

Prem Kaur Vs. J.S. Guleria

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Court : Delhi

Decided On : Nov-06-1995

Reported in : 1995RLR589

Judge : Anil Kumar, J.

Acts : Delhi Rent Control Act - Sections 14(l)

Appeal No. : Civil Revision Appeal No. 288 of 1995

Appellant : Prem Kaur

Respondent : J.S. Guleria

Advocate for Pet/Ap. : Mukul Rohatagi,; Ravi Gupta,; Anil Kumar and;

Judgement :

Anil Kumar, J.

(1) [ED. facts : Petitioner owns suit building. She is living in the ground floor with her married son, married grandson, a grand daughter (28 years old) ; another son's wife and latter's son aged 17 years. Accommodation on the ground floor with the petitioner consists of a Drawing room, a Dining room and 3 bed rooms. She filed a petition u/S. 14(l)(e) & 25B of Drc Act in Dec., 89. Tenant was granted leave to defend on 23.2.91. She then withdrew the petition on 13.8.91 with permission to file afresh, She then filed the present petition on 9.10.91. Tenant applied for leave

to defend contending that as he had earlier been granted leave to defend, same should now automatically be granted Arc agreed and granted leave to defend on 6.2.95 ignoring the plea of the landlady that there had been change of circumstances for the 2nd petition.] After detailing above. Judgment proceeds :

(2) The accommodation on the ground floor of the property which is available with the landlady consists of a drawing room, a dining room and two regular bed rooms with attached toilets. There is another room which according to the landlady is a study. It is shown as a study in the sanctioned plan copy whereof is on record. However, according to the respondents, it is a bed room with attached toilet or bath room to this room. The learned counsel for the petitioner conceded at the time of hearing that for the sake of argument, this portion of the property in suit may be counted as a bed room. This means that accommodation on the ground floor comprises of three bed rooms (counting the room which is marked as study) besides a drawing room and a dining room. There is also a garage on the ground floor.

(3) The second floor of the suit property is also in possession of the landlady. It consists of a barsati of the size of 1 - ft. X 11 ft. According to the learned counsel for the respondents, this barsati portion consists of two rooms while according to the learned counsel for the petitioner landlady it is only one room. In this connection, the learned counsel for the petitioner has drawn my attention to (he sanctioned oF plan which shows barsati as only one room. Apart from this, a copy of the eviction order passed against the tenant who was earlier occupying that barsati shows that the second floor accommodation consists of barsati only measuring 18' X 11' with a bathroom having temporary asbestos sheets roof and an open lavatory. Thus, the accommodation on the second floor is really a big barsati without a regular toilet and bath. If the above barsati is to be used as a bed room, the least that is required is a toilet and a bath room. The landlady cannot be expected to be using an open lavatory. These are the facts as they exist today. Paras 8 & 9 relate to previous petition],

(4) Thus, it is clear that the impugned order has been passed on the basis that the facts on the question of bona fide need as pleaded in the previous petition and as

forming part of the present petition are the same. I have been taken through material facts pleaded in the previous petition as also in the present petition. Having perused the same, I am of the view that the Addl. Controller erred in proceeding on the basis that the material facts are the same in both the cases. In the earlier petition in para (viii) of para 18(a), it was pleaded that the other son of the petitioner Col. K.J. Singh was at that time posted at Delhi and was residing with his family at 10/109, Arjun Vihar, New Delhi, a flat allotted to him by the defense authorities. It was further pleaded that Col. K.J. Singh would be completing his three years' tenure of posting in Delhi in June 1990 when he would be due for posting outside Delhi. In the present petition, in this connection it has been pleaded in sub-para (viii) of para 18(a) that towards end of June 1991, Col. K.J. Singh who was residing at 10/109, Arjun Vihar, New Delhi in a flat allotted to him by the defense authorities has also shifted to and is residing in a portion of the ancestral house (property in suit) with the petitioner as he had to vacate the said Government flat in consequence of the threat of eviction proceedings against him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The need for the said son's family to come and stay arose for the reason as pleaded in the present eviction petition that the said son was granted two years study leave after his posting in Delhi was complete. The leave was granted w.e.f. 18th July, 1990 necessitating the said son to come and reside with the petitioner in his ancestral house. Besides going into any other question, to my mind, this is a material change in the circumstances and the facts pleaded for purposes of bona fide requirement. Therefore, the considerations which prevailed at the time of granting leave to contest in the previous petition were no longer available. The impugned order of the Addl. Controller granting leave to contest is thus liable to be set aside for this reason alone. It proceeds on a wrong assumption of facts.

(5) The learned counsel for the respondents strongly urged that the order granting leave to contest in the previous eviction petition has been rightly passed by the Arc in the present case and, therefore, no interference is called for. In the facts as mentioned hereinbefore, I am not inclined to accept the argument that the order granting leave to contest passed in the previous eviction petition is binding in the present proceedings and therefore, simply for that reason, leave to contest ought

to be granted in the present case. The order in the previous petition on the question of grant of leave to contest is practically a non-speaking order. Moreover, circumstances have changed since then.

(6) Coming to the facts of the present case, for purposes of determining whether respondents are entitled to leave to contest the petition, the requirement of the landlady has to be considered. No other point is in controversy. The details of accommodation available with the landlady and the members of her family have already been mentioned in the earlier part of this judgment. On the basis of those details, it has to be seen that at least one bed room is required for the landlady herself. Inderjit Singh's family, i.e., family of the elder son of the landlady requires at least three bed rooms-one for Inderjit Singh and his wife, another for their daughter aged twenty-eight years and a third for the married son. No dispute has been raised about the requirement of the family for a dining room and a drawing room. On this basis alone, the accommodation available with the landlady on the ground floor is not sufficient. Then, we have to consider the requirement of K.J. Singh, the second son of the landlady. Presently K.J. Singh is said to be posted at Dehra-dun. According to a certificate from Army authorities filed by him, he is due to retire in October 1996. His younger son aged about seventeen years is studying in Army school at Delhi and is admittedly staying in the property in suit. Wife of K.J. Singh is also stated to be staying in Delhi along with her son. The accommodation with K J. Singh in Dehradun is a Single Officer flat. Assuming for the sake of argument that wife of K.J. Singh has to shuttle between Delhi and Dehradun, still a separate bed room is required for her because K.J. Singh would be also coming to Delhi to visit his mother and family. There should be a separate bed room available for him and his wife. Another room is required for his son aged 17 years. There is also requirement of a guest room for the three married daughters of the landlady. In fact, K.J. Singh has pleaded requirement/or a separate drawing room for his unit of the family which in normal circumstances, he should have because he is an officer in the Army having his own family as against the family of Inderjit Singh his elder brother who is on the ground floor of the property and whose family must be using the ground floor drawing room.

(7) For all these reasons, I am of the view that the accommodation available with the landlady is far too short to meet the requirements of her family. The present is not a case where there is any dispute (none has been raised) about ownership and letting purpose. The result is that the application of the respondents tenants for leave to contest the eviction petition is ordered to be dismissed. It follows that averments in the eviction petition are deemed to be correct. An eviction order is passed in favor of the petitioner landlady and against the respondents regarding the first floor of property no. D-360, defense Colony, New Delhi. However, in view of provisions of Section 14(7) of the Act, six months' time is granted to the respondents to vacate the premise'. No costs. (The End of R.L.R. 1995).

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