

Suresh Kumar Gupta Vs. Sudershan Kumar

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Court : Delhi

Decided On : Jun-13-2014

Judge : Manmohan Singh

Appellant : Suresh Kumar Gupta

Respondent : Sudershan Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Pronounced on: June 13, 2014 + RC. Rev. No.109/2013 SUDERSHAN KUMAR Through Petitioner Mr.Sandeep Sethi, Sr.Adv. with Mr.Narender Sharma, Adv. versus HARISH CHAND GARG Through + Respondent Mr.J.P.Sengh, Sr.Adv. with Mr.B.B.Gupta, Mr.Sumeet Batra & Ms.Ankita Gupta, Advs. RC. Rev. No.113/2013 & C.M. No.4912/2013 SURESH KUMAR GUPTA Through Petitioner Mr.Gaurav Aggarwal, Adv. with Mr.M.P.Sinha, Adv. versus SUDERSHAN KUMAR Through Respondent Mr.Sandeep Sethi, Sr.Adv. with Mr.Narender Sharma, Adv. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. Mr. Sudershan Kumar, landlord/owner filed two eviction petitions under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) for bonafide requirement, against his two tenants, namely, Mr.Suresh Kumar Gupta and Mr.Harish Chand Garg.

2. The said eviction petitions were filed by him with respect to Shop No.1 and Shop No.2, situated on the ground floor of the suit property bearing No.29/5, Shakti Nagar, Delhi-110007. He purchased suit property on 27th July, 2006. He thereafter approached this Court challenging the vires of sub-Section (6) of Section 14 of the Act in Writ Petition (Civil) No.8975/2008, inter-alia, submitting that the embargo of five years imposed by the said sub-Section upon a purchaser prohibiting him from instituting an eviction petition on the ground of bonafide requirement was unconstitutional. The said petition was dismissed on 17th December, 2008. Thereafter he terminated the tenancy of the tenants and filed the eviction-petitions against them.

3. The number of the eviction petition filed against Mr.Suresh Kumar Gupta is E-77/12, and against Mr.Harish Chand Garg is E115/11. The grounds of eviction in both the eviction petitions are the same.

4. The leave to defend applications filed by both the tenants, namely, Mr.Suresh Kumar Gupta (Shop No.1) and Mr.Harish Chand Garg (Shop No.2) are almost on the same grounds. However, both the matters were dealt by the different Additional Rent Controllers.

5. By an order dated 15th December, 2012, the application for leave to defend filed by Mr.Harish Chand Garg in Eviction Petition No.115/11 was allowed by the Addl. Rent Controller (North), Delhi. The said order has been challenged by the landlord Dr.Sudershan Kumar by filing of the petition being RC. Rev. No.109/2013, under Section 25-B(8) of the Act before this Court against his tenant Mr.Harish Chand Garg.

6. However, the leave to defend application in the Eviction Petition No.77/12 was dismissed by the impugned order dated 12th February, 2013 passed by the Additional Rent Controller (North), Delhi despite of having knowledge about the granting of leave to defend in the matter of adjoining shop. The said order is challenged by the tenant of Shop No.1, i.e. Mr.Suresh Kumar Gupta, is the subject matter of petition being RC. Rev. No.113/2013 under Section 25-B(9) of the Act.

7. Both the matters were listed before this Court from time to time. Almost similar submissions were addressed by the parties, as the numbers of grounds mentioned in the application for leave to defend were similar, thus, common order is being passed by disposing of both the petitions. RC.Rev. No.109/2013 filed by Mr.Sudershan Kumar, Landlord 8. The petitioner by way of the present petition under Section 25B(8) of the Act assailed the order dated 15th December, 2012 passed by Addl. Rent Controller, North, Delhi whereby respondent/tenants application for leave to defend was allowed in the eviction petition being No.115/2011 filed by the petitioner 9. Brief facts are that the petitioner filed an eviction petition against the respondent on the ground of bonafide requirement under Section 14(1)(e) of the Act in respect of shop No.2, on the ground floor of the suit property which was let out by the previous owner to the respondent.

10. The petitioner, who is a dentist by profession, has his own dental surgery clinic at shop bearing No.2, on the ground floor, situated at Municipal Market Mandelia Road, Kamla Nagar, Delhi. It was stated in the eviction petition that the petitioner required the tenanted shop for establishing a full-fledged 24-hour Dental Hospital with all ultramodern facilities. It was stated that the vacant portion in suit property purchased by the petitioner of which the tenanted shop No.2 is a part, is not sufficient enough to execute the desired plan.

11. Petitioner stated himself to be highly qualified dentist, having worked as Sr. Consultant and Head of Department with St. Stephens Hospital for 16 years. He has been a consultant at Tirath Ram Hospital and was at the time of filing the eviction petition, the Head of Department of Dental Surgery at Sunder Lal Jain Hospital and also Pentamed Hospital. It was stated in the eviction petition that the space available at the clinic of the petitioner is insufficient and it is difficult for the petitioner and his two associate junior doctors and assistants to work together. The waiting patients also faced difficulty due to paucity of space.

12. The petitioner resides at H. No.11/8, Shakti Nagar, Delhi-7 which is near to the tenanted shop No.2 and establishing the new clinic closer to his house would be of great convenience to him. The second floor of the suit property is owned by the wife of the petitioner but it is not suitable for the purpose of a dental clinic by the

petitioner.

13. In the leave to defend application filed by respondent, it was contended that the petitioner is merely a co-owner in the suit property and there is no proof of the petitioner being the exclusive owner/ title holder of the suit property. It was also contended that the respondent is not the sole tenant under the petitioner, since on death of his wife, who was a co-tenant in the tenanted shop No.2, her rights devolved upon her children, who also became by operation of law, the cotenants in the tenanted shop No.2. Therefore, the eviction petition is bad in law and even otherwise, it has triable issue in the absence of impleading all legal heirs of co-tenant of the tenanted shop No.2.

14. It was stated that the suit property is situated in a highly overcrowded and grossly congested area where there are acute restrictions on traffic- including parking of vehicles. The hospital of any successful doctor/dentist cannot be located in such an area because it requires prior approval/clearance from various government/statutory authorities. It also requires the proper facilities for disposal of bio-medical waste and non-polluting environment.

15. It was averred that the eviction petition had been preferred by the petitioner with an intention to earn pugree from a commercial area which has enormous potential for pugree and intellectual property rights. The site plan filed by the petitioner of the suit property was disputed by the respondent.

16. It was also averred that the sole purpose behind the institution of the eviction petition is to start/set up a new professional clinic from the tenanted shop No.2. It was contended that the petitioner already possess much more than sufficient alternative accommodation for his professional requirements. It was also averred that the petitioner had already in the actual use and occupation for professional purposes, a number of accommodations, details of which were given, besides being professionally associated with number of hospitals.

17. It was contended that the petitioners clinic at Kamla Nagar market was much more than sufficient, being approximately 230 sq ft. area., for a dental surgeon to run a dental clinic. The respondent also objected to the plan of the proposed

dental hospital the petitioner wanted to establish in the suit property as imaginary. It was stated that in the said plan duplicate facilities were shown without any explanation.

18. It was stated that the only son of the petitioner is residing in U.S.A, and having his avocation there. As such, the petitioner does not have any financial liability towards members of his family he is earning a handsome amount of salary/perks from the hospitals in which he is working as HOD and/or consultant.

19. It was also contended that sometime towards Navratras of 2011, the petitioner approached the respondent and his family proposing an amicable settlement for the tenanted shop No.2. During the course of the discussions, the petitioner offered to sell the tenanted shop No.2 to the respondent but demanded an exorbitant price-nearly four times the prevailing market price. The respondent allegedly was ready and willing to pay anything over and above the market price, which is stated to have annoyed the petitioner who allegedly claimed that he had the resources to throw the respondent out from the tenanted shop No.2 in minutes/hours. Soon thereafter the petitioner instituted the eviction petition alleging bonafide requirement. It was further contended that similar negotiations were going on between the petitioner and the neighbour of the respondent in respect of the adjoining shop (shop No.1) to the tenanted shop No.2.

20. It was stated that the petitioner and his wife were the only two persons residing at the residential address of the petition which is a 2 and storeyed structure and has ample space. In case the petitioner was/is seriously desirous of setting up an ultra model dental clinic or a dental hospital in this locality, he could have done so in the said residential premises since the space therein is lying surplus and the house is sufficiently big for two family members to use and occupy.

21. The learned Rent Controller allowed the leave to contest application filed by the respondent vide the impugned order and observed that the petitioner had denied the accommodations alleged by the respondent to be run by the petitioner, and submitted that he only visits those places occasionally as and when he is called upon by the said clinics. The respondent referred to copies of visiting cards, letter pads, prescription slips etc wherein petitioner had given address not only of

the Kamla Nagar clinic but also other clinics. The learned Rent Controller observed that the inference that could be drawn from these documents is that the petitioner is also available at those addresses and the petitioner is associated in some way with the running of the clinics at the said places. Had the petitioner been only a visiting consultant, petitioner would not have mentioned those addresses on the said documents. In view of the learned Rent Controller, it became a triable issue as to whether the petitioner was running clinics at those addresses or not; whether petitioner is only a visiting consultant. This will throw light on the issue of alternative accommodation already available with the petitioner 22. It was further observed that it was apparent from the petition itself that the entire second floor of the suit property is owned by the petitioner's wife. A dental hospital can conveniently be run thereon.

23. In view thereof the learned Rent Controller granted the respondent leave to contest the petition and aggrieved thereof the petitioner filed the present petition.

24. The submissions are addressed by Mr. Sandeep Sethi, learned Senior counsel appearing on behalf of the landlord, i.e. Dr. Sudershan Kumar. It is submitted by Mr. Sethi that it is the prerogative of the landlord if he requires the premises in question for his bonafide use or the expansion of business. The tenant or even Court cannot dictate the terms to the landlord as to how else he can adjust himself. He is the best judge of his requirement and when the landlord is able to show a prima-facie case, a presumption is that the requirement of the landlord is bonafide. He referred various decisions so far as the allegations of the respondent that the petitioner visited his shop and offered to sell the tenanted shop No.2 to him are concerned, the same are totally false concocted and baseless. As regards his use of property in area of Shakti Nagar for commercial purpose is concerned, it is argued by him that the petitioner has been residing in 11/18, Shakti Nagar, Delhi which is residence of the petitioner who has no other place to live and he cannot be compelled to first come on road and shift his residence and open a dental clinic in his residential house in total contravention of building bye-laws. He cannot be asked by the tenant to operate the business from his residence. The other submission of Mr. Sethi is that the landlord is highly qualified who needs sufficient infrastructure for opening a new Dental Clinic. He cannot be asked by the tenant to

carry on business from the small shop where there was no washroom and patients used to stand outside. Thus, the tenanted premises, i.e. both shops are very convenient for him to establish his proposed modern clinic. His next submission is that it totally immaterial if whether the tenanted shop No.2 is smaller or bigger than the present shop of the landlord who actually requires both tenanted shops for his ultra modern dental clinics. He has already in his possession back portion of the suit property and hence the total property can be used by him for the proposed project. He has denied the suggestion of the tenants that the proposed site plan given by him for use of the building for running his dental clinic cannot take place until and unless the structural changes are carried out in the building and he argues that its is impossible for his client to operate his new clinic from the back portion of the suit property as there is only 8 feet wide back service lane available to the suit property and denied that the petitioner/landlord has any such clinics or hospitals in Greater Kailash or other places except his present Shop No.3, Mandaliya Road, Kamla Nagar, New Delhi.

25. The argument of Mr. J P Sengh, learned senior counsel appearing on behalf of tenant is that after purchase of property Mr Suresh Kumar has been harassing the respondent and other tenants in many ways right from day one. His intention always was to earn a premium in this investment made by him by purchasing one-half specified share in partially tenanted suit property from one of the brothers, to show that the said half share had fallen on partition between brothers. In fact, his intention from day one was to acquire the tenanted premises in terms of the sale deed dated 27th July, 2006 which was investment in immoveable property and if vacated, was bound to yield very high dividends. It was with this mala fide intention that he had even issued a notice dated 22nd September, 2008, inter alia, terminating the tenancy, even though the same was always protected under the provisions of the Act. 25.1 The judgment in the case of Satyawati Sharma vs. Union of India & Anr., 2008 (5) SCC287 came much later. The petitioner/landlord now wants to take undue advantage of the same. The purpose of Satyawati's judgment of the Supreme Court cannot be extended to such a whimsical and fanciful desire which has been sought to be termed as bona fide requirement of the landlord. On the face of the eviction petition, the tenanted premises is merely a desire which cannot be called bona fide. 25.2 It is submitted by Mr Sengh that it

has been specifically stated in the leave to defend application that the petitioner had approached the respondent towards the Navratras of 2011 and had offered to sell the tenanted shop No.2 to the respondent. The photographs to the said effect (taken from the CCTV Camera installed in the tenanted shop No.2) were also filed. The visit to the tenanted shop No.2 by the landlord and his meeting with the tenant is not disputed by the petitioner, though he has denied any such offer. The contention of the respondent is that said aspect would require trial of prima facie evidence which has been filed on record by the respondent. 25.3 The lease qua the tenanted shop No.2 was admittedly created jointly in favour of the respondent and his wife Smt.Shashi Kanta Garg. Apparently, all her natural heirs/legal representatives have not been impleaded as a party to the eviction petition, even though they are in actual possession of the tenanted shop No.2. The said fact was specifically pleaded by the respondent/tenant in his affidavit seeking leave to defend. Still, the landlord did nothing. The said eviction petition was/is always bad in the eye of law.

26. Mr.J.P.Sengh, learned Senior counsel appearing on behalf of respondent has relied upon the judgments passed by the learned single judges of this Court in the cases of M/s S. K. Sethi & Sons Vs. Vijay Bhalla, 191 (2012) DLT722 Santosh Devi Soni vs. Chand Kiran, (2001) 1 SCC255 S.M. Mehta (Dr.) vs. D.D. Malik, (2001) 1 SCC256 Aggarwal Papers v. Mukesh Kumar Decd. Through LRs, 194 (2012) Delhi Law Times 605; Vinod Ahuja Vs. Anil Bajaj & Anr, 194 (2012) Delhi Law Times 203; Kishore & Anr v. Prabodh Kumar & Ors, 2012 (132) DRJ562 Accebeen Steel Pvt. Ltd & Ors v. Jai Shree Khanna in RCR2902012 (Decided on 23.07.2012) wherein the consistent view has been taken that when there exists an alternative accommodation, then the Controller or the Court should grant the leave to defend so that the issue as to the genuineness of the need may be thrashed out in the full-fledged trial.

27. His submission is that as per own admission made by the petitioner-landlord about owning various properties, it is the case of additional accommodation. It is not a case of bonafide requirement but it is a simple case of desire of the petitioner to get all tenants vacated and in future, he would construct new clinic as per his choice. It is to be tested in trial as to whether his requirement is genuine or merely

desire which cannot be fulfilled at this stage while considering the application for leave to defend. At least the tenant is entitled for a trial in view of issue raised by him. His further submission in the present petition that there is hardly any chance for interference, if the leave is granted by the trial after long hearing and detailed orders passed in the matter. The appropriateness of the additional accommodation is required to be considered in trial and not in summary manner by believing the stand of petitioner only. Therefore, the impugned order does not suffer from the legal infirmities. It is argued by Mr.Sengh that the said requirement is merely a fanciful desire as the same is resting upon too many contingencies the petitioner is not entitled for any relief in view of the existence of the alternative accommodation. Submission is also made by him that the respondent has filed several photographs of the locality surrounding 11/8 Shakti Nagar to show that the commercial activity is permissible therein and more particularly on the ground floor thereof. All this was/is not disputed by the landlord/petitioner. RC. Rev. No.113/2013 28. The petitioner/tenant by way of the present petition under Section 25B(8) of the Act has assailed the order dated 12th February, 2013 passed by Additional Rent Controller, North, Delhi in the petition filed by the respondent - landlord in Eviction Petition No.77/2012. The petitioner herein is tenant at the adjoining shop of another tenant Harish Chand Garg who is the respondent in RC. Rev. No.109/2013.

29. The respondent filed an eviction petition against the petitioner on the ground of bonafide requirement under Section 14(1)(e) of the Act in respect of a shop bearing No.1, on the ground floor of the suit property which was let out by the previous owner to the petitioner. The other facts mentioned in the eviction petition are identical to the ones mentioned in RC. Rev. No.109/2013. These are not repeated for the sake of brevity.

30. In the leave to defend application filed by tenant, it was contended that the respondent at the time of purchase of the suit property in the year 2006, had deposed that the same was for investment purposes and had he the intention to open a dental clinic, he would not have purchased the same knowing that the suit property is occupied by tenants. It was contended that the respondents clinic at Kamla Nagar market is much bigger than the tenanted shop which is only 8.4 X10

