

Net Ram Vs. Beant Singh

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Court : Delhi

Decided On : May-23-1985

Reported in : 28(1985)DLT318

Judge : J.D. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

Appeal No. : Civil Revision Appeal No. 695 of 1981

Appellant : Net Ram

Respondent : Beant Singh

Advocate for Pet/Ap. : Rajeev Behl and; J.R. Tandon, Advs

Judgement :

J.D. Jain, J.

(1) This revision petition is directed against order of eviction passed by an Additional Rent Controller against the petitioner on 5th March 1981 under clause (e) of proviso to section 14(1) of the Delhi Rent Control Act (hereinafter referred to as the Act).

(2) On 21st December 1978 the respondent-landlord filed an eviction petition against the petitioner who is admittedly in occupation as a tenant of a portion comprising two rooms with common user of courtyard, bath and latrine, with other occupants of the premises bearing No. 84, Bharat Nagar (Mathura Road), New Delhi, under section 14(l)(e) read with section 25-B of the Act. He averred that he was the owner of the premises in question and he required the same bonafide for residence of himself and other members of his family, and that he had no other reasonably suitable accommodation. He explained that he was residing at house No. 44, Church Road, Jangpura (Bhogal) New Delhi but the accommodation there was not sufficient for himself and other members of his family who were dependent on him for their residence.

(3) Leave to contest was granted to the petitioner as contemplated under section 25-B sub-section (5) of the Act and he filed a written statement, inter alia, contending that the existing accommodation with the respondent-landlord was quite commodious and sufficient for him and members of his family and that he was living there Along with his family members quite comfortably. He also took up the plea that the premises in question had been let out to him for residential-cum-commercial purposes. He denied that the respondent was owner of the premises in dispute Lastly he contended that the Rent Controller had no jurisdiction to entertain the said application in as much as the provisions of the Act were not applicable to the locality in which the premises in dispute were situated.

(4) The learned Additional Rent Controller has vide impugned order found that the respondent was the owner of the premises in question having inherited the same from his deceased father. who was the original owner- landlord under a will. He further found that the existing accommodation with the respondent was inadequate for the residence of the respondent and members of his family who were living with him. He has rejected the plea of want of jurisdiction in the Rent Controller to entertain the eviction petition saying that there was no evidence on record to support the same. Likewise he has also rejected the plea of the petitioner that the letting purpose was residential-cum-commercial. Feeling dis-satisfied the petitioner has come up with this revision petition.

(5) The learned counsel for the petitioner has assailed the impugned order on the sole ground that the finding of the Additional Rent Controller with regard to the existing accommodation with the respondent and the same being insufficient for his need is not sustainable having regard to the material on the record. The petitioner moved an application being Cm 3029/81 purporting to be under Order Xli, Rule 27 read with section 151 of the Code of Civil Procedure for permission to adduce additional evidence with regard to the actual accommodation in the possession of the respondent in house No. 44, Jangpura (Bhogal). According to him, he came to know of the extent of actual accommodation with the respondent only on 1st August 1981 and it transpired that the respondent was in possession of three rooms, two verandahs, one lavatory and four bath rooms on the ground floor and one room on the first floor. The respondent vehemently denied this averment reiterating that he was in possession of only one living room besides, of course, a couple of verandahs. He again vouched for the correctness of the site-plan Ex. Public Witness 2/2 which he had produced in the trial Court as according to him the total accommodation in his occupation at 44, Jangpura (Bhogal) was truly depicted in the said plan. In view of these conflicting claims of the parties; I appointed an Advocate as a Local Commissioner to verify facts and prepare the site-plan on spot inspection. Accordingly he has submitted his report Along with a rough site-plan and the same have been accepted by both the parties.

(6) On a bare juxtaposition of the two site-plans viz. Ex. AW. 2/2 and the one prepared by the Local Commissioner it is manifest that the following accommodation is not reflected in the site-plan Ex. Aw 2/2 :

'(1)Kitchen marked CC1C1C1 which is situated in the open courtyard beyond the verandah adjoining the living room marked Bbbb in the outline sketch prepared by the Local Commissioner. Of course, the size of the kitchen is very small, it being 6'6' X4 '8'. It may be mentioned here that in the site-plan Ex. Aw 2/2 the dimensions of the open courtyard were given as 20' x 18 '6' whereas the size of the same xxx has been found to be 13'7'x8'10' only by the Local Commissioner. The decrease in the size of courtyard is obviously due to the fact that the kitchen mentioned above although situated in the open courtyard was not shown as such in the site-plan Ex. Aw 2/2.

(2) The room marked A1A1A1A1 on the rear of the house of the respondent as shown in the rough sketch prepared by the Local Commissioner i.e. beyond the open courtyard, has not been shown in the site-plan Ex. Aw 2/2. This room has dimensions 9'9"x 12'9". Obviously this room too exists in the space shown as open courtyard by the respondent in Ex. Aw 2/2. It may be seen that the respondent showed only a bath room and a latrine running along the whole of the rear wall of the house whereas it is not so as would be clear from the rough sketch prepared by the Local Commissioner. He has further pointed out that as at present there are no door leaves affixed to this room but there is a provision for the same. Curtains were hanging on two openings meant for doors at the time of the his visit. The said room had mosaic flooring but the same had not been properly polished as yet. The whole of the room was lying vacant except one big box which was lying there.

(3) The location of the flight of steps for climbing up the roof of the ground floor has been wrongly shown in the site-plan Ex. Aw 2/2 because it appears to be situated just adjacent to the verandah but in fact it is adjacent to the kitchen. In other words, the kitchen lies in between the verandah and the open staircase.

(4) There is a covered canopy over the Pooja room marked BBB1B1 in the rough sketch but the same has not been shown in the site-plan Ex. Aw 2/2. However, according to the report of the Local Commissioner the height of the canopy is only 4' approximately. It has puce walls on three sides while a curtain is banging on the fourth side.

(5) The room marked Aaaa in the rough sketch has been shown as passage in the site-plan Ex. Aw 2/2. According to the Local Commissioner, the size of the room is 7'9' X 8'7'. There was one inbuilt wooden almirah in one of the walls and some books were lying in the shelves of the almirah. Moreover, one cot, one table and two chairs were lying inside the room. One door of the room opened towards the main road whereas another door opened inside the living room. This room has been shown as passage in the site-plan Ex. Aw 2/2, and the Explanationn given by counsel for the respondent is that it is the only passage from the main road to the living room of the respondent.

(6) The site-plan Ex. Aw 2/2 makes no mention of the room situated on the first floor. The said room according to the Local Commissioner was situated above the living room. It was made of bricks but had a tin roof. However, the room was in a dilapidated condition and its tin roof was damaged. A lot of waste material and junk such as old cycle tyres, old cycle and some pieces of furniture etc. were stacked therein.

(7) In view of the vast divergence between site-plan Ex. Aw 2/2 and the rough outline sketch as prepared by the Local Commissioner, the learned counsel for the petitioner has canvassed with considerable force that the impugned order has proceeded on wrong facts and as such it is liable to be quashed on this short ground. The petitioner has also made an application under section 340 of the Code of Criminal Procedure for prosecution of the respondent on charges of perjury and fabrication of false evidence.

(8) It is no doubt true that the respondent is guilty of submitting and relying on a site-plan which is full of distortions and does not reflect the accommodation available with him correctly. His conduct in vouching for its correctness consistently throughout the course of this litigation must, therefore, be condemned with all the vehemence at one's command. All the same, I do not consider it just or expedient to prosecute him for the same and the ends of justice will be amply met if this revision petition is decided on the basis of true facts as divulged by the Local Commissioner in his report.

(9) It is not disputed that the respondent has a large family comprising himself, his wife, five daughters and three sons. Three of his daughters have been married and only two younger daughters namely, Jaswinder Kaur and Surinder Kaur who are now aged 24 and 20 years remain to be married. He has got three sons, the eldest of whom is said to be mentally retarded and is, therefore, living with his parents. His second son Sohan Singh aged 32 years has since been married and according to the respondent he is living in one room in the premises in dispute which was formerly in the tenancy of one Amarnath. That room was vacated recently pursuant to an eviction order obtained by the respondent against the old tenant. The contention of the petitioner is that the said room has been let out by

the respondent to Jai Nath and Amod Kumar. However, the Explanationn given by the respondent is that his son Sohan Singh lives in that room over since it was vacated by the erstwhile tenant Amar Nath. As for Jai Nath and Amod Kumar, his contention is that they are his employees and they also live in that very room. However, according to him. there is no arrangement for cooking in that room and, thereforee, his son Sohan Singh still takes meals etc. with him. The distance between the premises in question and the residence of the respondent viz 44/2, Church Road, is about two miles. In view of the Explanationn given by the respondent the safest and surest course would be to treat that room is being in the occupation of the family of the respondent while determining his requirement. The third son Harjit Singb, who is aged about 17 years is still living with respondent at 44/2, Church Road.

(10) It is in this state of evidence that the question of bonafide requirement of the respondent which, as stated above, is the only crucial question in the whole case has to be determined. The law is well settled that mere assertion on the part of the landlord that he requires residential accommodation in the occupation of the tenant for residence for himself and members of his family is not decisive. It is for the court to determine objectively the truth and weight of the assertion and also to find whether it is bonafide. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show that he genuinely requires the extra accommodation for the purpose of residence of himself and members of his family (see *Mattulal v. Radhe Lal*, 1974 Rcr 441 In view of the facts which are established on record there can be little doubt that the existing accommodation with the respondent even taking into account the one room which has fallen vacant at 84, Bharat Nagar, is absolutely insufficient. The main living room would be required by the landlord himself. The room marked Aaaa in the outline rough sketch prepared by the Local Commissioner but shown as passage by the respondent in the site- plan Ex. Aw 2/2 can certainly be used as a living room by one of his sons, for instance, the youngest one. Similarly, the room marked Aiaiaiai shown in the rough sketch can be used by the two unmarried daughters of the respondent even though door leaves have not yet been provided. The purpose can be certainly achieved by providing curtains to ensure privacy. The eldest son of the respondent who is

mentally retarded can certainly be asked to sleep in the verandah marked BB1CC in the rough sketch as in that case the respondent and his wife can look after him quite well. We are thus left with second son of the respondent namely, Sohan Singh who is married. The wife of Sohan Singh is said to be a patient of tuberculosis. Normally speaking they could have well occupied the room which has failed vacant at 84, Bharat Nagar, but as explained by the respondent there is no provision for a kitchen there. So, he would require extra space or room to be used as kitchen. That apart, the three married daughters must be visiting the respondent off and on with their opuses and children. So. the respondent needs at least one room more to accommodate them. Needless to say that even though technically speaking the married daughters ceases to be members of the family of the landlord but the parents earnestly wish to maintain links with them and would very much want them to pay visits to their parental home off and on. In other words, it is the requirement of the landlord himself that they should visit him off and on and as a necessary corollary he has to make provision for some extra accommodation so that they can stay with him as and when they visit Along with their spouses and children or otherwise. Surely, the married daughters cannot be treated as total strangers to the family of landlord. They are not just guests. Thus, keeping in view all these facts it cannot be again said that the respondent still needs more accommodation for members of his family dependent on him even if he does not want himself to shift from his present residence to the premises in question. What I mean to say is that extra accommodation for the married daughters etc. can be provided by shifting his youngest son to the premises in question where one of his sons is already living.

(11) There is umpteen authority for the proposition that even though the word 'dependent' has not been defined in the Act it will have to be construed on a commonsense view of the matter having regard to the social religious structure of Hindu society and its interpretation must have relation to existing facts and circumstances, proved on record of the case. It is equally well settled that the phrase 'or for any member of his family dependent on him' occurring in clause (e) of proviso to section 14(1) not require the additional accommodation for himself but he wants it for members of bids family dependent on him. In that case he has to satisfy two conditions precedent before he can take recourse to the second part

of the above clause, namely that the person for whose occupation he requires the premises bonafide (i) is a member of his family, and (ii) is dependent on him. It is only when he satisfies both these postulates that he would be entitled to an order of eviction against the tenant; see S.K.Dey v. D.C. Gagera, : AIR1985 Delhi169 , wherein I have dealt with this aspect of the matter at considerable length on a review of some well-known decisions of this Court. The same view has been expressed by my learned brother T.P.S. Chawla, J. in Waryam Singh Duggal v. Smt. Savitri Devi, (1984)1 Rcr 52 In the words of Chawla, J. :

'The distinguishing feature of the second alternative is that the landlord does not intend to reside in the premises himself see Sain Dass Berry v. Madan Lal Puri, 1971 Rcr 887 He needs them only to accommodate a member of his family 'dependent' on him. It,s in this case that dependence on the landlord is a requirement.'

(12) As for the first alternative, it is now well settled by numerous decisions of this Court that 'himself' includes the landlord's family who is actually living with him. As at present the entire family of the respondent with the solitary exception of one son is living with him. Even that son is dependent on the respondent for residential accommodation b cause till recently he had been residing with him and he tad to shift to 84, Bharat Nagar per force of the circumstances viz paucity of accommodation at 44/2, Church Road, Jangpura (Bhogal). Hence, the requirement of the respondent for additional accommodation can by no stretch of reasoning be said to be malafide or motivated by any oblique motive. Further the fact that he sold a part of the property at Bharat Nagar as far back as 1975-76 i.e. much before the commencement of the present litigation would hardly be of any consequence. Surely, a landlord can sell his property if his circumstances so require and he can be hardly called upon to explain his action in this respect.

(13) Yet another argument advanced by the learned counsel for the petitioner is that even if an order of eviction is passed in favor of the respondent neither he nor his family members would shift to the premises in question. It is for the reason that there is no water supply or sewerage system in the locality in which the premises in question is situated and, thereforee, only a hand-pump is installed. It is thus

contended that the eviction of the petitioner is sought for oblique motive and the ground of bonafide personal necessity is fake and sham. It is no doubt true that there is no municipal water supply or flush system in the premises in question for want of proper sewerage but that by itself would not be a ground to doubt the bonafides of the respondent landlord when his need for extra accommodation is clearly made out. After all the landlord does not appear to be a person of that high a status that members of his family cannot adjust themselves to the want of these amenities in the premises in question.

(14) The upset of the whole discussion, therefore, is that the respondent still requires bonafide the additional accommodation viz. the premises in question and as such the impugned order cannot but be sustained. Hence, this revision petition is dismissed as being devoid of any merit. However, in the interest of justice and keeping in view the enormous difficulty which a tenant has to face to find out the alternative residential accommodation, the petitioner is allowed six months time to surrender peaceful and vacant possession of the premises in question to the respondent. Having regard to all the circumstances of the case, I leave the parties to bear their own costs' throughout.