IN THE COURT OF MS. SHEFALI BARNALA TANDON, ADMINISTRATIVE CIVIL JUDGE- CUM- ADDITIONAL RENT CONTROLLER (CENTRAL) : DELHI

E-77490/16

In the matter of :-

Sh. Mani Ram (now deceased, represented by LR's)
All R/o 1093, Ganj Mir Khan,
Turkman Gate,
New Delhi-110002. .....Petitioners/ Landlords

Versus

Ms. Noor Jahan,
D/o Mr. Ali Hasan
R/o 1093, Second Floor,
Ganj Mir Khan, Turkman Gate,
New Delhi-110002. ....Respondent/ Tenant

Date of Institution	: 22.07.2015
Date of order when reserved	: 13.03.2020
Date of order when announced	: 16.05.2020(due to lockdown on account of COVID-19)

JUDGMENT

1. Vide this judgment, the undersigned shall dispose off the present eviction petition filed by the petitioner against the respondent/ tenant U/s 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'Act'), in respect of ***tin shed room on second floor in property bearing No.1093, Ganj Mir Khan, Turkman Gate, New Delhi-110002, (hereinafter referred to as 'tenanted premises').*** The site plan showing the tenanted portion in red colour is annexed with the petition.

16/5/20

2. However, the petitioner expired during pendency and vide order dated 18.07.2018, the application Under order 22 Rule 3 CPC has been allowed whereby the legal heirs of deceased petitioner were impleaded as petitioners in the present eviction petition.

3. The brief facts of the case, as mentioned in the petition by the original petitioner are that he is the owner/ landlord of the property bearing No.1093, Ganj Mir Khan, having purchased the same by virtue of a duly registered sale deed dated 09.04.1958 duly registered as a document No.5619 at Book No.1, Volume No.3117 at Pages No.36 to 41 with the Sub-registrar (hereinafter referred to as '*suit property/ property in question*'). The '*tenanted premises*' were let out to the respondent for residential purposes on a monthly rent of Rs.300/- excluding the water & electricity charges. The premises is an old structure, as per the MCD record also and it was let out to the respondent long back.

The family of the petitioner presently consist of his five sons namely Sh. Dharamvir, Sh. Bhoop Chand, Sh. Ishwar Dayal, Sh. Nanak Chand and Sh. Fateh Chand and five daughters. The details of status of his children living with him are as under:-

(i) His son namely Sh. Dharamvir is married and has a family consisting of his wife & five unmarried daughters.

(ii) His other son namely Sh. Bhoop Chand is also married and his family consists of his wife and two sons namely Wasu and Varun.

(iii) Sh. Ishwar Dayal is also married, having a family including his wife, one married son Sunil and three daughters namely Niti, Aarti and Geeta.

16/3/20

(iv) Sh. Nanak Chand is also married, having a family including his wife Smt. Veena, one daughter Pooja and two sons namely Rahul & Rohit (all married).

(v) Sh. Fateh Chand is also married and has a family consisting of his wife Ms. Poonam, one son Mahesh and two daughters Meenakshi (married) and Madhu.

(vi) One of his daughters namely Ms. Kamlesh, is a widow and is living with the petitioner along with her four sons and dependent upon the petitioner.

All the aforesaid family members of the petitioner reside in the '*property in question*' except the married grand-daughters.

4. It is averred that the property consists of ground floor, mezzanine floor, first floor and second floor and the entire family of the petitioner is living in this very house in the portions other than in occupation of tenants. However, the accommodation in possession of the petitioner and his family members is inadequate. It is further averred by the petitioner that he has filed separate petitions against all the tenants, as he is in urgent need of the space to accommodate his family members. The *'tenanted premises'* are situated at the second floor of the '*property in question'* and one of his sons Sh. Ishwar Dayal is in occupation of one tin shed room on the same floor and he resides in a single room with his family hence, the '*tenanted premises'* are required bonafidely for residential purposes of Sh. Ishwar Dayal. The *'tenanted premises'* are most suited for the aforesaid son of the petitioner, being adjacent to the room where he is presently residing. The petitioner does not have any other alternate suitable accommodation for

16/5/20

himself as well as for his family members. Hence, this eviction petition has been filed with the same prayer.

5. Accordingly, notice was served upon the respondent and vide order dated ***03.11.2016***, the leave to defend application of the respondent was allowed by the Ld. Predecessor of this Court, as triable issues were raised that the petitioner is in occupation/ possession of several other residential accommodations.

6. Written statement was filed by the respondent, wherein the allegations levelled by the petitioner were denied in general, however, she has not disputed the landlord-tenant relationship between them. The basic contention of the respondent is that the petitioners have sufficient accommodation in the *property in question,* as it has been averred that there are 12 rooms, 2 tin sheds, 2 kitchens, 1 storeroom, 2 latrines & 1 bathroom constructed on the ground floor of the suit property, out of which, 8 rooms, 2 tin sheds, 2 kitchens, 2 latrines & 1 bathroom on the ground floor are in the possession and use of the petitioner & his family members. That two latrines constructed on the ground floor are also in common use with the tenants. The remaining 4 rooms are in the possession of the tenants. That there are 3 rooms constructed in the mezzanine of the suit property, out of which, one room is in the possession of the petitioner and his family members and the remaining two rooms are in the possession of the tenants. Further, it is averred that there are 11 rooms, one tin shed and two kitchens constructed on the first floor of the suit property, out of which, 7 rooms, 2 kitchens & 1 tin shed are in the possession & use of the petitioner & his family members and the remaining 4 rooms are in

16/5/20

possession and use of the tenants. That there are 7 tin sheds constructed on the terrace of the first floor i.e. the second floor of the suit property, out of which, 2 tin sheds are in possession and use of the petitioner & his family members and the remaining 5 tin sheds are in possession & use of the tenants.

The family members of petitioner reside in the property in question as follows:-

(a) The petitioner's eldest son Sh. Dharamvir resides at the ground floor & first floor of the suit property and the petitioner also resides along with his son Dharamvir at the ground floor of the suit property. Dharamvir has 3 rooms at the ground floor and 2 rooms on the first floor in his possession and use.

(b) The petitioner's second son Sh. Bhoop Chand resides at the ground floor, who is having 2 rooms in his possession and use at the ground floor of the suit property.

(c) The petitioner's third son namely Sh. Ishwar Dayal has one room and a kitchen at the first floor in his use and possession in the suit property. Sh. Ishwar Dayal also has one tin shed in his use and possession on the terrace of the first floor i.e. the second floor.

(d) The petitioner's fourth son namely Sh. Nanak Chand has 1 room and 1 tin shed in his use and possession at the ground floor of the suit property. In addition to that, Sh. Nank Chand has 2 rooms, 1 kitchen and 1 tin shed in his use and possession on the first floor of the suit property.

(e) The petitioner's fifth son namely Sh. Fateh Chand has 1 room, 1 kitchen and 1 bathroom in his use and possession on the ground floor of

16/5/20

the suit property. In addition to this, Sh. Fateh Chand has also 1 room in his possession at the first floor of the suit property.

(f) Further, it is contented that the petitioner's widow daughter Smt. Kamlesh has 1 room on the first floor in her use and possession in the suit property. In addition to this, Smt. Kamlesh has also 1 room in her possession and use on the mezzanine floor of the suit property.

It is contented by the respondent that the above details have clearly proved that the petitioner and his family have sufficient accommodation in their use & possession and they do not require the suit premises for their bonafide need.

7. It is further contended that the petitioner's widow daughter Smt. Kamlesh has four sons and one daughter Ms. Swati. However, her two married sons are living separately & independently and they are not living in the suit property. Ms. Swati is also married and living with her husband hence, is not residing in the suit property. Thus, only two sons of Smt. Kamlesh are living with her. That one room on the first floor of the suit property is lying unused, which is in possession of the petitioner's fifth son Sh. Fateh Chand, however, he is not using the said room. Apart from this, the major portion of the terrace of the first floor is lying vacant and unused. Furthermore, it is contented that all the three daughters of Sh. Ishwar Dayal are married and they have been living at their matrimonial home. Thus, only Sh. Ishwar Dayal, his wife and his son Sunil are residing in the suit property. Further, Sh. Nanak Chand has one daughter and two sons. It is stated that his daughter Ms. Pooja is married and is living separately with her husband in her own family and Ms. Pooja is not residing in the suit property.

16/5/20

8. It is also contented by the respondent that the petitioner also has other built up residential properties in Delhi and the details of the said properties of the petitioner are disclosed as under:-

- Built-up Plot No.7, Gali No.10, Amrit Vihar, Inderprastha Colony, Nathupura, Burari, Delhi.
- Built-up H.No.18/2, Gali No.1, Prem Nagar, Nathupura, Burari.
- Built-up H.No.2895-B, Gali No.B-21, Block No.35-B, Baleet Nagar, New Delhi.

That the above mentioned residential premises are in the possession of the petitioner and his family members, however, the petitioner has concealed these residential premises in his eviction petition. That the petitioner has claimed himself to be the sole owner of the suit property but the petitioner has not disclosed in his eviction petition as to how he has become the sole & exclusive owner of the suit property. He has not filed the correct site plan of the suit property and also has not disclosed the complete accommodation. One room on the first floor is not being used by the landlord and one bathroom under the stairs leading to the second floor is also lying unused. The petitioner is negotiating the sale of the entire suit property with a local builder and property dealer, hence, his requirement is not bonafide.

9. It is also contended that she had under her tenancy 01 room on the first floor and 01 tin shed on second floor alongwith a courtyard (size 10' x 10' approx.) covered by Tirpal at the actual monthly rent of Rs.500/- p.m. She has been paying monthly rent regularly upto the month of August,

16/5/20

2015, however, petitioner/landlord has not issued a proper rent receipt to her.

10. It is contended that respondent has been residing in the suit premises for the last about 30 years. It is further contended that she has ration card & voter ID card of the suit premises. It is contended that no electricity connection is installed in the tenanted premises. It is contended that there are no separate latrine & bathroom alongwith the tenanted premises.

11. Lastly, it is contented that the sale deed dated 09.04.1958 cannot be treated as proof of the sole & exclusive ownership of the petitioner qua the suit property and he has not got permission from Slum Authority before filling the present petition. Hence, the present eviction petition is not maintainable against the respondent and the bonafide need shown by the petitioner is fake, false and concocted.

12. In order to substantiate the case, one of the Legal Heirs of the petitioner namely Sh. Bhoop Chand filed his evidentiary affidavit, who is examined as PW-1 and tendered his evidence by way of affidavit, which is Ex.PW1/A and re-iterated the averments made in the petition. He also relied upon documents i.e. Ex.PW1/1 to Ex.PW1/5 being sale deed of the property in question, site plan, original rent receipt, house tax receipt and copy go GPA, Will etc of property Bajeet Nagar, Delhi.

During his cross-examination, he denied to know the owner of the property bearing No.18/2, Gali No.1, Prem Nagar, Nathu Pura, Burari, Delhi. He denied that the property bearing plot No.7,Gali No.10, Amrit Vihar, Indraprastha, Nathu Pura, Burari, Delhi belongs to him or any of his

family members. He deposed that H.No.2895-B, Gali No.E-21, B-Block 35-B, Baljeet Nagar, New Delhi is constructed on a plot of land admeasuring about 25 sq. yards and it only consists of ground and first floor. Each of the floor has only one room set and the same is for residential purpose, however, his father/ original petitioner had let out the same to the tenants. His elder brother Sh. Ishwar Dayal receives the rent of the aforesaid premises after demise of his father. He also deposed that neither he nor any of his brothers ever resided in the said house, as all of them reside in the suit property. He admitted that Smt. Ratni Devi vacated the two rooms under her tenancy and handed over physical possession to his later father. The said two rooms are now lying vacant and are not being used either by him or his brothers. Presently, they are being used for parking their two wheelers. He denied to have made any alteration in the above said two rooms of the tenant Smt. Ratni Devi after the same was vacated by her. The said two rooms were marked as Mark X1 and X2 in the site plan exhibited as PW1/2. He also admitted that Mr. Mazhar Beg was also a tenant at the first floor of the suit property having one room, one washroom and one kitchen under his tenancy and that he too vacated the aforesaid tenanted premises during pendency of the present matter and handed over physical possession of the same to his father/ original petitioner. The tenanted premises of Mr. Mazhar Beg are also lying vacant at present and not under use. The said premises have been marked as Mark-X3 in the site plan already exhibited as PW1/2. He deposed that presently he and his brothers are in the possession of only 7 rooms, one kitchen-cum-washroom and one another washroom at the ground floor of the suit property. He also deposed that there is no separate store room at the ground floor, however, there are two tin sheds therein, out of which, one tin

16/5/20

shed is covered and another open. He admitted that there is one room at the mezzanine floor which is in possession of one of his family members i.e. son of his sister namely Mr. Amit. Mr. Amit was paying rent to his late father and after his death, he is paying the rental amount to him. He also deposed that there are 10 rooms at the first floor of the suit property which includes the portion which was in the possession of Mr. Mazhar Beg earlier. He denied the suggestion that at present, 8 rooms at the first floor are in the possession of his family members, however, he volunteered that there are 7 rooms in their possession. He also denied the suggestion that two tin sheds are in possession of his family at the second floor, however, he volunteered that only one tin shed is in their possession which is used by his elder brother Sh. Ishwar Dayal. When asked about the status of sons of his widow sister, he deposed that all four sons of his sister are not financially dependent upon them, however, one of her sons namely Sh. Chander Prakash resides on the first floor of the suit property in one room with his sister Ms. Kamlesh. He denied the suggestion as to sufficient residential accommodation in their possession or that they do not require the '*tenanted premises*' bonafidely.

13. No other witness has been examined on behalf of the petitioner and petitioner's evidence was closed vide order dated 06.07.2019.

14. In rebuttal, respondent namely Noor Jahan examined herself as RW-1, who tendered her evidence by way of affidavit, proved as Ex.RW1/A and reiterated the averments made in the written statement. She relied upon documents Ex.RW1/1 which is copy of her ration card; Ex. RW-1/2 copy of her Voter ID Card & Ex. RW-1/3 copy of her Aadhaar Card.

During her cross-examination, she deposed that she is a tenant in the suit premises for the last 30 years. She admitted that she was introduced by Mazhar Beg to the landlord and thereafter she was inducted as a tenant in the suit property. She stated that she knows about the family of Late Sh. Mani Ram. She admitted that family of Late Sh. Mani Ram/ the original petitioner was not very big when she came in this property as a tenant. She also admitted that Late Sh.Mani Ram had five sons and five daughters and now all are married. Even his grandsons are married now and having children. She also admitted that all the family members of the sons of Late Sh. Mani Ram resides in this property.She also admitted that one of his daughters Ms. Kamlesh is also residing in this property along with her two sons, being a widow. She also admitted that the elder son namely Amar of Ms. Kamlesh is residing on rent somewhere else. She admitted that all children of Kamlesh are married. She denied that sons of Ms. Kamlesh are residing on rent due to paucity of accommodation in the suit property. She denied that 80 to 90 members of the family of Late Sh. Mani Ram and the tenants are residing in the suit property. She further denied that around 40 members of the family of Late Sh. Mani Ram are residing in the suit property, however, **she volunteered that around 30 persons are residing there belonging to the family of Late Sh. Mani Ram.** She admitted that there are five members in the family of Sh. Ishwar Dayal, 7 members in the family of Sh. Nanak Chand, 4 members in the family of Sh. Fateh, 6 members in the family of Sh. Dharamvir, 4 members in the family of Sh. Bhoop Chand and 7 members in the family of Ms. Kamlesh, who all are sons and daughter of Late Sh. Mani Ram/ original petitioner. She also admitted that besides these family members, Late Sh. Mani Ram also had married daughters and 5 grand daughters, who are

16/4/20

married and have children. She admitted to having been in possession of one tin shed on second floor, which is a construction of around 50 years old. She admitted that marriages of the family members of Late Sh. Mani Ram was solemnised in the suit property and at the time of functions, when the daughters and the grand-daughters come to attend the gathering becomes at around 100 to 150 persons. She admitted that there are 2 common latrines at the ground floor, which are used by the family of the landlord as well as the tenants and sometimes there is a disgusting position due to paucity of latrines for the use of all the residents of the building. **She also admitted that Sh. Ishwar Dayal only has one room at the first floor and one tin shed at the second floor in his possession and he or his married sons do not have separate kitchen, bedroom, dining room, washroom, drawing room, etc. She also admitted that the family members of Sh. Ishwar Dayal uses their room for bathing and kitchen.** She even admitted that Sh. Ishwar Dayal has three married daughters, who come to stay during vacations, however, he has only one room and one tin shed. She denied that Ishwar Dayal needs at-least 11 rooms for accommodating his family members. She also admitted that relatives of Sh. Ishwar Dayal sleep in the verandah when they visit him.

15. She also admitted that Sh. Nanak, second son of the original petitioner, is having only three rooms in his possession, though his family consists of 7 members and they do not have separate washroom, latrine, dining room, drawing room, however, he has a separate kitchen She also admitted that out of three rooms, one room is lying locked, which was being used for commercial activities. She denied the suggestion that the kitchen is measuring 1 ½ feet and temporarily used by blocking the way. However,

she volunteered that the kitchen in possession of Sh. Nanak is 4x4 feet and is shown at point A on Mark-RA.

She also admitted that Sh. Fateh has only two rooms in his possession and the kitchen in his occupation is very small, which they use for bathing also. On showing two photographs, she admitted the same to be of a temple room on the ground floor, which is in possession of Sh. Dharamvir and proved as Ex.RW1/P1. She also admitted that Sh. Dharamvir does not have a separate drawing room or dining room and that the size of his kitchen is small. She denied that Sh. Bhoop Chand has only one room on the ground floor which is being used as kitchen. She volunteered that he has a one room and a separate kitchen, however, he has four family members. She also admitted that Sh. Bhoop Chand does not have a separate washroom, drawing room, dining room, etc. for himself or his family. She also admitted that the family of Sh. Bhoop Chand uses their room for bathing purposes. She denied the suggestion that the rooms vacated by Smt. Ratni Devi are not in habitable condition, however, she admits that the same are being used by the petitioners for parking their vehicles. He admits that the portion vacated by tenant Mr. Mazhar Beg is being used by family members of the petitioner and the photographs Ex.RW1/P-4 is of the said portion. However, she denied the suggestion that the portion vacated by Mazhar Beg is not in a habitable condition.

16. She also admitted that the tenants of the entire building use their respective rooms for bathing, as there is no separate washroom. The adjacent house bearing No.1094 is owned by Mr. Arab Shah and the petitioners do not have any right over the same. She admitted the photographs shown to be of her room Ex.RW1/P2 & P3. She also admits

16/5/20

photographs Ex.RW1/P5 of the main gate of the suit property which is very narrow as the size of the main gate is 3' x 6". She admitted that the electric meter shown in photograph, Ex. RW-1/P-6 are installed on the both side wall of the main entry gate.

17. No other witness has been examined on behalf of the respondents and respondents' evidence was closed vide order dated 08.01.2020.

18. The undersigned heard the oral final arguments adduced on behalf of the parties. Written final arguments have been filed on record on behalf of both the parties. The entire case file has been perused carefully including the written arguments.

It has been stated in the written arguments by the petitioner that at the time of creation of tenancy, family of petitioner was very small but with passage of time and grace of God, he was blessed with five sons and five daughters and subsequently grand-children, who all are residing in the suit property except the married daughters. However, one daughter namely Ms. Kamlesh, who is a widow, is also residing along with her children in the suit property. There are only two latrines in the suit premises which are being used by the landlords/ petitioners and their families as well as by the tenants admittedly. Further, majority of family members take bath in their respective rooms due to lack of separate washroom. The petitioners have either married sons or sons of marriageable age, therefore, to accommodate the families, '*tenanted premises*' are required bonafidely for residential purpose. The petitioners are a big joint family, having 45 members in total. The '*tenanted premises*' are required bonafidely for Sh. Ishwar Dayal, as his family consists of himself, his wife, his son, daughter-

in-law and grandson. He also has three married daughters, who often visit him. However, he has only one room on the first floor and one tin shed room on the second floor in his possession for residence. He does not have any separate kitchen, bathroom, dining room, latrine for the use of his family. **It has also been stated that the other rooms in suit property are occupied by tenants and the '*tenanted premises*' are adjacent to the tin shed room occuried by Sh. Ishwar Dayal**.

Regarding the property bearing H.No.2895-B, Gali No.B-21, Block-35B, Baljeet Nagar, New Delhi, it is stated that it is of only 28 sq. yards which has been mentioned in the document proved on record as Ex.PW1/5 and the same is occupied by tenants. More so, the same is not suitable at all for the petitioner Sh. Ishwar Dayal, as it is very small consisting only of one room set and the petitioners are residing together in the suit property as a big family. There was another property adjacent to the suit property bearing No.1094, however, it was sold 35 years back by the family members of the petitioners and the same is now owned by Mr. Arab Shah, which has been specifically admitted by the respondent during his cross-examination, as RW-1. Hence, it is prayed that the present eviction petition be allowed in the interest of justice, as the requirement of the family of the petitioner is genuine and bonafide.

19. In the written final arguments filed on behalf of the respondent, it is submitted that the suit property is constructed on a plot measuring 225 sq. yards as per the registered sale deed proved as, Ex.PW1/1, however, the actual area of the plot is 300 sq. yards. The contentions made in the written statement have been reiterated stating that petitioners have sufficient accommodation, however, it has been admitted that many rooms

16/3/20

are occupied by the tenants. It has been stated that petitioners have 19 rooms and 7 tin sheds in their possession, however, there are 29 members in their family. Further, during pendency of the present petition, two rooms on the ground-floor and two rooms on the first floor of the suit premises have been vacated by the tenants namely Smt. Ratni Devi and Mr. Mazhar Beg respectively. It has also been stated that one room on the ground floor which is in possession of petitioner Sh. Nanak Chand is lying under lock & key and also one room on the said floor is used by petitioner Sh. Dharamvir as temple, therefore, 6 rooms are lying vacant in the suit property which are in the possession of the petitioners and can be used for residential purpose. Further, the petitioners concealed possession of property bearing No.2895-B, Gali No.B-21, Block-35B, Baljeet Nagar in the petition, hence, they have not approached the Court with clean hands and bonafide intention.

Reliance has been placed upon judgment of the Apex Court in a case titled as ***Hasrat Rai & Ors. Vs. Raghunath (1981) 3SCC 103*** wherein it is held that "*if tenant is in possession to show that the need or requirement of petitioner no more exists due to subsequent events, it would be opened to him to point out such events and the Court has to examine, evaluate and adjudicate the same.*" The Hon'ble Supreme Court also held that "*the bonafide need of the landlord is not only to be shown to exist at the date of the suit but must exist throughout the progress and passage of proceedings of the Court.*"

20. Now, before appreciating the present facts of the case, let's discuss the basic law on the point. The essential ingredients which a landlord/ petitioner is required to prove for the purpose of getting an eviction order

16/3/20

for *bona fide* need are (i) the petitioner is the owner and landlord of the suit premises (ii) the suit premises are required *bona fide* by the landlord for himself or any of his family members dependent upon him (iii) the landlord or such other family members has no other reasonable suitable accommodation.

21. Let's discuss the first ingredient in detail :-

(i) Ownership as well as existence of landlord-tenant relationship :-

The respondent has no where denied the existence of landlord-tenant relationship between him and the original petitioner Late Sh. Mani Ram. In the entire written statement, the respondent has referred herself as the tenant of the original petitioner. Only at one point he has disputed the ownership of the original petitioner stating that he has not proved his ownership documents qua the property in question on record legally, however, the petitioner has proved on record the sale deed of property in question as Ex.PW1/1. No co-owner has challenged his title. Moreover, the Principle of Estoppel as contained in Section 116 of the Indian Evidence Act does not permit the tenant to deny or challenge title of the landlord to such immovable property during the continuation of the tenancy, when the relationship is admitted.

The relation of the present petitioners with Late Sh. Mani Ram has also not been disputed or denied. Therefore, all the LRs/ children of the owner/ landlord Sh. Mani Ram stepped into his shoes after his demise and became the landlords of the "tenanted premises" as per section 2 (e) of the Delhi Rent Control Act, 1958 and have been brought on record vide amended memo of parties. Therefore, ownership of petitioners over the

16/5/20

'*tenanted premises*' as well as existence of landlord-tenant relationship between the petitioners and the respondent stands established.

22. Coming to the second ingredient that the ***(ii) landlord requires the tenanted premises bonafidely for himself or any member of his family depended upon him.***

The averment of the petitioners is that they are a big joint family, having 45 members in total and residing in the suit property since beginning. The '*tenanted premises*' are required bonafidely for Sh. Ishwar Dayal, as his family consists of himself, his wife, his son, daughter-in-law and grandson. He also has three married daughters, who often visit him. However, he has only one room on the first floor and one tin shed room on the second floor in his possession for residence. He does not have any separate kitchen, bathroom, dining room, latrine for the use of his family. It has also been stated that the other rooms in suit property are occupied by other tenants and the '*tenanted premises*' ***being adjacent to the tin shed room occupied by Sh. Ishwar Dayal***, hence, it is the most suitable accommodation available for him.

The aforesaid averment of the petitioners has not been denied by the respondent by and large as she admitted during his cross-examination that family of Late Sh. Mani Ram/ the original petitioner was not very big when she came in this property as a tenant, however, the landlord Late Sh.Mani Ram was blessed with five sons and five daughters and thereafter, with grandchildren and all the family members of the sons of Late Sh. Mani Ram are residing in this property i.e. the suit property. She also admitted that one of his daughters Ms. Kamlesh is also residing in this property along

16/8/20

with her two sons, being a widow. She voluntarily stated that around 30 persons are residing therein, belonging to the family of Late Sh. Mani Ram.

She also admitted that there are 5 members in the family of Sh. Ishwar Dayal, who is in possession of only one room at the first floor and one tin shed at the second floor and he or his married sons does not have a separate kitchen, bedroom, dining room, washroom, drawing room, etc. She also admitted that the family of Sh. Ishwar Dayal uses their room for bathing and kitchen. She even admitted that Sh. Ishwar Dayal has three married daughters, who come to stay during vacations, however, as he has only one room and one tin shed, his relatives sleep in the verandah when they visit him. She admitted that marriages of the family members of Late Sh. Mani Ram was solemnised in the suit property and at the time of functions, when the daughters and the grand-daughters come, the gathering becomes at around 100 to 150 persons. She even admitted that there are 2 common latrines at the ground-floor, which are used by the family of the landlord as well as the tenants and sometimes there is a disgusting situation due to paucity of latrines for the use of all the residents of the building.

In view of the aforesaid admissions made by the respondent, the petitioners have insufficient space for accommodating their families, specifically Sh. Ishwar Dayal. Hence, there seems no malafide intention on the part of the petitioner(s) seeking possession of the '*tenanted premises*' and the bonafide need appears to be genuine.

Reliance is placed by this Court upon judgments delivered by Hon'ble Supreme Court of India as follows :-

(i) In ***Sarwan Dass Bange Vs. Ram Prakash, 167 (2010) DLT 80 = 2010 IV AD (Delhi) 252***, observations made by Hon'ble Supreme Court in

Baldev Singh Bajwa Vs. Monish Saini, VIII (2005) 12 SCC 778, have been quoted as under :-

"...It was held that these restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of the tenant, unless his need is bonafide - no unscrupulous landlord in all probability, under this section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the Court his requirements shall be presumed to be genuine and bonafide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

(ii) Hon'ble Supreme Court in ***Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde, (1999) 4 SCC 1*** held that the phrase "reasonably and *bona fide* required by the landlord" is not to be tested on par with "dire need" of a landlord because the latter is a much greater need.

16/3/20

23. Now coming to the last ingredient ***(iii) Non-availability of reasonably suitable alternative accommodation.***

The petitioners averred that the '*tenanted premises*' are required for bonafide need of one of the petitioners namely Sh. Ishwar Dayal, who is residing in one room at the first floor of the suit property, though his family consist of 5 members including his married son and daughter-in-law, and the '*tenanted premises*' are on the same floor, hence, most suitable for him. That the said petitioner does not have any other reasonable suitable alternative accommodation, as almost all the rooms in the suit property are either occupied by his brothers and their family members or by the other tenants. Regarding the other property bearing No.2895-B, Gali No.E-21, B-Block 35-B, Baljeet Nagar, New Delhi, it has been proved on record by Ex.PW1/5 that the said property is only ad measuring 28 sq. yards. It has two floors only, having one room set and the same has been let out to tenants. It is the averment of the petitioners that they are a big family residing together in the suit property since beginning, which has been admitted by the respondent during his cross-examination. The respondent has also admitted that the adjacent property bearing No.1094 is owned by Mr. Arab Shah.

It is contented by the respondent that during pendency of the present petition, subsequent events have taken place and four rooms i.e. two rooms by tenant Smt. Ratni Devi and two rooms by tenant Mr. Mazhar Beg have been vacated, hence, the petitioners have alternate accommodation. However, it is deposed by the petitioner that the two rooms vacated by tenant Smt. Ratni Devi are in inhabitable condition and to prove the same, he has marked the said rooms as Mark X1 and X2 in the site plan exhibited as PW1/2. It has been further stated that those two rooms are used only

for parking the two wheelers of the petitioners due to their inhabitable condition. The same has been admitted by the respondent during his cross-examination. The respondent has also admitted the photographs of the said rooms proved on record. Further, the rooms vacated by Mr. Mazhar Beg are stated to be occupied by other family members, the petitioners' family, being a big joint family having almost 30 to 40 members. The same has not been specifically denied by the respondent.

As per the site plan filed by the petitioners and admitted by the respondent Ex.PW1/2, the room occupied/ in possession of Sh. Ishwar Dayal is just adjacent to the '*tenanted premises*'. Further, it is the whole and sole discretion of the landlord and the tenant cannot dictate the terms. Reliance is placed upon judgment delivered by Hon'ble Supreme Court in case titled as ***"Ragavendra Kumar Vs. Firm Prem Machinery & Company", AIR 2000 SC 534***, it was observed by the Court that 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 .

Reliance is also placed upon judgment delivered in a case titled as ***Ramesh Chand Vs. Uganti Devi, 157 (2009) DLT 405***, it has been clearly held that *"a tenant who alleges that landlord has at his disposal other accommodation has to place before the Controller, some material to show that the landlord has a specific alternative accommodation at his disposal". Mere bald allegation with respect to availability of additional accommodation with the petitioner does not hold any basis and cannot be a basis to deny the petitioner of his right to vacate the tenanted premises for his bonafide requirement".*

16/3/20

Further, it is settled law that the landlord is master of his choice and the tenant or the court cannot compel a landlord to choose a particular place against his choice.

With this background, it seems that the petitioner Sh. Ishwar Chand does not have any reasonably suitable alternative accommodation for himself as well as for his family members except the *'tenanted premises'*.

24. Lastly, the contention of not obtaining permission of the Slum Authority before filing the present petition does not hold any water as it is well settled preposition of law that it is not required for petition U/s 14(e) of the Act.

25. In view of the aforesaid discussion, this Court is of the considered opinion that the petitioner(s) have proved all the necessary ingredients of Section 14 (1) (e) of Delhi Rent Control Act, 1958. Accordingly, an eviction order is passed U/s 14 (1) (e) of DRC Act in favour of the petitioner(s) and against the respondent in respect of tin shed room on second floor in property bearing No. 1093, Ganj Mir Khan, Turkman Gate, New Delhi-110002, as shown in the site plan in red colour annexed with the petition. This order shall not be executable before the expiry of six months from the date of this order as provided U/s 14 (7) of DRC Act. Parties to bear their own costs.

File be consigned to Record Room.

Announced through
video conferencing
on 16.05.2020

16/5/20

(SHEFALI BARNALA TANDON)
Administrative Civil Judge -cum-
Additional Rent Controller (Central): Delhi

(This judgment contains 23 pages in total)