
Through: Mr.Sudhir Kumar Sharma, Advocate

Versus

Siraj Ahmed ...

Respondent
Through: Mr. G.M. Farooq, Advocate

JUDGMENT:

1. The petitioner is aggrieved by the order dated 10th October 2005 of the learned Additional Rent Controller whereby the eviction petition of the petitioner under Section 14(1) (e) read with Section 25B of the Delhi Rent Control Act was dismissed after contest.

2. The eviction petition was filed by the petitioner in respect of premises bearing No.3393/VII, Gali Ibrahim, Jungli Kuan, Kucha Pandit, Lal Kuan, Delhi qua premises two rooms, verandah, open courtyard, bath room, latrine and kitchen alleging therein that he needed the premises bonafidely. The petitioner had been working in Bombay Mercantile Corporative Bank. He retired from the said bank on 31st March 1999. His wife, who was a teacher, had also retired. He pleaded that he had decided to lead his retired life in Delhi since he was born, brought up and educated in Delhi. A part of the property in question was in occupation of his sister-in-law and after his retirement, he requested his sister-in-law as well as the respondent herein, to vacate the premises in their respective possession so that he may shift to Delhi. At the time of filing of the eviction petition, he was residing with his wife in Lucknow at the house of his sister. He submitted he required one room as bedroom, a room for entertaining guests, one room for giving tuitions to students by his wife and a store room. He had no issue. He was a man of status.

3. Apart from taking other objections regarding maintainability of the petition, the respondent had submitted that the petitioner had no intention to return to Delhi as the petitioner and his wife had flourishing business in Bombay. The premises in question fell in slums. The petitioner and his wife, being persons of high status, would not live in slum area. The petitioners contention that he wanted to shift to Delhi was baseless. The petitioner had, during his service tenure, never made efforts to come to Delhi even for collecting rent. His job was transferrable but despite that he did not seek a transfer to Delhi.

4. The respondent had also raised issues qua ownership and letting purposes. However, issues of ownership and letting purposes were decided in favour of the petitioner. Regarding bonafide requirement, the trial court came to conclusion that the petitioner does not require the premises for his own use. He retired in Mumbai in 1999. Before or after his retirement, he had not written a letter to the respondent for vacating the suit premises. It is the petitioners own case that he was a man of high status and the property admittedly falls in slums. A man of high status, as that the petitioner, retired as an officer from Bombay Mercantile Bank, could not be expected to live in slum area. There was nothing on record to show that he had any plans to settle in Delhi. While at the time of filing the eviction petition, the petitioner gave his address as that of Lucknow but during his cross examination, he gave his address as that of Mumbai which shows that he had shifted back to Mumbai. The trial court, therefore, dismissed the eviction petition.

5. It is contended by counsel for the petitioner that it was not for the tenant or for the trial Court to decide whether the petitioner should live in old Delhi area which has been termed by the trial Court as slum. It was for the petitioner to decide whether he would like to live in his own house in old Delhi or not. The terms could not be dictated to the petitioner about his requirement and environment in which he wanted to live. On the other hand, counsel for the respondent argued that this Court in a revision petition should not interfere in the conclusions arrived at by the learned ARC since this Court was not sitting as a Court of appeal. The order passed by ARC was within its jurisdiction and ARC has not committed any illegality in dismissing the eviction petition. The finding given by the ARC cannot be interfered by this Court under section 25B (8) of DRC Act.

6. It is settled law that this Court while considering a revision under section 25B (8) of DRC Act does not act as a Court of appeal. However, there is no bar in appreciating the evidence in order to arrive at a conclusion whether the Court below had acted within its jurisdiction and had not committed a material irregularity. The Court below has to keep within four bounds of law while exercising jurisdiction under DRC Act. The Courts have repeatedly laid down that the question whether it was good for the landlord to move to his own house in Delhi from outside or not, is not within the purview of the Court. It is for the landlord to decide where he wants to live. In the present case the petitioner had been educated and brought up in Delhi and after retiring from his service in Bombay, wanted to live in his own house in Delhi. It is well settled that landlord is the best judge of his residential requirement and the place where he has to live. It is not open for the Court or the tenant to dictate in what manner he should live, where he should live nor the

Court can impose its own standards on the landlord. Although several areas of old Delhi are technically called slum, but old Delhi is habitat of several rich businessmen who enjoy living in old Delhi and may not like to shift outside old Delhi at any cost. If a landlord wants to live in his own house in old Delhi which technically falls under slum, neither the tenant nor the Court can dictate terms to him that he was a well off person, an officer in the bank or a teacher and old Delhi was not fit for his residence. As far as not writing letters to the tenant before his retirement is concerned, it is not necessary that a landlord should keep on writing futile letters to the tenant asking him to vacate. It is well known that no tenant vacates premises in his occupation just by writing letters. The landlord in this case had not only filed eviction petition against the tenant but had also filed a possession suit against his own real sister-in-law but in occupation of another part of the premises since he wanted to shift to Delhi. This clearly shows that the landlord had a bona fide desire and plan to settle in Delhi. The observation of the Court that the landlord had sold his flat in Bombay but has not given the name of seller and has not disclosed the consideration, had nothing to do with the bona fide requirement of the landlord. It is not obligatory on the landlord to disclose the name of the purchaser and the consideration for which he sold his property in Bombay in order to establish his bona fide desire of shifting to his own residence in Delhi. In S.P. Kapoor vs. Kamal Mahavir Prasad Murarka and ors, 2002 V AD (Delhi) 73 this Court had observed that even the requirement of the landlord to have his premises vacated for his frequent visits to Delhi and for temporary stay in his own premises has to be viewed as a bona fide requirement.

7. I, therefore, consider that the conclusion arrived at by the trial Court on the basis of its own imagination as to whether it would be good for the landlord to live in slum or not is not sustainable in the eyes of law. The petitioners intention to shift to Delhi was shown as bona fide by the petitioner by filing simultaneous eviction petition against tenant and a suit for possession against his sister-in-law. A person may take steps about his post retirement life even after retirement. It is not necessary for every person to start planning before retirement and start making arrangement in Delhi even if his house was in occupation of tenant. It was not necessary for the petitioner to come to Delhi and take a house on rent and live there in order to show his bona fides. A tenant can file an eviction petition from the place of his retirement for vacating his house in the other town and still his intention can be bona fide.

8. I consider that the learned Addl. Rent Controller committed an error in law by dictating terms to the landlord as to in what kind of area he should live or that old Delhi slum was not good for him. I, therefore, allow the eviction petition filed by the petitioner against the respondent and set aside the order of the learned Addl. Rent Controller.

Sd./-

November 17, 2008

SHIV NARAYAN DHINGRA J.