

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC. REV. 527/2011 & CM 22681/2011

DATE OF DECISION : 21st July , 2014

PHULGITA

.....Petitioner

Through: Mr. Sajan K. Singh, Advocate

VERSUS

SHRI KRISHAN KUMAR & ORS.

..... Respondents

Through: Mr. J.P.Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') against the judgment of the Additional Rent Controller dated 4.6.2011 by which the Additional Rent Controller dismissed the petition for bona fide necessity on the sole ground that the petitioner is not the owner/landlord of the suit premises. The eviction petition has been dismissed after trial.

2. The subject petition for bona fide necessity was filed by the petitioner on the ground that she has purchased the suit property by means of the documentation dated 16.11.1973, and which documents were also registered with the Sub-Registrar. There was a typing mistake as to the property number, and hence the petitioner had filed a civil suit for rectification of the documents, and this suit was decreed in favour of the petitioner by the judgment dated 28.2.2004 passed by the Court of Sh. Rakesh Kumar, Civil Judge, Delhi. Petitioner filed the eviction petition on the ground of bona fide necessity because the petitioner was living in one room only in the same premises bearing House no. M-18, Shastri Nagar, Delhi-110052 and in her family members besides herself there was her married son with two children aged 10 years and 7 years.

3. So far as the aspect of bona fide necessity is concerned, nothing was argued before me by the respondent, and which is in view of the fact that the family members of the land lady cannot be denied, more so as in her evidence the landlady has filed and proved the ration card as Ex.PW 1/5A showing the family members. Clearly therefore petitioner has bona fide necessity and admittedly she has no other alternative suitable accommodation.

4. As already stated the Additional Rent Controller had dismissed the petition only on the ground that the present petitioner is not the owner/landlady of the suit premises.

5. In my opinion, the judgment of the Additional Rent Controller clearly suffers from a patent illegality. It may be noted that the original owner was one Sh. Jagdish Prasad and whose successor-in-interest was Sh. Ram Prem Sharma, and the present petitioner purchased rights in the suit premises from Sh. Ram Prem Sharma. Neither Sh. Jagdish Prasad nor Sh. Ram Prem Sharma have questioned the title of the petitioner, and hence a tenant has no locus standi to question the title of the petitioner. The ownership in favour of the petitioner-landlady is otherwise duly proved by means of the GPA and payment receipt proved and exhibited as Ex. PW-1/1 and Ex. PW-1/2 respectively, the order of the civil court rectifying the number of the property as Ex. PW-1/3, and House Tax receipts with MCD as Ex. PW-1/4A. It is also relevant to note that Sh. Ram Prem Sharma the seller and predecessor-in-interest of the petitioner had made a statement in favour of the present petitioner and which was proved and exhibited as Ex. PW-1/4.

6. Every owner of a property is automatically a landlord of the property. Merely because a tenant may want to deny attornment to a landlord who is the owner of the premises cannot mean that the owner is not the landlord of the tenanted premises. As per Section 2(e) of the Delhi Rent Control Act, 1958 a person who is entitled to receive the rent is a landlord. An owner is entitled to receive rent and therefore the owner is undoubtedly a landlord both under the common law as also in terms of Section 2(e) of the Delhi Rent Control Act, 1958.

7. Learned counsel for the respondent sought to very vehemently argue that petitioner has not purchased the room in tenancy with the respondent because the seller Sh. Ram Prem Sharma had two rooms but only one room was sold to the petitioner, however, when asked to show such a plea raised

in the written statement, counsel for the respondent could not show any such plea raised in the written statement. Therefore, once no pleadings are found, and object of pleadings being to give notice of a person's case to the opposite party, no amount of evidence can be looked into on a plea which is not raised.

8. Another aspect is that in the civil suit which was decreed in favour of the petitioner for correction of the municipal number of the property, it was held that the issue as to relationship between tenant and landlord is not decided, however, that cannot make any difference because there could not be and there was no issue in the civil suit as regards existence of tenancy between the petitioner and the respondent herein, and the issue in the civil suit was only with respect to rectification of the number of the property purchased by the petitioner vide registered documents dated 16.11.1973.

9. Last but not the least it is required to be observed that the Additional Rent Controller has given unnecessary importance and emphasis to certain statements in the cross examination of the petitioner that she does not know about the contents of the title documents, and which documents therefore cannot be believed as per the Additional Rent Controller, however, contents of documents be the same the documents of transfer of title dated 16.11.1973 or the judgment of the civil court dated 28.2.2004 rectifying the number of the property, have to be looked into themselves for their contents as documents themselves, because, oral statements cannot change contents of written documents especially in view of Sections 91 and 92 of the Indian Evidence Act, 1872. Therefore, there cannot be any ambiguity in the title of the petitioner merely because certain statements were made in the cross examination of the landlady expressing ignorance of contents of documents.

10. It may be noted that the petitioner since 1973 has not received any payment for use and occupation by the respondent because the respondent denied the ownership of the petitioner and in fact had claimed adverse possession. Clearly, therefore, the respondent is illegally and obdurately holding on to the tenanted premises.

11. In view of the above, the petition is allowed. The eviction petition of the petitioner with respect to the room shown in red in the site plan Ex. PW-1/5 will stand decreed in favour of the petitioner and against the respondent in the property bearing House no. M-18, Shastri Nagar, Delhi-110052. The petitioner is also awarded costs of Rs. 30,000/- because petitioner had not

received any charges of use and occupation with respect to the suit property whether as rent or otherwise right since 1973. Costs to be paid within four weeks.

JULY 21, 2014

Sd/-
VALMIKI J. MEHTA, J