

Kailash Chand and Others Vs. Mr. Chand

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Court : Delhi

Decided On : Aug-06-1998

Reported in : 75(1998)DLT734; 1998RLR603

Judge : C.M. Nayar, J.

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

Appeal No. : C.R. No. 446/96

Appellant : Kailash Chand and Others

Respondent : Mr. Chand

Advocate for Pet/Ap. : Mr. A.P. Aggarwal, Adv.

Judgement :

ORDER

C.M. Nayar, J.

1. The matter was called out for hearing on 5th August, 1998 as well as 6th August, 1998. There was no appearance on behalf of the respondent on any of these two dates.

2. The present petition is directed against the Order dated March 1, 1996 passed by the Additional Rent Controller, Delhi by which an application for eviction of the

petitioners filed under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1959 (hereinafter referred to as 'the Act') was rejected. The brief facts of the case are that the petitioners claimed to have purchased undivided half shares i.e. petitioners Nos.1 and 2 jointly and petitioners 3 and 4 jointly by two separate Sale Deeds in property No.2206 Ward No.VIII Gali Shankar Kali Masjid, Delhi. Respondent is alleged to be a tenant in respect of the portion shown in red in the site plan on a monthly rent of Rs.3/- which was let out to him by the original owner for residential purposes. It is next alleged that petitioners 1 and 2 who are husband and wife were residing in portion of property No.2255 as licensee since the property was owned by Smt.Sarla Devi and Smt.Indra Devi respectively. The family of petitioners 1 and 2 comprised of one son and three daughters aged about 13-8 years at the time of filing of the eviction petition. They were students and petitioners 1 and 2 required one bed room for themselves, one bed room-cum-study room for their three daughters as well as one drawing room, one dining room, one Pooja room and one room for guest accommodation. Similarly, petitioners 3 and 4 have been residing in the property No.2161 as licensees owned by Munna Lal and his wife Smt. Sharbati Devi. They were also allegedly asked to vacate the said premises. It is further alleged that respondent is not residing in the suit premises but resides in his acquired residential house No.944, Faiz Road, Karol Bagh, New Delhi and the suit premises is in occupation of an unauthorised and illegal occupant.

The petitioners, it is contended, have no other residential house in Delhi except the suit property which they have purchased. Leave to Defend the suit was granted to the respondent and he filed written statement wherein it is alleged that the petitioners are not the owners of the premises as one Kundan was the owner of the same in 1947 and he migrated to Pakistan and thereafter the property continued to be unclaimed. The respondent is a washerman by profession and the premises has been used for washing the clothes for the last about 100 years. The purpose, therefore, is residential-cum-commercial. The respondent further alleged that petitioners are the owners of the following properties:

1. Property No.2214-16 Bazar Sita Ram, Delhi.

2. Property No.3068, Kucha Raja Sohan Lal, Bazar Sita Ram, Delhi. (These two properties allegedly consists of 18 rooms).
3. Property No.2161, Gali Sudama, Bazar Sita Ram, Delhi this property allegedly have 8 rooms and partly occupied by them.
4. Property No. 2252-55 Gali Dakotan, Delhi which they sold in the year 1988, for 8 lacs.
5. Property No.WA-13, Shakarpur, Delhi which is double storeyed and have 10 rooms, partly occupied.
6. Property at Lawrance Road.

Replication was filed wherein the averments made by the respondent were vehemently denied and the contents of the eviction petition were reiterated. The learned Additional Rent Controller examined the ingredients of the provisions of Section 14(1)(e) of the Act and came to the following conclusions:

- (A) The petitioners have proved that they are the owners of the premises;
- (B) the purpose of letting the premises was residential;
- (C) the bona fide requirement was held as not established and the following finding was recorded in in paragraph 11 of the judgment which reads as follows:

'11. It has been argued by Id. counsel for the petitioners that relation of his wife with her in-laws are strained so he wants to shift to his own house therefore the requirement of the petitioner No.-1-2 is bona fide. If I peruse the cross-examination of AW-1 he has admitted in his cross examination that property No.3060 consists of four rooms in all. He has also stated that his grand mother has expired and his mother resides in house No.WA 13, Shakarpur Delhi to whom he visit of and on. He has also admitted that Subhash is his younger brother and they have joint business. He does not mention where his father resides and it is not improper to come to the conclusion that his father might be residing with his mother in Shakarpur. When both his father and mother are not residing with him I fail to understand as to how the accommodation is required on the ground of strained

relation between his wife and his mother. Secondly, he has stated in his cross examination that property No.3060 is constructed on an area of 120 sq. yards and consists of four rooms in all. He has also admitted in cross examination that this property is owned by his brother Sh.Subhash and his mother Smt.Indermani. When he is participating in joint business, occupying house owned by his mother and brother, his story of strained relation does not inspire any confidence. The petitioners have filed photostat copy of rent receipt in the name of AW-1 Sh.Kailash Chand which now I exhibit as Ex.AX being document filed by petitioners themselves. In this receipt it is nowhere mentioned that the tenancy in favor of Kailash Chand petitioner is only in respect of one room. Rather it is written that it is in respect of House No.3060 Kucha Sohan Lal Delhi. No site plan of this premises has been brought on record to show to the court the exact accommodation, number and size of rooms in the said premises. This shows that the petitioner has concealed the actual accommodation in this premises at his disposal. It is not the case of petitioner Nos.12 that they want to shift to the tenanted house which consists of only one room. Their case is that due to strained relation of petitioner No.2 with her in laws that they want to shift to tenanted premises. It is proved on record that mother and father of the petitioner are residing separately and their story of strained relation is improbable particularly when petitioner No.1 has been residing in house owned by his mother and brother. In the absence of any evidence showing total accommodation in premises in possession of petitioner No.1-2 now particularly when whole of the house is under the tenancy of petitioner No.1, it cannot be said that petitioner No.1-2 have proved that their requirement for additional accommodation is bona fide.'

Similarly it was held in the case of petitioners 3 and 4 that they have not been able to prove their requirements for accommodation.

The facts have been established on record that petitioners 1 and 2 are already possessed of accommodation which is under their tenancy. therefore, the Additional Rent Controller came to the conclusion that the requirement was not bona fide. Similarly, so far as petitioners 3 and 4 are concerned the learned Judge has held that there is nothing on record that apart from petitioner No.3 Mahinder Kumar no-one else was residing in the premises known as 2161, Bazar Sita Ram,

Delhi after the death of his mother. The Additional Rent Controller has clearly gone wrong on two questions. Firstly, that the possession by the landlord of rental premises will debar him to claim that his requirement for his own property is not bona fide and he, accordingly, considered the accommodation in possession of petitioners 1 and 2 to hold that their requirement for additional accommodation such as of the present premises can not be entertained. Secondly, the requirement of petitioners 3 and 4 has also been rejected whereas it is contended by the learned counsel for them that the accommodation in their possession is on a mere plot of 50 sq. yds which can be termed as totally inadequate for their residence.

Moreover, the requirement of all the petitioners for the same premises cannot be determined by taking into account the accommodation which may be in their tenancy at different places as the family is expected to stay in one premises. The finding of the Controller on this question is perverse, unreasonable and cannot be sustained. On present facts it is further stated that even the rented accommodation in possession of petitioners 1 and 2 cannot be held to be sufficient and adequate.

Taking into consideration the need of the petitioners as well as the members of the family the requirement can be held to be bona fide as there is no sufficient accommodation available to them. Moreover, it is a natural phenomena that a landlord living in rented premises is entitled to move in his own accommodation and the desire to do so cannot be held to be imaginary, fanciful or unnatural. In the present case the petitioners are not possessed of sufficient alternative accommodation to deprive them of the benefit of the provisions of Section 14(1)(e) of the Act.

The present petition is, accordingly, allowed and the impugned order dated March 1, 1996 is set aside. Respondent is, however, granted time of six months to vacate the tenanted premises from the date of passing this order. There will be no order as to costs.