

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

E-77556/16

In the matter of :-

Sh. Mani Ram (through LRs)
All R/o 1093, Ganj Mir Khan,
Turkman Gate,
New Delhi-110002.

.....Petitioners/ Landlords

Versus

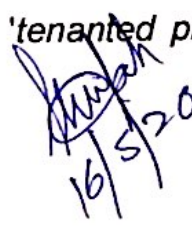
Mr. Abdul Wahid
S/o Mr. Adbul Hamid
R/o 1093, First & Second Floor,
Ganj Mir Khan,
Turkman Gate,
New Delhi-110002.

.....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)

J U D G M E N T

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 one room on the first floor and one tin shed room on the second floor in property bearing No.1093, Ganj Mir Khan, Turkman Gate, New Delhi-110002, (hereinafter referred to as '*tenanted premises*'). The

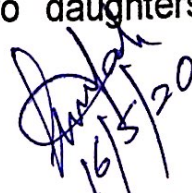

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site plan showing the tenanted portion in red colour is annexed with the petition.

2. The brief facts of the case, as mentioned in the petition by the petitioner is 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.400/- excluding the water & electricity charges.

The family of the petitioner presently consist of 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 are as under:-

- (i) His son namely Sh. Dharamvir is married and has a family consisting of 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.
- (iv) Sh. Nanak Chand is also married, having 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.

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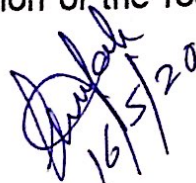
(vi) One of his daughters namely Ms. Kamlesh, is a widow and is living with the petitioner along with her four sons & one daughter and dependent upon the petitioner.

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

3. 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 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 first floor & the second floor of the '*property in question*' and two sons of the petitioner namely Sh. Nanak Chand and Sh. Ishwar Dayal also reside on the first & second floor respectively along with their families in single rooms, which are small portions, hence, the '*tenanted premises*' are required bonafidely for residential purposes of Sh. Nanak Chand and Sh. Ishwar Dayal. The '*tenanted premises*' are most suited for the aforesaid sons of the petitioner, being on the same floor where they are presently residing.

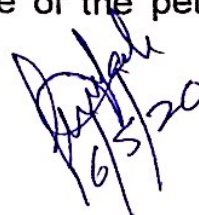
Further, the petitioner does not have any other alternate suitable accommodation for himself as well as for his family members. Hence, this eviction petition has been filed with the same prayer.

4. Accordingly, notice was served upon the respondent and vide order dated 27.04.2016, the leave to defend application of the respondent was

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allowed by the Ld. Predecessor of this Court, as triable issues were raised, one with respect to the actual accommodation with the petitioner in the premises in question and the other that the petitioner is in occupation/ possession of several other residential accommodations.

5. Written statement was filed by the respondent, wherein the allegations levelled by the petitioner are denied in general, however, he has not disputed the landlord-tenant relationship between them. The basic contention of the respondent is that the petitioner has 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 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

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family members and the remaining 5 tin sheds are in possession & use of the tenants.

6. 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 himself 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

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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.

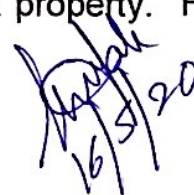
(f) Further, it is contented that the petitioner's widow daughter Smt. Kamlesh has 1 room on the first floor in her use and possession in the suit property. In addition to this, Smt. Kamlesh has also 1 room in her possession and use on the mezzanine floor of the suit property.

It is also 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 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.

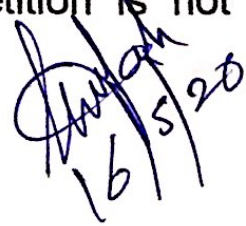
That the above mentioned residential premises are in the possession of the petitioner and his family members, however, the petitioner has concealed these residential premises in his eviction petition. That the petitioner has claimed himself to be the sole owner of the suit property but the petitioner 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

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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.

8. It has also been contented that the respondent has obtained the electricity connection in his own name from BSES Yamuna Power Limited with CA No.100340341 in the suit premises and has also been paying the electricity bills regularly. It has also been mentioned that under the tenancy of the petitioner, he is in possession of one room at the first floor with courtyard covered by a tripal & one tin shed at the second floor and the petitioner has not correctly shown the 'tenanted premises' in his eviction petition. It is denied that the suit premises is specially required for the bonafide need of the petitioner's two sons, who reside at the first floor and second floor of the suit property. He mentioned therein that all the five sons of the petitioner are married and are independently residing along with their families and none of them is dependent upon him. It is also denied that at present, the accommodation available with the petitioner and his sons is insufficient or inadequate. It is further denied that the petitioner requires the 'tenanted premises' for the bonafide need of his widow daughter Ms. Kamlesh.

It is lastly 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. Hence, the present eviction petition is not maintainable

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against the respondent and the bonafide need shown by the petitioner is fake, false and concocted.

9. Replication has been filed on behalf of petitioner to the written statement filed by the respondent denying all the allegations levelled against the petitioner. It has been stated that the 'tenanted premises' are required bonafide need for his two sons namely Sh. Nanak Chand and Sh. Ishwar Dayal. Sh. Ishwar Dayal, who is in occupation of only one room & a kitchen at the first floor and one tin shed at the terrace of the first floor i.e. the second floor. However, his requirement is of one room, one kitchen, one drawing room, one bathroom cum toilet for himself & his wife and his married son also requires one room, one kitchen and one drawing room along with one room for the grandchildren. Sh. Ishwar Dayal has three married daughters, who visit him frequently with their respective children, however, there is no space available to accommodate them, therefore, two more rooms are required for his daughters for their short stay. In this way, he requires at least 11 rooms for him and his family, whereas he is only having one room, one tin shed and one kitchen at present.

Similarly, Sh. Nanak Chand requires one room, one drawing room, one kitchen, bathroom-cum-toilet for himself and similar accommodation is required by him for his two married sons. Hence, he requires 14 rooms for him and his family members, whereas, presently, he is only having two rooms, one kitchen and one tin shed on the first floor.

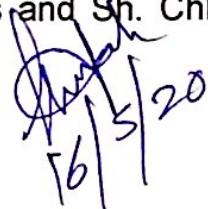
10. The other sons of the petitioner are also having large families and their scarcity of space with them also. His daughter namely Smt. Kamlesh,

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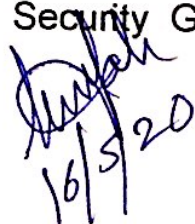
who is residing with him also has married sons, who are living with her in the property in question occupying only two rooms and one bathroom, however, the requirement is much more. In total, the petitioner requires 64 rooms besides kitchen, bathroom, etc. to well accommodate his family members, being a big joint family of more than 50 persons consisting of 11 families. There are only two latrines and more than 65 persons are using the same. During pendency of this petition, two tenants namely Ms. Ratni Devi and Mr. Mazhar Begh have vacated their portions which will be used for the residence of the petitioner and his family members only. It has also been specified that two sons of his daughter namely Smt Kamlesh are living separately on rent due to paucity of accommodation in the property in question. That the petitioner does not have sufficient accommodation, hence, this petition.

11. In order to substantiate the case, the petitioner namely Sh. Mani Ram has been examined as PW-1, who tendered his evidence by way of affidavit, which is Ex.PW1/A, wherein he re-iterated the averments made in the petition. He relied upon documents i.e. Ex.PW1/1, which is photocopy of original sale deed executed in favour of the father of the petitioner in Urdu script along with its English translation (OS&R); Ex.PW1/2 is the site plan of the property in question wherein the '*tenanted premises*' have been shown in red colour; Ex.PW1/3 is the rent receipt; Ex.PW1/4 (OS&R) is the receipt of house tax and Ex.PW1/5 (OS&R) is the document of property admeasuring 29 sq. yards situated at Baljeet Nagar, Delhi, stated to be owned by the petitioner.

During his cross-examination, he stated that they are four brothers namely Sh. Pritam Singh, Sh. Bhagwan Dass and Sh. Chhotey Lal and


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two sisters namely Smt. Raj Rani and Smt. Lajwanti. He further stated that the old municipal number of the suit property might be 726 and presently its municipal number is 1093. His father Late Sh. Ram Charan was the sole & exclusive owner of the suit property, who remained the owner of the same till his lifetime. He admitted that the four brothers and two sisters have equal rights in the property bearing No.1093, Ganj Mir Khan, Turkman Gate, New Delhi-110002. He stated that his father Late Sh. Ram Charan purchased the properties bearing No.1093 & 1094 (new numbers) ie. 726 & 727 (old numbers) under the registered sale deed dated 09.04.1958 and his three brothers and sisters did not claim any shares in the above said properties. His brothers namely Sh. Pritam Singh & Sh. Bhagwan Dass remained bachelor during their lives and Sh. Chottey Lal left behind his children after his death, however his brothers and sisters gave him in a writing that they have given their shares to him qua the property in question and he is having the said documents in his possession. He admitted that he has not filed the said document in this proceedings. He denied the suggestion that he is not the exclusive owner of the suit property, however, he volunteered that he had given money to his brothers and sisters in lieu of their shares in the suit property by selling property No.1094, Ganj Mir Khan, Turkman Gate, Delhi and he had sold the said property about 15-20 years ago. He further stated that he has not purchased any other property in Delhi besides the suit property. He further stated that his one of the sons namely Sh. Dharambir, who is aged about 50 years is working as Priest and has not owned his own house in Delhi. His second son namely Sh. Bhoop Chand, aged about 40 years is working as a Musician at a Hotel, who also does not have his own house in Delhi. His third son namely Sh. Ishwar Dayal, who is working as a Watchman/ Security Guard does a

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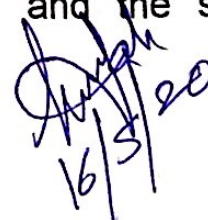
private job and also does not own his own house in Delhi. His fourth son namely Sh. Nanak Chand also does private job & also does not have his own house in Delhi and his fifth son namely Sh. Fateh Chand, aged about 45 years, who is running a printing press, also does not have his own house in Delhi. He stated that there are 8 rooms & two toilets on the ground floor of the suit property and no kitchen or store room on the ground floor, however, he volunteered that the said rooms are being used for the purpose of kitchen also. He again voluntarily stated that he could not recollect the exact number of rooms existing on the ground floor of the property in question.

His tenant Harish Kumar @ Pinki has two rooms at the ground floor of the suit property and his another tenant Bobby Thakur has one room at the ground floor of the suit property. He let out the ground floor premises to his tenants namely Pinki @ Harish Kumar, Bobby Thakur & one lady and the said lady has two rooms under his tenancy at the ground floor of the suit property. He denied the suggestion that he had let out four rooms at the ground floor to the tenants, however, he volunteered that he only let out three rooms at the ground floor. He further denied the suggestion that he and his sons have eight rooms in the possession at the ground floor of the suit premises. He voluntarily stated that he has only three rooms at the ground floor of the suit premises in their possession. His tenant Ratni has vacated two rooms at the ground floor of the suit property and Sadhu Ram was the husband of Ratni, who had two rooms in her possession at the ground floor in Gali. His tenant Ratni vacated the said two rooms about 5-6 months ago and handed over the possession of the said two rooms to him. He stated that at present, six rooms are in the possession of his sons and himself at the ground floor of the suit property, which includes the said two


16/5/20

rooms of Ratni. He further stated that one of his sons namely Sh. Dharamvir has only one room at the ground floor of the suit property and besides the said rooms, he has another room in his possession, wherein he has set up a temple of Kali Devi. He denied the suggestion that his son Sh. Dharamvir has three rooms at the ground floor of the suit property. His other son namely Sh. Bhoop Chand resides at the ground floor of the suit property, to whom he has given one room and one store room at the ground floor of the suit property. He further stated that he has also given one room on the ground floor to his other son namely Sh. Nanak Chand. He voluntarily stated that the same is being used for printing press, however, the same has been closed since 4-5 months and the said room is also lying locked. The press machine is still lying installed in the said room.

12. He also denied the suggestion that seven rooms, two kitchen and one tin shed are in his possession as also in the use by his family members at the first floor of the suit property. He stated that there are three tenants at the first floor of the suit property and one of them namely Mazhar Beg was having the possession at the first floor, who had one room along with courtyard under his tenancy, who had vacated the aforesaid tenanted premises about 2-3 months ago and handed over the possession to him. He further stated that his son Sh. Ishwar Dayal also resides at the first floor of the suit property, who has one room in his possession and has been using a part of the room as kitchen. His other son namely Sh. Nanak Chand also resides on the first floor. He further denied the suggestion that he also has one built up house bearing plot No.7, Gali No.10, Amrit Vihar, Indrapasthan Colony, Nathu Pura, Burari, Delhi and the said house

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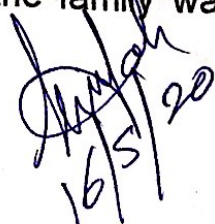
belonged to his son namely Mr. Ishwar Dayal. The built up house No.18/2, Gali No.1, Prem Nagar, Nathupura, Burari, Delhi belonged to his cousin namely Mr. Lalu hence, he has not mentioned about the aforesaid properties in his eviction petition.

No other witness has been examined on behalf of the petitioner and petitioner's evidence was closed vide order dated 11.12.2017.

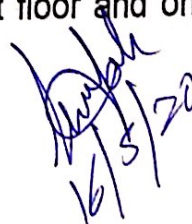
13. It is pertinent to mention here that after concluding the cross-examination, the petitioner namely Sh. Mani Ram expired on 27.03.2018 and vide court's order dated 18.07.2018, the application for bringing on record the LRs of the deceased petitioner was allowed and an amended memo of parties was taken on record. Accordingly, all the five sons namely Sh. Ishwar Dayal, Sh. Nank Chand, Sh. Dharamvir, Sh. Bhoop Chand & Sh. Fateh Chand and five daughters namely Smt. Pushpa, Smt. Kamlesh, Smt. Usha, Smt. Urmila & Smt. Om Wati were brought on record and stepped into the shoes of the original petitioner/ landlord.

14 . In rebuttal, respondent namely Mr. Adbul Wahid examined himself as RW-1, who tendered his evidence by way of affidavit proved as Ex.RW1/A, and deposed almost on the same lines, as averred in the written statement. He proved the copy of his passport as Ex.RW1/1 (OS&R); copy of his ration card as Ex.RW1/2 (OS&R); copy of his Voter Identity Card as Ex.RW1/3 (OS&R); copy of his Aadhar Card as Ex.RW1/4 (OS&R), copy of original electricity bill as Ex.RW1/5 (OS&R); site plan as Ex.RW1/6 .

During his cross-examination, he admitted that family of Late Sh. Mani Ram/ the original petitioner was very big when he came in this property as a tenant. He voluntarily stated that the family was reduced

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after marriage of daughters. He also admitted that Late Sh. Mani Ram had five sons and five daughters and now they all are married. Even his grandsons are married now and having children. He also admitted that all the family members of the sons of Late Sh. Mani Ram are residing in this property. He also admitted that one of his daughters Ms. Kamlesh is also residing in this property alongwith her two sons, being a widow. He also admitted that other two sons of Ms. Kamlesh are residing on rent somewhere else. He denied that around 40 members of family of Late Sh. Mani Ram are residing in the suit property, however, he volunteered that they are around 25. He 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. He also admitted that besides these family members, Late Sh. Mani Ram also had married daughters and 5 grand-daughters, who are married and have children. He admitted to have been in possession of one room on the first floor and one tin shed room at the second floor in the suit premises which is a construction of around 50 years old. He admitted that marriages of the family members of Late Sh. Mani Ram was solemnized 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. He admitted that there are 2 common latrines at the ground floor, which are used by the family of landlord as well as the tenants and sometimes there is disgusted position due to paucity of latrines for the use of all the residents of the building. He also admitted that Sh. Ishwar Dayal only has one room at the first floor and one tin shed at the


16/5/20

second floor in his possession and he or his married sons does not have separate kitchen, bedroom, dining room, washroom, drawing room, etc. He also admitted that family of Sh. Ishwar Dayal uses their room for bathing and kitchen. He 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. He also admitted that relatives of Sh. Ishwar Dayal sleep in the verandah when they visit him.

He 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 including himself. He further admitted that Sh. Nanak Chand does not have dining room, however, he has a separate kitchen. He voluntarily stated that Sh. Nanak Chand has a separate latrine at the first floor. He admitted that the said latrine has come in possession of Sh. Nanak Chand during pendency of the present case on vacation by the other tenant. He also admitted that out of three rooms, one room is lying locked, which was being used for commercial activities. He denied that the kitchen is measuring only 1½ feet and it has been temporarily used by blocking the way, which is shown at point A on the site plan filed by him. He voluntarily stated that the kitchen is 4 X 4 feet.

He 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. He volunteered that Sh. Dharamvir has two rooms at the first floor in his possession. On showing a photograph, he admitted the same to be of temple room on the ground floor, which is in possession of Sh. Dharamvir and proved as Ex.RW1/P1. He also admitted that Sh. Dharamvir does not have a separate drawing room, dining room, etc. and that the size of his kitchen is small. He also admitted that Sh. Bhoop Chand does not have a

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separate washroom, drawing room, dining room, etc. for himself or his family. He also admitted that family of Sh. Bhoop Chand uses their room for bathing purpose.

He 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. He denied that the petitioner is not having any other suitable property except the property situated at Baljeet Nagar. He stated that he does not know the size of plot of Baljeet Nagar or that it is on rent.

He admitted the photographs shown to be of his room are Ex.RW1/P2 & Ex.RW1/P3. He denied the suggestion that the room as shown in the photograph is inhabitable. He admitted that there is only one entry to the premises in question. He denied the suggestion that the entry gate of the aforesaid rooms is separate from the main building.

No other witness has been examined on behalf of the respondents and respondents' evidence was closed vide order dated 06.03.2020.

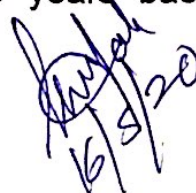
15. The undersigned heard the oral final arguments adduced on behalf of the parties. Written final arguments have been filed on record on behalf of both the parties. The entire case file has been perused carefully including the written arguments.

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 on the same floor where Sh. Ishwar Dayal resides with his family, hence, it is the most suitable accommodation available.**

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

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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.

16. 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 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.

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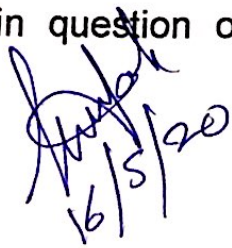
Reliance has been placed upon judgment of the Apex Court in a case titled as *Hasrat Rai & Ors. Vs. Raghunath (1981) 3SCC 103* wherein it is held that "if tenant is in possession to show that the need or requirement of petitioner no more exists due to subsequent events, it would be opened to him to point 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."

17. 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 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.

18. 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 himself 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,


16/5/20

however, the petitioner has proved on record the sale deed of property in question as Ex.PW1/1. 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 'tenanted premises' as well as existence of landlord-tenant relationship between the petitioners and the respondent stands established.

19. 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.**

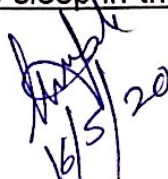
The averment of the petitioners is that they are a big joint family, having 45 members in total and residing in the suit property since beginning. It has been stated that the 'tenanted premises' are required bonafide need for his two sons namely Sh. Nanak Chand and Sh. Ishwar Dayal. Sh. Ishwar Dayal, who is in occupation of only one room & a kitchen at the first floor and one tin shed at the terrace of the first floor i.e. the second floor. However, his requirement is of one room, one kitchen, one drawing room, one bathroom cum toilet for himself & his wife and his married son also requires one room, one kitchen and one drawing room along with one room for the grandchildren. Sh. Ishwar Dayal has three

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married daughters, who visit him frequently with their respective children, however, there is no space available to accommodate them, therefore, two more rooms are required for his daughters for their short stay. In this way, he requires at least 11 rooms for him and his family, whereas he is only having one room, one tin shed and one kitchen at present. Similarly, Sh. Nanak Chand requires one room, one drawing room, one kitchen, bathroom-cum-toilet for himself and similar accommodation is required by him for his two married sons. Hence, he requires 14 rooms for him and his family members, whereas, presently, he is only having two rooms, one kitchen and one tin shed on the first floor.

The aforesaid averment of the petitioners has not been denied by the respondent by and large as he admitted during his cross-examination that the landlord Late Sh. Mani Ram has been blessed with five sons and five daughters and grandchildren and all the family members of the sons of Late Sh. Mani Ram are residing in this property i.e. the suit property. He also admitted that one of his daughters Ms. Kamlesh is also residing in this property along with her two sons, being a widow. He voluntarily stated that around 25 persons are residing there belonging to the family of Late Sh. Mani Ram.

He 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. He also admitted that the family of Sh. Ishwar Dayal uses their room for bathing and kitchen. He 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

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they visit him. He admitted that marriages of the family members of Late Sh. Mani Ram was solemnized 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. He 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 including himself. He further admitted that Sh. Nanak Chand does not have dining room, however, he has a separate kitchen. He voluntarily stated that Sh. Nanak Chand has a separate latrine at the first floor. He admitted that the said latrine has come in possession of Sh. Nanak Chand during pendency of the present case on vacation by the other tenant. He also admitted that out of three rooms, one room is lying locked, which was being used for commercial activities. He denied that the kitchen is measuring only 1½ feet and it has been temporarily used by blocking the way, which is shown at point A on the site plan filed by him. He voluntarily stated that the kitchen is 4 X 4 feet. **He 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. 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


16/5/20

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."

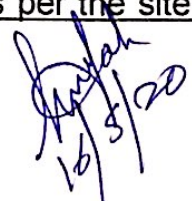
(ii) Hon'ble Supreme Court in **Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde, (1999) 4 SCC 1** held that the phrase "reasonably and *bona fide* required by the landlord" is not to be tested on par with "dire need" of a landlord because the latter is a much greater need.

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

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The petitioners averred that the 'tenanted premises' are required for bonafide need of two of the petitioners namely Sh. Ishwar Dayal, who is residing in one room at the first floor of the suit property and Sh. Nanak Chand, who is residing in 2 rooms on the first floor, though their families consist of 5 & 7 members respectively, including their wives, married sons, daughters-in-law and grandchildren, and the 'tenanted premises' are on the same floor, hence, most suitable for them. The 3rd room in possession of Sh. Nanak Chand is on the ground floor, which is under lock & key due commercial activities and machinery. That the said petitioners do 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, he admitted the photographs shown to be of his room are Ex.RW1/P2 & Ex.RW1/P3 and that there is space crunch in the suit premises, due to big family of petitioners. As per the site plan filed by the

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petitioners Ex.PW1/2, the rooms occupied/ in possession of Sh. Ishwar Dayal and Sh. Nanak Chand are on the same floor of 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 placed upon **"Prativa Devi Vs. T.V. Krishnan, (1996) 5 SCC 353**).

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".

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 petitioners namely Sh. Ishwar Chand and Sh. Nanak Chand do not have any reasonably suitable alternative accommodation for themselves as well as for his family members except the 'tenanted premises'.

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21. In view of the aforesaid discussion, this Court is of the considered opinion that the petitioners 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 petitioners and against the respondent in respect of one room on the first floor and one tin shed room on the 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


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

(This judgment contains 26 pages in total)