

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

R. C. Rev. No. 75/2012

Date of Decision: 21.12.2012

TARUN PAHWAPetitioner
Through: Mr. M.L. Pahwa, Adv.

Versus

PRADEEP MAKINRespondent
Through: Mr. Deepak Gupta, Adv.

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

M.L. MEHTA, J.

1. The present petition has been filed under Sec. 25B (8) of the Delhi Rent Control Act against the order passed by the Ld. Additional Rent Controller, Delhi in Eviction Petition No. 25/2010, decided on 23.11.2011; whereby the Ld. ARC has allowed the application filed by the respondent for leave to defend the eviction petition.

2. Briefly stating the facts, the petitioner herein is the landlord of the suit premises i.e. one hall on the ground floor, forming part of property no. 25/8, B-11, Gali No. 7, New Rothak Road, Industrial Area, Anand Parbat, New Delhi – 110005. The respondent is a tenant in respect of the suit premises, under the petitioner at a monthly rent of Rs. 638/- excluding other charges. The suit premises were initially let out to the father of the respondent by Late Sh. Daulat Ram in the year 1977. Late Sh. Daulat Ram sold the property to the petitioner vide an Agreement to Sell dated 28.05.1979. Thereafter, the petitioner became the landlord of the suit premises and the father of the respondent herein started paying the rent to the petitioner. After the death of the father of the respondent, the respondent has been paying the rent to the petitioner. In the year 2010, the petitioner required the suit premises for his wife, who wanted to set up a unit for manufacturing artificial jewellery and therefore, filed for an eviction before the Ld. ARC. He contended that his wife had done the course of jewellery making in the year 2003, but due to the birth of a baby, she was unable to start her business back then. He also contended that the suit premise is located in an industrial area, which is suitable for setting up a manufacturing unit and also it was near to his residential place.

3. In the leave to defend application filed by the respondent, it was contended before the Ld. ARC that the petitioner did not possess any document to support his title over the suit premises and that an Agreement to Sell by itself does not confer any title upon the petitioner. The respondent also contended that the petitioner has not revealed the full extent of properties held by him and his family members, or which have been disposed off by sale or even otherwise let out on rentals to third parties till before the institution of the eviction petition. He submitted that the lands comprised in the locality of the suit premises had already been acquired by the Union of India as well as the Delhi Development Authority. In connection with this the respondent filed the site plan contending that the portion adjacent to the suit premises had been constructed by the petitioner without the permission of the Union of India/DDA/MCD and built four floors, which have been let out.

4. The respondent, submitting a detailed list of the tenants under the petitioner, contended that the petitioner had come into vacant possession of the above mentioned newly constructed building, whose carpet area alone is 700 sq. ft. or more. After the construction of the ground floor, it was let out by the petitioner in the last quarter of 2009 to Sh. Subhash Chand @ Rs. 14,000 per month. The newly constructed accommodation on first and second floor were let out to Sh. Virender Kumar in September 2009 @ Rs. 15,500 per month, the terrace floor with covered mumty was let out to Sh. Sudhakar @ Rs. 3,000 per month and recently, had also inducted Sh. Mahender Singh on the first floor of the adjoining building at a monthly rent of Rs. 6,000 in December 2009. In addition to the above, it was also contended that the petitioner has sent a legal notice to Sh. Manoj Sharma who was a tenant in respect of a shop in the first floor, to enhance the rent from Rs. 436 to Rs. 22,500 a month. The respondent also contended that the decision of the Supreme Court in the case of Satyawati Sharma v. Union of India, III (2008) SLT 553, was not to be relied upon since it had no finality attached to it.

5. In the reply to the leave to defend application, along with the counter affidavit filed on behalf of the petitioner, he contended that the respondent had been in the occupancy of the suit premises for about 30 years and that the respondent cannot contest the title of the petitioner as owner/landlord of the suit property. He also submitted that he had sold 200 sq. yards of the 400 sq. and that the rest of the premises is in possession of tenants. He also submitted that the construction in the adjoining premises was done in May, 2005 and not in 2009. He has also submitted that the ground floor of the abovementioned premises was let out to M/s. Manish Engineering Works on 23.11.2005 under an agreement, which was also placed on record before the Ld. ARC. He has also placed on record the deeds of the tenancy of Sh. Virender Kumar & Sh. Sudhakar, who were tenants in respect of first and second floors, and the open terrace, respectively. It was also submitted that two small shops in the first floor were let out at a monthly rent of Rs, 6, 000/-, to Sh. Mahender Singh in April 2004 and Sh. Manoj Sharma in March 2010, respectively. The petitioner also submitted that he had served a notice to the respondent to enhance the rent as it was abysmally low.

6. The Ld. ARC while allowing the respondent's application seeking to leave to defend has dealt with the issues, namely, (a) ownership of the suit premises, (b) purpose of

letting, (c) alternative accommodation, and (d) bona fide requirement. The Ld. ARC has summarily dismissed the first two issues observing the law is well settled with respect to ownership and purpose of letting. He has relied upon the judgment in the case of *Rejender Kumar Sharma v. Leela Wati*, 155 (2008) DLT 383, in which it was held:

“Mere assertions made by a tenant in respect of landlord’s ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Sec. 25B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence, defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant’s assertions and averments were totally false.

It is settled law that for the purpose of Sec. 14(1)(e) of the Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is only required to show that he is more than a tenant.”

He has also concluded that the law laid down by the Apex Court in *Satyawati Sharma v. Union of India* (supra), wherein it was held that an eviction petition on the ground of bona fide requirement in respect of premises which were let out for commercial purposes is maintainable, is binding upon him.

7. The petitioner herein is aggrieved by the decision of the Ld. ARC only in respect of the other two issues. In deciding the issue regarding alternative accommodation and bona fide requirement, the Ld. ARC has relied upon the details of properties and list of tenants presented by both the petitioner as well as the respondent in their affidavit and counter affidavit. Based on an evaluation of the facts presented in affidavit filed along with the leave to defend application by the respondent, and the counter affidavit filed along with the reply to the leave to defend application by the petitioners, the Ld.ARC allowed the leave to defend to the respondent.

8. Before proceeding to examine the submissions, it is vital to note that the powers of revision of this Court under Sec. 25B(8) are not as wide as that of an appellate Court. If found that the impugned order is according to law and does not suffer from a jurisdictional error, then this Court has no power to interfere. It must also be noted that the object behind the rent laws is to strike a balance between the rights of tenants and the landlords. More so in cases where the landlord possesses properties other than the suit premises. While it is settled position of law that the landlord is the best judge of his own requirements, and neither the courts nor the tenant can dictate terms to him, it cannot be said that everything the landlord states should be taken as gospel truth. Keeping this in mind, I have perused through the impugned order and find that the Ld. ARC has rightfully allowed the respondent’s leave to defend application.

9. It is very important to remember that burden is placed on the landlord to prove that his need is a bona fide one when he has other alternate accommodations in his possession. In the case of “*Charan Dass Duggal v. Brahma Nand*, (1983) 1 SCC”, the Supreme Court has specifically held that the burden is on the landlord to prove his personal requirements:

“4. When landlord seeks possession for personal requirement he has to prove his present need. If he has any premises in his possession he must allege and prove why that is not sufficient for his present use, or why he has to shift to the premises of which he seeks possession.”

10. There is no dispute with regard to the proposition that the landlord is entitled to seek eviction of tenanted premises not only for himself, but also for his other dependant family members, which in this case is his wife. There is also no dispute that neither the tenant nor the Court can dictate the landlord as he is the best judge of his decisions and choices as regard to the premises which he requires and also the mode and manner of putting them into beneficial use. But, at the same time it is also trite that the projected requirement is or is not bonafide, is not the subjective decision of the landlord, but it has to be examined and evaluated by the controller objectively.

11. Ld. ARC was of the view that certain triable issues are raised by the respondent, which can only be decided by evidence and not on the basis of affidavits. It was observed by him and rightly so, that the petitioner has not disclosed in his petition that he had sold 200 sq. yards. However, as per the petitioner's own documents, he had purchased a 400 sq. yards plot. In the absence of there being anything on record to substantiate his plea that he had sold 200 sq. yards and to whom, the plea of the respondent that it was 400 sq. yards cannot be discarded at this stage.

12. It is also a triable issue as to whether the premises which were available with petitioners, but let out to tenants in 2007, 2008 and 2010, are in the possession of those very tenants or someone else, and are not available, or are not suitable, for the requirement of the petitioner to set up a jewellery manufacturing unit.

13. In the instant case, the Ld. ARC has rightly allowed the respondent's leave to defend because it is apparent from the record that the issues regarding alternate accommodation as well as bona fide can be decided after adducing additional evidence in the trial.

14. In light of the factual matrix and the principles of law as discussed above, the respondent was able to raise some triable issues before the Ld. ARC. I see no infirmity or illegality in the impugned order.

15. The petition is hereby dismissed.

Sd./-
M.L. MEHTA, J.

DECEMBER 21, 2012