

Ghika Limited Vs. Krishan Behari

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Court : Delhi

Decided On : Jul-05-1982

Reported in : 22(1982)DLT245

Judge : Yogeshwar Dayal, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 25B

Appeal No. : Civil Revision Appeal No. 391 of 1980

Appellant : Ghika Limited

Respondent : Krishan Behari

Advocate for Pet/Ap. : D.D. Chawla,; Suresh Vohra,; Bharat Deepak and;

Judgement :

Yogeshwar Dayal, J.

(1) This is a petition for revision under the proviso to Sub-section (8) of Section 25-B of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act') against the order dated 17-1-80 whereby the learned Rent Controller, Delhi, dismissed the application of the petitioner for leave to contest the ejectment application filed by the respondent on the ground of bona fide personal requirement under the provisions of Clause (c) to the proviso to Sub-section (1) of Section 14 read with the provisions of Section 25-B of the Act.

(2) Respondent Shri Krishna Bihari as owner-landlord of premises No. D-3/9, Vasant Vihar, New Delhi, filed a petition on or about 18-8-1979 for eviction of the respondents on the aforesaid ground.

(3) The case of the respondent-landlord was that he had constructed the premises on a plot of land allotted to him by the Government Servants Co-operative House Building Society Limited and the plot is held on a perpetual sub-lease granted by the President of India. A copy of the perpetual lease was filed along with the petition. It was further alleged by landlord that the premises are residential and were let for residential purposes for a period of 11 months. It was also stated that the landlord intends to occupy the premises for his own use and for use of members of his family dependent upon him. The family of the petitioner for the aforesaid purposes comprises the landlord himself, his wife and a grown up daughter. The landlord has been temporarily staying along with his family members with his son who is independent and is a Doctor employed with the Government of India. It was also stated that the son of the landlord has also desired that the landlord and his wife and daughter should move to the landlord's house and stay on there and that he has his own plans for use by him of the Government accommodation allotted to him. It was also averred that even otherwise, the son of the landlord is holding a transferable job and is liable to be posted anywhere in India and the landlord has no other reasonably suitable residential accommodation and does not have any other property in Delhi. The landlord is in dire need of the accommodation in occupation of the petitioner. The landlord in these, circumstances, submitted that he bona fide needs the premises for use as a residence for himself and members of his family dependent upon him and has been repeatedly requesting the respondent to quit and vacate the same.

(4) The property was stated to have been let out as far back as on 12-5-1972.

(5) On service of summons in the prescribed manner, the petitioner M/s. Chika Limited filed an application for leave to contest the eviction application. In the affidavit accompanying the application for leave to appear and contest the eviction application, the ownership of the respondent/landlord was denied. It was also submitted that the petition for ejectment was incompetent because the premises

have been built out of the joint family funds which includes the funds contributed by the landlord's son in whose premises the landlord is living at present and as such other sons and members of Huf are necessary party to the eviction petition filed by the landlord.

(6) Another plea to dispute the bona fide requirement which was taken was that in April, 1973 the tenant through its Manager Shri P. K. Mathur called upon the landlord to carry out the repairs in terms of their letter dated 20-1-1973 in which various repairs were sought. On receipt of the said letter the landlord wrote a letter dated 10-3-1973 whereby Mr. Mathur of the petitioner was intimated that the landlord was living in a Government accommodation which has been allotted to his eldest son and he is going abroad on deputation and in case the tenant is willing to extend the lease by six months, he will extend the same from 12-4-1973 to 1-10-1973.

(7) It was also averred that no repairs were carried out and rather by letter dated 16-3-1974 the landlord contested the case of the petitioner in respect of the repairs and pointed out that these repairs should be carried out by the tenant and he is not ready to spend Rs. 800.00 to Rs. 1000.00 on the repairs and that the present petition is not bona fide as it is an off-shoot of the landlord's omission to carry out the repairs in the suit premises occupied by the tenant.

(8) It was also stated that the landlord in his letter dated 16-3-1974 had stated that he needs the premises for his personal use even though he and his family members were living in commensuality with his son who is well placed Government official in the medical profession and has sufficient accommodation to meet the requirements of the entire family.

(9) It was further stated that the accommodation at present enjoyed by the landlord and his family members comprised of three bed rooms, one drawing-cum dining, two covered verandahs and this accommodation is more than sufficient for the requirements of the landlord.

(10) To show the falsity of the case of the landlord, it was alleged that it is also clear from the fact that though in March, 1973 it was represented that his son

would be going abroad on deputation and he would not retain the Government accommodation yet in April, 1974 his son was still serving in Delhi and was occupying the said flat in which he is still living and the allotment is still retained by him.

(11) A plea was also taken that the landlord wanted to enhance the rent as the rents in the locality have enhanced and the landlord contacted Shri Mathur of the petitioner on 27th May, 1975 whereby the Landlord wanted the tenant to enhance the rent to Rs. 2,000.00 per month which the tenant is unable to comply with.

(12) It will thus be seen that the substance of the aforesaid pleas to show the mala fides of the landlord, were :

1. That the landlord failed to carry out repairs which were requested by the petitioner-tenant as far back as in January, 1973; 2. That though in March, 1973 the tenant was intimated by the landlord that his son was going abroad on deputation and the lease was extended till 11-10-1973 yet his son was in Delhi in April, 1974 as yet; 3. That the landlord was not the owner of the premises and the premises were owned by an H.U.F. of himself and his son; 4. That the landlord's family is staying with their son in Delhi and the accommodation with the son is more than sufficient for their requirement.

(13) It may be noticed that the averment of the landlord that he was staying with his son, who is holding a transferable job was also denied.

(14) Shri Krishna Bihari, respondent-landlord filed a detailed affidavit in reply. He also placed on record the photostat copy of his letter dated 16-3-1974 referred to in the affidavit filed on behalf of the tenant. He also placed on record the order of the Deputy Director (Admn. I) (C.G.H.S.) dated 30-1-1973 showing the assignment of Dr. Narendra Bihari (son of the landlord) as Neurologist at the University of Jundi Ahwaz in Iran. In this letter it was stated that 'it has been decided to relieve Dr. Narendra Bihari, Physician of his duties under the C.G.H.S. Delhi with effect from the afternoon of 31st January, 1973 on his selection for foreign assignment as Neurologist at the University of Jundi Shapoor Ahwaz in Iran'. This letter was sent to the Medical Superintendent, Safdarjang Hospital, New Delhi, with whom

Dr. Narendra Bihari was attached. A copy of the request from the Government of Iran dated 24-4-1975 was also placed on record.

(15) In the reply affidavit it was pleaded that the respondent-landlord was the owner of the premises and various documents showing the ownership were placed on record.

(16) It was further stated that the landlord himself was holding a very senior gazetted post under the Central Government and the house was constructed out of his own savings and the loan from the L.I.G. and other members of the family were not at all concerned with it.

(17) It was further stated in the reply affidavit that on 10-3-1973 the landlord informed the tenant that the premises could be given on lease to the tenant for a further period of six months, as the landlord could live with his son. Narendra Bihari for a period of six months only in the event of his son going abroad on deputation it was denied that this communication had any connection with the request of the tenant for repairs.

(18) Regarding the repairs, it was stated that the tenant in its letter dated 11-3-1974 had made certain requests for repairs and the landlord by his letter dated 16-3-1974 informed the tenant that all expenses on account of damages caused to the property by the negligence of its employees and other connected persons who were occupying the premises on behalf of the tenant were to be borne by the petitioner-tenant.

(19) The averment as to the demand for increase of rent was denied as totally frivolous. It was also stated that the landlord's son Dr. Narendra Bihari is a senior officer in the Central Health Service of the Government of India and the Government accommodation allotted to him for his exclusive use and it has become inconvenient for the landlord as well as his unmarried daughter to live in the same premises.

(20) It was again reiterated that his son was liable to be transferred anywhere in India and abroad under the provisions of Central Health Services Rules.

(21) It was further stated that the landlord's son Dr. Narendra Bihari did not go abroad on foreign assignment as the tenant never agreed to vacate the premises even after the repeated requests made by the landlord and Dr. Narendra Bihari could not leave the landlord high and dry without any proper and suitable residential accommodation, knowing fully well how difficult it is to get and afford the residential accommodation in New Delhi at a reasonable rent by a retired Government Officer. In this connection, as mentioned earlier, a letter of Government of India dated 31-1-1973 and another letter were filed and marked collectively as Annexure 'C'.

(22) In the reply affidavit it was also stated that not only the accommodation is required for the bona fide user as residence for the landlord's himself but also for the user of his wife, his daughter and other children. It was reiterated that the landlord has every right to live and enjoy the premises owned by him and it was constructed by him specially for his residence after retirement.

(23) Before the Rent Controller, the pleas were urged regarding ownership as well as bona fides on account of landlord's failure to carry out repairs but these submissions were not advanced before me at all on behalf of the tenant-petitioner.

(24) Before me the only submission made was that the landlord is living comfortably with his son in the accommodation allotted to his son and, therefore, his need is not bona fide.

(25) It will be noticed that the premises were let out as far back as in May, 1972. The period of initial letting was to expire on or about 12-4-1973 and the lease was extended for a period of six months up to 11-10-1973 and since then the landlord has been pressing the tenant to vacate the premises.

(26) The Controller took the view that apart from the refusal of the landlord to effect repairs way back in 1973 there is nothing else to show any oblique motive on the part of the respondent-landlord. In any case the dispute as to repairs took place way back in 1973 and this could not be imputed on the landlord-respondent to show any oblique motive to file the ejectment application.

(27) The learned trial Court also noticed that the landlord has been residing with his son, who is in possession of a Government accommodation, and now the landlord want to move into his own house along with his family which consists of himself, his wife and one daughter.

(28) The Controller also observed that the landlord has every right to get his own house, as at present he is living at the mercy of his son and the accommodation which the son is having is also not owned by his son. The Controller was also of the view that where the landlord is residing is neither allotted to him nor is owned by him and, therefore, he was entitled to file the petition so as to live in his own house.

(29) Mr. D. D. Ghawla, learned counsel for the tenant-petitioner, submitted that the petition raised triable issues as the landlord is comfortably living with his son and in this connection brought to my notice the decision of the Supreme Court in Charan Dass Duggal v. Brahma Nand, Civil Appeal No. 179 of 1982, decided on 11th January, 1982. 21 (1982) D.L.T. 378 .

(30) A full Bench of our High Court recently in Mohan Lal and Tulai Dass v. Tirath Ram Chopra and another, CM. No. 1012 and 1013 of 1980 : 22(1982)DLT1 , Decided On: 14.05.1982 took the View that the earlier decision of the Supreme Court in B. N. Muttoo and another v. Dr. T. K. Nandi, A.I.R. 1979 S.G. 450 had specifically repelled the application of the principles of Order xxxvii, Rule 2, Sub-rule (3) of the Code of Civil Procedure, to an application for leave to appear and contest the application for ejectment and this decision is the law of the land under Article 141 of the Constitution of India and is binding on them.

(31) Irrespective of the observations of the Full Bench relating to the case of Gharan Dass Duggal, facts of that case viz-a-viz. the facts of the present case, there is no applicability of the case of Charan Dass Duggal to the present case. There the principle dispute was whether the landlord therein was staying at Pathankot or had shifted to Delhi and the Supreme Court made the observations that this raised the triable issue and, therefore, leave ought to have been granted,

(32) In the present case, there is no dispute as to the place where the landlord is staying. The landlord is very much in Delhi.

(33) It is clear from the rules as applicable to the officers, like the son of the landlord, that the son of the landlord is holding a transferable job.

(34) It is also clear that in this career he is likely to get offers of service even abroad as is clear from the bunch of letters filed as Annexure 'G' Along with the affidavit of the landlord. It is also clear that the son of the landlord could not avail of posting to Iran as the tenant at that time refused to vacate the premises and Dr. Narendra Bihari could not leave his father and his family in lurch.

(35) In this connection to understand the details of landlord's children I call upon the parties to File affidavits and the landlord filed his own affidavit giving the details of his family which consists of; (i) himself, (ii) his wife, (iii) Dr. Sudha Rani, (iv) Dr. Narendra Bihari, (v) Mr. Satyendra Bihari, (vi) Mr. Dharendra Bihari, (vii) Dr. Madhuri Bihari and (viii) Mr. Dharmendra Bihari.

(36) It will be noticed that the landlord is aged about 69 years and his wife is aged about 64 years. Dr. Narendra Bihari, his son, in whose name the accommodation is allotted) is not only M.B.B.S. but also M.R.C.P. Edinburgh and M.R.G.P. Glasgow, and is aged about 41 years. Dr. Sudha Rani, daughter of the landlord, is M.D. (Pathology) and doing Ph.D. (Pathology), from Delhi University and is presently working as Assistant Professor, Pathology in Lady Hardings Medical College and Sucheta Kriplani Hospital, New Delhi and is aged about 39 years. The other include Dr. Madhuri Behari aged about 30 years, who is Lecturer in Neurology in G.B. Pant Hospital and Maulana Azad Medical College, New Delhi, the two sons Mr. Satyendra Bihari and Mr. Dharendra, Bihari, who are Marine Engineers and it is well known that they are out usually for a long period but they do get leave to visit their home country. The youngest son Mr. Dhar- mendra Bihari is also a Marine Engineer and is also occasionally visiting Delhi as and when on leave.

(37) I had also given opportunity to the tenant to file a reply in this behalf and they in fact pleaded that Dr. Madhuri Bihari is staying with her parents but Dr. Sudha

Rani is staying in the hospital premises itself and is not residing with Dr. Narendra Bihari. In relation to Satyendra Bihari, Dharendra Bihari and Dharmendra Bihari it was stated that they do not reside in Delhi and do not live with their brother in Delhi.

(38) It will thus be noticed that besides the landlord and his wife and Dr. Madhuri Bihari, there is another aged unmarried daughter, who according to the landlord staying with him but according to the tenant- petitioner staying in the hospital, yet the fact remains that she would also be visiting her parents. It may be that three unmarried sons of the landlord are Marine Engineer* and, therefore, not permanently residing in Delhi, but they would be visiting their parents off and on and in these circumstances it cannot be said that the desire of the landlord to live in his own house is not bona fide or that it calls for any triable issue.

(39) I am, satisfied that the need of the landlord is bona fide and he requires the premises for himself, his wife and his unmarried daughter.

(40) The result is that the revision petition fails and is dismissed.

(41) The petitioner-tenant is, however, allowed three months time to vacate the premises.

(42) Parties left to bear their own costs.