

Maya Devi Vs. Sh. Amar Singh

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Court : Delhi

Decided On : Aug-13-1998

Reported in : 1998VAD(Delhi)363; 75(1998)DLT165; 1998(46)DRJ715; 1998RLR523

Judge : C.M. Nayar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : C.R. No. 305 of 1995

Appellant : Maya Devi

Respondent : Sh. Amar Singh

Advocate for Def. : Mr. J.S. Gaur, Adv.

Advocate for Pet/Ap. : Mr. K.N. Kataria, Sr. Adv. and; Mr. N.S. Bajwa, Adv

Judgement :

ORDER

C.M. Nayar, J.

1. The present petition is directed against the judgment dated 4th February, 1995 passed by the Additional Rent Controller, Delhi whereby the eviction petition of the petitioner under the provisions of Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the 'Act') was dismissed. The eviction related to the

premises known as House No. 5596, Gali No.1, Ward No.XII, New Chandrawal Subzi Mandi, Delhi wherein the respondent was tenant on the basis of oral tenancy prior to the purchase of the premises by the petitioner. The same comprised of one room, one verandah, common latrine on the ground floor which was let out at the monthly rent of Rs. 5/- for residential purposes exclusive of other charges. It was further alleged that the petitioner is a bed ridden woman and is suffering from arthr IT is for the last many years and her family consisted of herself, her husband, married son, his wife and two children and two married daughters who visit her along with their families. It is stated at the Bar that another child was born to son and his wife during the present proceedings. The husband of the petitioner has since expired. The accommodation available to the petitioner is one room, store on the first floor of House No. 5596 which is stated to be not suitable on account of illness of the petitioner. Moreover, the need and requirement of the married son and his family was also one of the reasons for filing the eviction petition The respondent applied for grant of leave to defend which was granted and thereafter written statement was filed wherein a plea was taken that the respondent did not dispute the relationship of landlord and tenant. However, a plea was raised that the premises were let out to the father of the respondent who used to utilise it for residential as well as commercial purposes. It was further alleged that the petitioner had two rooms on the first floor and one tin shed on the second floor of the premises apart from one big hall and four rooms and courtyard under her tenancy. The following ingredients are laid down to deal with such matters:-

- (a) That the petitioner is the owner of the tenanted premises.
- (b) That the premises are let out to the respondent tenant for residential purposes exclusively.
- (c) That the petitioner requires the premises bona fide for her residence as well as residence of the family members dependent upon her.
- (d) That the petitioner does not have any other reasonable suitable accommodation in Delhi.

2. The issues relating to the ownership and purpose of letting were decided in favor of the petitioner and no meaningful argument has been raised by learned counsel for the respondent to impugn these findings. The plea of bona fide requirement was next considered and the learned Additional Rent Controller came to the conclusions as recorded in paragraphs 19 and 20 which may be reproduced as follows:-

'19. In *Atam Prakash v. Ganeshi Devi* 1985 (2) RLR 224 the optimum accommodation required for the family is that each couple (married) should have one room and each adult and grown up one room each. On the basis this yardstick the family of the petitioner consists of two married couples i.e. she her husband and her son and his wife who require two separate rooms. The children are of 6 yrs and 2 yrs of age thus the family of the petitioner require two living rooms and two living rooms are already at her disposal in the house No. 5545 and 5596. Apart from this there are four small rooms and one tin shed at her disposal in both these houses which are of such size as can be utilised easily as Guest room, study room pooja room and dining room etc.

20. It has been argued by the learned counsel for the respondent that the Court cannot prescribe for the landlord as to how he should live or prescribe the standard of their own. He has also argued that the petitioner needs one room for her pooja being old couple as also accommodation for her married daughters who visit her. He has relied upon an authority reported as *Silver Toy Mfg.Com. v. Usha Sai* 1995 RLR 24 and *Hargundas v. Reva Chand* 1984 RLR 60. There is no dispute regarding the legal proposition discussed by their Lordships of High Court. Similar view has also been taken by their Lordships in *Sheela Sapra v. New India Electric Ind. Pvt. Ltd.* 1992 RLR 253, but as already discussed by me the petitioner has two big rooms four small rooms and a tin shed at her disposal which is not insufficient to cater to her accommodation requirements of pooja room visitors room dining room etc.. I am therefore of the view that there is sufficient accommodation at the disposal of the petitioner.'

3. The learned Controller has obviously misdirected himself and not applied his mind to the merits of the judgments as referred to in paragraph 19. In the case

reported as Hargun Das v. Rewa Chand 1984 Rajdhani Law Reporter 60 the Court clearly laid down the purpose of the provisions of Section 25B for granting leave to contest the petition if the facts disclosed in the affidavit of the tenant are as such to disentitle the landlord to obtain an Order of eviction. Paragraph 7 of the judgment may be reproduced as follows:-

'7. There can be no two opinions that a landlord is entitled to live comfortably in his own house and as in the instant case his grown up children are not expected to be huddled together in one room. No doubt, as urged by the learned counsel for the petitioner, there is no rule of thumb which entitles the landlord to claim a separate room for each member of his family in each and every case and the requirement of the landlord has to be judged in each case objectively having regard to his special status, financial position, family background and the composition of his family etc. However, even if the landlord is a person of modest means it would be highly unjust and improper to expect him to huddle together his grown up sons and daughters in one room and he legitimately claims additional accommodation which is in the possession of a tenant for making his own life and that of his family members comfortable. Thus, there is no escape from the conclusion that a minimum of three rooms is the dire need of the respondent-landlord in the instant case, one room for himself and his wife, one room for his second son and the third room for his grown up daughters.'

4. In the present case leave to contest was granted to the respondent tenant and he was granted every opportunity to prove that the requirement of the landlord was not bona fide. Similarly in the judgment reported as Sheela Sapra v. New India Elect. Ind. (P) Ltd. 1992 R L R 253 the need of the growing children was considered and it was held that they cannot be huddled to live together in one room for all times to come. It was open for the landlord to assess his own need and the Court merely had to consider the bona fides of his requirement. The law was further restated in the judgment as reported in Silver toe Mfg. Co. v. Usha Sai 1995 R L R 24 where it was held that the Court cannot dictate to the landlord as to how he should live or prescribe a standard of his own. On the other hand the learned counsel for the respondent has cited the judgments as reported in C.M. Mehta v. M.P.Bhalla, 1985 (2) R C J 159, Sh. T.V. Krishnan v. Smt. Prativa Devi

1986 (2) R C J 194 and Rakesh Kumar Sehgal v. Nem Chand 1987 (2) R C J 571. These judgments clearly laid down the proposition that there must be an element of need and not a mere desire to prove that the landlord bonafide required the premises in dispute. Reference is specifically made to the judgment as reported in Rakesh Kumar Sehgal v. Nem Chand (supra) to reiterate that the landlord residing in rented accommodation is not entitled to claim eviction merely because he wants to shift to his own house unless he proves that the accommodation in his possession is insufficient. The facts of the present case may now be examined. The petitioner landlady has a large family though the husband of the petitioner has expired during the pendency of the petition. The family of the petitioner presently comprises of herself, son, his wife and three children. There are two married daughters who usually visit the petitioner on different occasions which is expected in such kind of relationship. The learned Additional Rent Controller has erred in holding that the petitioner has already two living rooms at her disposal in House No. 5545 and 5596 and there are four small rooms and one tin shed which are available to her. The admitted fact is that the property No. 5545 is a tenanted property in which some accommodation is available to the petitioner and her family and is not appurtenant to the premises which is the subject matter of the present proceedings. therefore, the accommodation at a distance cannot be used to determine the bona fide requirement of the petitioner. The family may like to live together in one property and the availability of another place is hardly of any consequence. There is, therefore, non-application of mind in assessing the legal requirements as incorporated in the provisions of Section 14(1)(e) of the Delhi Rent Control Act.

5. The arguments were concluded and the judgment was reserved when another counsel Mr. S.S. Panwar appeared in the matter and filed his notes Along with citations. The main contention which he has made is that the petitioner failed to prove the bonafide need in as much as she concealed and suppressed the facts that she had already been living in a rented accommodation in property No. 5545, Gali No. 5, in the vicinity of the property in question in the same locality for the last about 50 years. Reliance is placed on the judgments reported as Smt. Nanki alias Natho Devi and others v. Laxmi Devi 1980 (2) R L R 670; Krishan Lal v. Joginder Nath Mehra 1981 (1) R L R 263; Shri Hans Raj Mehta v. Smt. Asha Rani

Vasudeva 1981 (1) R L R 443; Shri Manmohan Lal v. Shri Joga Singh 1981 (1) R L R 748; and Rakesh Kumar Sehgal v. Nem Chand 1987 (2) R C J 571. The judgments as referred to above are of no consequence and help to the respondent as the petitioner has categorically proved that the alternative rented accommodation in her possession is also not sufficient taking into consideration the size and requirement of her family. The basic fact is that the tenanted accommodation in possession of the petitioner is even away from the premises in dispute and the family cannot be expected to live at two separate places if the desire is to live together.

6. The criteria as formulated by the Additional Rent Controller is based on misconception of law. The need of the petitioner is clearly bona fide in view of the settled position as referred to above. The petition as a consequence is allowed and the judgment dated February 4, 1995 is set aside. The respondent however, is granted time of six months to vacate the premises from the date of the present Order. There will be no order as to costs.

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