

**Trilok Chand Tuteja Vs. Jamna Dass Chuoh**

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**Court :** Delhi

**Decided On :** Dec-03-1985

**Reported in :** 30(1986)DLT189; 1986RLR521

**Judge :** G.C. Jain, J.

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

**Appeal No. :** Civil Revision Appeal No. 297 of 1984

**Appellant :** Trilok Chand Tuteja

**Respondent :** Jamna Dass Chuoh

**Advocate for Pet/Ap. :** K.K. Chaudhry and; M.L. Malhotra, Advs

**Judgement :**

**G.C. Jain, J.**

(1) This revision petition is directed against the order of the Addl. Controller, Delhi dated January 21, 1984.

(2) Property No. 695-696, Double Storey Quarters situated in New Rajinder Nagar, New Delhi was a Government built property. The President of India vide lease deed dated October 20, 1965 leased this property to Sham Lal Taneja for a period of 99 years commencing from December 12, 1957. Taneja's mother lived on the

ground floor of the property bearing No. 696 along with her daughter and son-in-law Jamna Dass Chugh since before the execution of the lease deed. On her death Sham Lal Taneja took his brother-in law Chugh as his tenant on a monthly rent of Rs. 130.00 . On tenant's application standard rent of the ground floor was fixed at Rs. 60.75 per month by the Addl. Controller. Sham Lal Taneja, sold this property to Trilok Chand Tuteja, the petitioner, by means of sale deed October 22, 1977. Jamna Dass Chugh (the respondent tenant) thus became a tenant under Trilok Chand Tuteja, the petitioner (landlord).

(3) On October 21, 1976 the landlord brought a petition for recovery of possession of the said property (no. 696) consisting of two rooms, Kitchen, bath and latrine, front and rear court yard, etc. on the allegation that the premises in dispute had been let out for residential purpose to the respondent and were bonafide required by the landlord, owner thereof, for occupation as a residence for himself and members of his family and he had no other reasonably suitable accommodation.

(4) The tenant resisted the petition. It was alleged that the premises had been let out for residential-cum-commercial purpose and he had been using the same for residence as well as business since prior to the creation of this tenancy when he was living there along with her mother-in-law. The claim of the petitioner was not bonafide inasmuch as he was in possession of premises No. 695, the first floor of this property which had been vacated by its tenant B.K. Aggarwal who had constructed his own house No. D-174, Vivek Vihar and had shifted there.

(5) Learned Addl. Controller observed that the previous landlord Sham Lal Taneja, who could be the best witness to tell about the letting purpose was not asked any question by the petitioner to prove the letting purpose ; the tenant had categorically stated that he had taken the premises on rent for residential- cum-commercial purpose. He found that the tenant had been publishing his journal Centex from the disputed premises since 1965. He consequently held that the letting purpose was residential-cum- commercial. It was further held that the landlord was residing in quarter No. 694, Double Storey, Rajinder Nagar, Delhi. His need, according to his case, arose because his landlady had asked him to vacate the premises in his tenancy but this fact had not been proved. The landlord

did not require more than the accommodation available with him. His need was not genuine and his claim was malafide. With these findings he dismissed the eviction petition.

(6) Feeling aggrieved the landlord has filed the present revision petition.

(7) Mr. K. K. Chaudhary, learned counsel for the landlord vehemently assailed the findings of the learned Addl. Controller regarding letting purpose, non-availability of reasonably suitable accommodation and bonafide requirement of the landlord. He contended that the learned Addl. Controller ignored the statement of the previous landlord regarding letting purpose. raised a wrong inference from the nature of the user which was primarily residential and did not take into consideration the nature of the premises, its design and other relevant factors. He further contended that the landlord required accommodation for himself, his wife, three grown up daughters, mother, brother, brother's wife and their two school going children. He was residing in quarter No. 694 consisting of two rooms etc. as a tenant. First floor, i.e. quarter No. 695 containing the same accommodation was in the tenancy of B.K. Aggarwal. Even if it was held that there was no threat of eviction from his tenanted premises No. 964 and Aggarwal had vacated quarter No. 695 only four rooms accommodation was available, which could not be considered reasonably suitable for all the not member of his family and the requirement of the landlord was bonafide.

(8) On the other hand Mr. M.L. Malhotra, learned counsel for the tenant contended that the tenant was admittedly in possession of the premises in dispute since 1965, i.e. prior to the creation of the tenancy. The tenant had been using the premises for residential as well as business purposes, namely publishing big magazine CENTEX. This user established that the letting purpose was residential-cum commercial and the finding of the learned Addl. Controller was correct. He also contended that the requirement of the brother and brother's family of the landlord could not be taken into consideration as he was not dependent on the landlord. The landlord was in possession of reasonably suitable accommodation and his claim was not bonafide.

(9) A landlord, like any other man, is a social being. Ordinarily he lives with his wife, children, parents etc. In this context the word 'himself' used in clause (b) of the proviso to sub-section (1) of Section 14 of the Act cannot be strictly interpreted so as to mean accommodation for residence by the landlord alone. It has necessarily to be interpreted as to include the family of the landlord with whom he is living and is accustomed to live. The requirement of said members of his family would be the requirement of the landlord and would be covered by the word 'himself'.

(10) In the present case, it has been admitted by the tenant in his statement that the landlord, his wife, three daughters, mother, brother, brother's wife and their two children, were living in quarter No. 694 Double Storey, Rajinder Nagar, New Delhi. There is no suggestion even that Hukum Chand, the brother, at any time lived separately. In these circumstances, Hukum Chand, who had always been living with his brother, the landlord, was a member of his family. The requirement of Hukum Chand and his children would be covered by the word 'himself' and could not be ignored.

(11) The landlord thus required accommodation for himself, his wife, three daughters aged about 18, 15 and 12, mother, brother, brother's wife and their two school going children. The landlord was admittedly residing in property No. 694, Double Storey, Rajinder Nagar, New Delhi as a tenant under Smt. Thakri Bai. A perusal of the plan shows that it consisted of two rooms, kitchen, bath, Wc besides front and rear court yards. Correctness of this fact has not been disputed. Thus the landlord was in possession of two roomed accommodation in property No. 694.

(12) The landlord was admittedly owner of the flat on the first floor of the premises in dispute. That flat bears No. 695. It was in the tenancy of one B.K. Aggarwal as a tenant. According to the tenant, Aggarwal had constructed his own house in Vivek Vihar, and had shifted there and had vacated flat No. 695. There is sufficient evidence on record to prove this contention. Sat Pal, L.D.C., Food and Supply Deptt. Delhi Administration, deposed that a ration card was issued to B.K. Aggarwal on 1-1-1978 at the address B-174, Vivek Vihar. Lila Singh, clerk, Desu

deposed that after September, 1977 on electricity was consumed in flat No. 695, Double Storey, Rajinder Nagar, New Delhi. Admittedly the Landlord had not filed any eviction petition against B.K. Aggarwal. It was not expected of him to keep quiet, had he not surrendered the tenancy. All these circumstances support the contention of the tenant that B.K. Aggarwal had vacated the said flat. This flat also consisted of two rooms, besides kitchen, Wc etc. Thus four rooms in all were available to the landlord for residence.

(13) Four roomed accommodation, however, could not be considered reasonably suitable for the landlord and all the above mentioned members of his family. His reasonable requirement was of one drawing room, one dining room, one bed room for himself and his wife, two rooms for his three daughters, one room for the mother and two rooms for the brother and his family. The finding of the learned Addl. Controller that the landlord did not need more than two-roomed accommodation was unreasonable and cannot be sustained. There is nothing on the record to show that the need was not genuine or the application had been filed with any ulterior motive. In my judgment, it has been proved that the Inadlord bonafide required the premises in dispute for residence for himself and members of his family and had no other reasonable suitable accommodation.

(14) The main dispute was regarding the letting purpose. The onus to prove the letting purpose was on the landlord. Admittedly no lease deed or rent note was executed by the tenant. Learned Addl. Controller, however, was wrong in observing that Sham Lal Taneja, the previous landlord, who was the best witness, was not asked any question about the letting purpose. Part statement of TaneJa was recorded on December 6, 1978. He stated in clear terms that the premises were residential and .were let out for residential purpose. The learned Addl. Controller, it appears, ignored this part statement recorded on that date. Previous landlord also issued notice on October 2, 1977, to the tenant slating that the said house had been let out to him for residential purpose and intimation the tenant that he had sold the same to the present landlord and asking the tenant to deal with the present landlord directly. Thus according to the evidence of the previous landlord the premises had been let out for residential purpose.

(15) Sham Lal Taneja, the previous landlord, has deposed that his brother-in-law, Jamna Dass Chugh, had occupied the house forcibly on the death of his mother and he took him as a tenant under compulsion. Admittedly, the tenant had filed an application for fixation of the standard rent of the premises. It is thus clear that their relations were strained. Consequently, the solitary statement of Sham Lal, the previous landlord by itself was not sufficient to prove that the letting purpose was residential. Much reliance could, also, not be placed on the self-serving statement of the tenant regarding letting purpose.

(16) In these circumstances, the letting purpose would necessarily have to be inferred from the nature of the building, its design, the location of the building, the dominant use to which it has been put and other relevant factors (See *Ajit Singh v. Inder Saran and others* 1979 (1) Rcr 602

(17) Chattar Singh from the L & D O deposed that the premises were residential in nature. Under clause I(vi) of the lease deed between the Government and the landlord the premises could be used for residential purpose only. The premises consisted of only two rooms measuring 9 X 14 and 10x12 ft., kitchen, bath, WG. front and rear court yards. The design of the property, especially the provision of kitchen, indicates that the premises were residential. Locality itself is known as 'Double Storey Quarters'. Presence of the term in the lease deed that the property could be used only for residential purposes indicates that the locality was residential. No doubt, Jeewan Pasricha, a witness examined by the landlord, has admitted that there were there shops in a corner house, but these three shops alone were not sufficient to hold the locality a commercial locality.

(18) Learned Addl. Controller has held the tenant, besides his residence, was also publishing a journal Centex from the premises in dispute. I find no infirmity in this finding. The tenant got the journal registered with the Registrar of Newspapers and a certificate of registration was issued on August 9, 1968. This journal was registered with the postal authorities for concessional postal rates in 1968. A telephone was installed in the name of the journal in these premises in 1969. This evidence and other evidence on record is sufficient to prove that the tenant was also publishing the said journal from the premises in dispute.

(19) Centex is a fortnightly journal on Central Excises in India' It is edited by Mr. M.K. Madan. Advocate. The editing work was admittedly done by the said editor at his place and not at the premises in dispute. The journal was admittedly printing at Unique Press up to 1973 and thereafter at Shugan Printers at their place. In these circumstances, the only activity carried on in the premises was bringing the printed Journal there, dispatching the same to the customers and receiving some correspondence from the customers etc. According to O.N. Khanna. a witness examined by the tenant. some of this work was done in drawing room and some work was done In the court yard. The tenant, however, has not pointed put the portion of the premises where the commercial activity was carried on. Admittedly in the beginning the tenant's mother-in-law was also residing there. The two-roomed accommodation was hardly sufficient for residence of tenant and his family members. It appears that there was no specific portion of the premises earmarked for this commercial activity No cogent or sufficient evidence has been produced that the tenant had employed any employee for carrying on this activity or that any customer visited the place for purchase of the journal. This activity was almost negligible. The primary and dominant purpose was residential. From such a user, in the presence of other circumstances, namely, the nature of the building, the locality and mainly the condition imposed on the landlord by the Government while granting lease of the plot on which the premises was situated, letting for commercial purpose also could not be inferred. Learned Addl. Controller had not taken the totality of the surrounding circumstances in consideration. His finding was based mainly on the commercial user which was almost negligible and thereforee his finding that letting purpose was residential-cum-commercial was not correct and cannot be maintained. The circumstances go to prove that the letting purpose'was residential only.

(20) For all these reasons, the petition is allowed, the impugned order is set aside and instead an order for recovery of possession of the premises in dispute under clause (e) of the proviso to sub section (1) of Section 14 of the Act is passed in favor of the petitioner-landlord against the respondent-tenant. The tenant is allowed six months' time to vacate the premises. Parties are left to bear their own costs throughout.

