

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV.No.266/2012 & C.M.Nos.10945/2012, 17918/2013,

8628/2014, 8629/2014

DATE OF DECISION : 04th December, 2014

SH. OM PRASAD SARIN & ANR.

.....Petitioners

Through: Mr.R.P.Sharma Advocate.

VERSUS

SH. AJIT MEHRA & ORS.

..... Respondents

Through: Mr.Pramod Kumar Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller (ARC) dated 09.12.2011 by which the ARC has dismissed the bonafide necessity eviction petition filed by the petitioners/landlords with respect to the suit/tenanted premises comprising of five rooms, one drawing room, two kitchens on the ground floor and one tin shed on the first floor of property bearing no.4538, Daiwara, Nai Sarak, Delhi-6 as shown in red colour in the site plan annexed along with the eviction petition. The eviction petition has been dismissed after evidence was led by both the parties.

2. The original eviction petition was filed by the landlady Smt.Munni Devi Sarin widow of late Sh.Amba Prasad Sarin for her own requirement as also the requirement of her two sons, one of whom was unmarried. The married son Sh.Rattan Prasad Sarin was having besides himself his wife, one daughter and two sons. When the eviction petition was filed in the year 1991, the two sons of Sh. Rattan Prasad Sarin were 10 years and 9 years of age, and therefore today these two sons would be 33 years and 32 years

respectively. I am informed by the counsel for the petitioners that these two sons of Sh.Rattan Prasad Sarin are now in fact married.

3(i) Besides the need for the landlady, her unmarried son Sh.Om Prasad Sarin and married son Sh.Rattan Prasad Sarin and his family, need was also projected for the son Sh.Raghubir Prashad Sarin, who was residing in Mathura and who has retired from a Gazetted post of a District Extension Executor, Family Planning Department in the State of U.P and wanted to shift to Delhi. Need was also projected for another son Sh.Ram Parshad Sarin, who was posted in Agra and was to retire in February 1993, and who also wanted to come to Delhi.

(ii) The landlady also had two other sons Dr.J.P.Sarin and Sh.K.P.Sarin who lived away from Delhi and frequently visited the landlady, and therefore two other rooms/guest rooms were also required for these two sons and their families.

(iii) The landlady was about 85 years of age when the eviction petition was filed and she pleaded that she required the tenanted premises for her sons to stay with her and for looking after her also.

(iv) During the pendency of the eviction proceedings, the landlady expired and she was substituted by her sons and the daughter. The eviction proceedings however continued because the projected need in the eviction petition was not only for the landlady but also for her family members including the unmarried son Sh.Om Prasad Sarin and the married son Sh.Rattan Prasad Sarin, the need for two other sons Sh.Raghubir Prashad Sarin and Sh.Ram Parshad Sarin who wanted to come and settle in Delhi from Mathura and Agra and the need of guest rooms for other two sons who were living away from Delhi.

4. The respondents, who are the legal heirs of the original tenant Sh.Shiv Narain Mehra contested the eviction petition by denying the ownership of the landlady Smt.Munni Devi Sarin. It was also stated by the respondents/tenants that the two sons of the landlady posted at Mathura and Agra did not want to come and settle in Delhi. The landlady was also stated to have sufficient alternative accommodation in a property bearing no.4555, Kucha Bibi Gohar, Charkewalan, Delhi-6, and which as per the respondents/tenants comprised of five rooms. The landlady was also stated to have two rooms and a kitchen on the first floor of the property bearing no. 4554, Kucha Bibi Gohar, Charkewalan, Delhi-6, and to which the landlady stated that her son-in-law was a tenant in the same and he could not be evicted on account of the close and sensitive relations.

5(i) After the pleadings were complete, parties led evidence. On behalf of the landlady Smt.Munni Devi Sarin, depositions were given by PW-1 Sh.Om Prasad Sarin, PW-2 Sh.Ram Prasad Sarin (who did not appear for cross-examination and whose testimony therefore cannot be looked into) and PW-3 Sh.K.P.Sarin being the son of the landlady, who has retired and was living in a rented house in Lucknow and was wanting to come to Delhi.

(ii) On behalf of the respondents/tenants, Sh.Jitender Narain Mehra, son of late Sh. Shiv Narain Mehra deposed as RW-1.

6. In a bonafide necessity eviction petition under Section 14(1)(e) of the Act, three aspects are required to be established for decreeing of the petition. Firstly there must exist the relationship of landlord and tenant between the parties and that the landlord is the owner of the property. Second requirement is that the suit/tenanted premises are required for the bonafide need of the landlord and/or his family members. The third aspect to be examined is whether the landlord has alternative suitable accommodation.

7(i) On the aspect that the original landlady Smt.Munni Devi Sarin was the owner of the suit/tenanted property, this aspect was held in favour of the petitioners/landlords holding that admittedly the husband of Smt.Munni Devi Sarin, late Sh.Amba Prasad Sarin was the owner of the suit/tenanted property, and therefore his widow would surely be at best the co-owner of the suit/tenanted property. The case of the respondents/tenants that the property was given to a temple was disbelieved. The present petitioners are the sons and the daughter of Smt.Munni Devi Sarin, and therefore the children of late Sh.Amba Prasad Sarin, and being the legal heirs of late Sh.Amba Prasad Sarin, they would also hence be the co-owners of the suit/tenanted property. The relevant discussion with respect to the petitioners/landlords proving their ownership also gives a finding for the aspect that the ownership of the property in the name of late Sh.Amba Prasad Sarin, husband of Smt.Munni Devi Sarin was proved on account of mutation of the suit/tenanted property in favour of late Sh.Amba Prasad Sarin. The house tax receipts for the years 1961, 1962, 1965, 1968, 1973 and 1974 were proved and exhibited as EXs. PW-1/8 to PW-1/13.

(ii) I completely agree that with the findings and conclusions of the ARC holding that the petitioners are the owners/landlords of the suit/tenanted property, and which relevant observations of the ARC in the impugned judgment dated 9.12.2011 read as under:-

“ A. OWNERSHIP AS WELL AS RELATIONSHIP OF LANDLORD AND TENANT.

(i) The contesting respondent has denied the ownership as well as relationship of landlord and tenant between the parties stating that the father of the respondent took the possession of the suit property when the Kalibari temple was shifted about 50 years back. In the W.S. it has not been disclosed in which capacity the father of the respondent took the possession of the suit property. However, in his cross examination RW-1 testified that his father became the owner of the suit property but he has no documents of transfer of ownership executed in favour of his father. It is further testified that he does not know who was the owner of Kalibari i.e. the suit premises nor he has personally seen the Kalibari temple himself. It is further testified that his elder brother Sh.S.N.Mehra told him that earlier there existed a kalibari temple. It is further testified that the property in question is not assessed to the house tax and denied the suggestion that the suit property is assessed in the name of Amba Prasad Sarin in the house tax department.

(ii) On the other hand, in the cross examination of PW-1, the suggestions have been put that the petitioner is not the owner of the suit property nor Sh.Amba Prasad Sarin and the house tax receipts are forged and fabricated and PW-1 has denied those suggestions. The petitioner has placed reliance upon the certified copy of the judgment in respect of the suit property of the year 1910 which has been exhibited as Ex. PW-1/2 and denied the suggestion that said document is not in respect of the suit property. Nothing has been placed on record to contradict the correctness of the said documents or that that the said document is not in respect of the suit property by the respondent. Though RW-1 has denied the correctness and signatures upon the letters Ex. PW-1/5 and Ex. PW-1/7 disputing the signatures of the ‘Author’ but when in cross examination, he was asked as to whether he can produce the documents pertaining to signatures of the author of those letters, he testified that he can not produce though he admitted that the authors of those letters are well educated. Even no witness has been summoned on behalf of the respondent to corroborate their allegation that the house tax receipt/bills in the name of Mr. Amba Prasad Sarin is forged and fabricated. Though the respondents have denied that the petitioner was the wife of late Sh. Amba Prasad Sarin but has not denied that the legal heirs subsequently brought on record are not the sons and daughters of Late Sh. Amba Prasad Sarin and even admitted that PW-1 is the son of Late Amba Prasad Sarin.

(iii) In the light of aforesaid discussions, this Court is of the opinion that in a petition U/s 14(1)(e) of the D.R.C. Act, the petitioner is required to prove that they are more than tenants and there is no requirement that they must prove that they are absolute owner of the suit property. Thus, it has been proved on record on preponderance of probability that petitioner is the owner of the suit property qua the respondent and there is relationship of landlord and tenant between the parties.”

(iii) Besides the aspect that the ARC has rightly concluded that the petitioners are the owners/landlords, it is required to be noted that the ownership which has to be proved in an eviction petition is only for showing that the petitioners/landlords have a better title than the respondents/tenants and which position has been clearly established because not only the house tax receipts are filed and proved, the respondents/tenants have failed to prove that if not the petitioners then who else is the owner of the suit/tenanted property ie who else other than late Sh.Amba Prasad Sarin and thereafter the present petitioners/landlords were/was the owners/owner and in what manner.

(iv) Also, it is to be noted that every owner is automatically a landlord in view of the definition of ‘landlord’ contained in Section 2(e) of the Act, which states that a person who is entitled to receive the rent is also a landlord and since a co-owner is entitled to receive the rent, a co-owner is always a landlord. I therefore hold that the court below has rightly concluded the aspect of existence of relationship of landlord and tenant between the parties as also the aspect of ownership of the suit/tenanted property in favour of the petitioners/landlords.

8 (i). On the aspect of bonafide need, even after the death of the landlady Smt.Munni Devi Sarin, the following family members (who are also the owners-landlords) exist being the unmarried son Sh.Om Prasad Sarin, the married son Sh.Rattan Prasad Sarin and who has two sons who are now aged about 33 and 32 years, and who as per the counsel for the petitioners are also married. Therefore, for the need of Sh.Om Prasad Sarin and the family of Sh.Rattan Prasad Sarin, a total of four bedrooms will be required being one room for Sh.Om Prasad Sarin, one room for Sh.Rattan Prasad Sarin and his wife and two rooms for the two married sons of Sh.Rattan Prasad Sarin. Also, in addition to the four bedrooms, two other bedrooms will be required for the children of the two married sons of Sh.Rattan Prasad Sarin, noting

that however though no evidence exists on record with respect to marriage of the two sons of Sh.Rattan Prasad Sarin as also they having any children, considering that this is a very old case i.e having been filed more than 23 years back, I accept the contention of the counsel for the petitioners with respect to the marriage of the two sons of Sh.Rattan Prasad Sarin and their having children. Therefore, for Sh.Om Prasad Sarin and Sh.Rattan Prasad Sarin, a total of six bedrooms will be required.

(ii) In addition to the six bedrooms, there will be required one drawing room, one dining room, one store room and one guest room for the large family, which besides Sh.Om Prasad Sarin and Sh.Rattan Prasad Sarin includes two married sons who live away from Delhi and two married sons who were living in Mathura and Agra.

(iii) All in all therefore for the need of the landlords and their families, a total of ten bedrooms, one drawing room, one dining room, one store room and one guest room will be required i.e a total of 14 rooms. As compared to the need of 14 rooms, the landlords only have a total of five bedrooms in the property bearing no. 4554, Kucha Bibi Gohar, Charkewalan, Delhi-6, and therefore the petitioners/landlords have clearly established their bonafide need.

9. On the aspect of alternative suitable accommodation, what was argued on behalf of the respondents/tenants is that there is a property being house no.4555, Kucha Bibi Gohar, Charkewalan, Delhi-6, which is an alternative suitable accommodation. Therefore this aspect has to be examined whether this property 4555 which is stated to comprise of five rooms would be an alternative suitable accommodation.

10. As per the evidence led on behalf of the petitioners/landlords, and who filed the photographs of this 4555 property, which have been marked as Mark-A1 to Mark-A5, this property is in a shabby condition. The ARC has rejected the stand of the petitioners/landlords and held that this property being house no.4555 is available, and therefore the same will be an alternative suitable accommodation by making the following observations in the impugned judgment dated 9.12.2011:

“ X X X X X

(ii) Though in the petition, the petitioner has not disclosed that she is also the owner of property no 4555 (supra), but in rejoinder, she disclosed that she is owner of the said property, but alleged that the said premises is in

shabby condition and one Smt. Kaushalya is in occupation of one room therein. In his chief examination, PW-1 reiterated the same facts and deposed that the ground floor of the said property has been photographed which are marked as Mark A1 to A5. However, nothing has been disclosed as to when the said photographs were taken and no negatives of the said photographs have been filed on record nor the photographer has been produced as witness to prove those photographs. In this cross examination PW-1 has admitted that the property no. 4555 (supra) belongs to him along with his brothers and two rooms are situated in this property on the ground floor and two rooms including tin shed are in existence on the first floor and there is only one tenant namely Smt. Kaushalya residing on the first floor in the tin shed and denied the suggestion that the said property is consisting of five rooms, kitchen, latrine, bathroom and store. He further denied the suggestion that the property is in good condition and is not in a shabby condition. However, deposition regarding construction in respect of property no. 4555 (supra) is contrary to the site plan put on behalf of the petitioner to the respondent in his cross examination which was marked as Mark-X on 07/04/2003 wherein three rooms have been shown on the ground floor and only one tin shed has been shown on the first floor in the said property and, thus, from the testimony available on record as well as from the site plan marked as Mark-X, it can be safely held that there are five rooms in the said property no. 4555 (supra).”

11. In my opinion, the ARC has clearly fallen into a gross error and committed a manifest illegality and perversity, inasmuch as firstly the photographs should be taken to have been proved and ought to have been not marked because it is not mandatory in all cases to necessarily file negatives unless and until the photos are shown to be forged photos. Once the photographs are proved which show the said property in a shabby condition, the petitioners/landlords are not expected to re-construct the same by incurring expenses inasmuch as another suitable accommodation i.e suit/tenanted premises are available with them for their residence. It is not the law that the landlords must spend money and re-construct a dilapidated property, and which should be then taken as an alternative suitable accommodation. In fact the law states that the landlords need not spend money over a property required to be re-constructed and re-built, but they can instead seek eviction of the tenant from the tenanted property for the bonafide need of the landlords. Since the photographs should not be marked as Mark-A1 to Mark-A5, the photographs marked as Mark-A1 to Mark-A5 are now taken as exhibited and should be read as Ex.PX-1 to Ex.PX-5.

12. Therefore, the premises being house no.4555 is not an alternative suitable accommodation and cannot be considered for satisfying the needs of the family members of the petitioners/landlords.

13. I may state that at the conclusion of the arguments, counsel for the petitioners/landlords very vehemently argued that the suit/tenanted property is lying vacant since long and the same is not being used by the respondents/tenants. In fact the tenanted premises has become a dustbin for people to throw waste and garbage into the same, and inspite of non-user the respondents/tenants are illegally not vacating the same hoping to extract consideration from the petitioners/landlords. I may note that the respondents/tenants have not filed any document whatsoever before the ARC below to show that the premises are continued to be used by them, and therefore there is no reason for me to disbelieve the emphatic stand of the petitioners/landlords with respect to the deplorable condition of the suit/tenanted premises, and that it has also become a garbage dump on account of non-user.

14. In view of the above, the present petition is allowed and the impugned judgment dated 9.12.2011 of the ARC is set aside. The bonafide necessity eviction petition will stand decreed with respect to the suit/tenanted property comprising of five rooms, one drawing room, two kitchens on the ground floor and one tin shed on the first floor in the property bearing no.4538, Daiwara, Nai Sarak, Delhi-6, and especially as shown in the site plan which is proved and exhibited as Ex.PW-1/14. The respondents/tenants will be entitled to the statutory period of six months to vacate the suit/tenanted premises. Parties are left to bear their own costs.

Sd/-

VALMIKI J. MEHTA, J

DECEMBER 04, 2014