

Devi Ram and ors. Vs. Ram Kapoor

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Court : Delhi

Decided On : Nov-03-1998

Reported in : 76(1998)DLT637; 1999RLR71

Judge : C.M. Nayar, J.

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

Appeal No. : C.R. No. 115 of 1995

Appellant : Devi Ram and ors.

Respondent : Ram Kapoor

Advocate for Def. : Sidharth Sharma, Adv.

Advocate for Pet/Ap. : Y.K. Jain and; B.K. Sharma, Advs

Disposition : Petition allowed

Judgement :

C.M. Nayar, J.

1. This petition is directed against the judgment dated November 2, 1994 passed by Shri R.K. Gauba, Additional Rent Controller, Delhi dismissing the application of eviction of the petitioner under Section 14(1)(e) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act').

2. The petition was filed on July 11, 1986 and summons under Schedule III of the Act were issued. Leave to defend was granted vide order dated November 12, 1986 and, as a consequence, the respondent filed written statement and subsequently amended the written statement by way of an application under Order 6, Rule 17, CPC which was allowed.

3. The suit premises were handed over to the respondent by way of a license agreement dated March 1, 1975 and the respondent was to pay Rs. 850/- per month as license fee. Subsequently this arrangement was converted into lease agreement by which the rental fixed was Rs. 900/- per month exclusive of electricity and water charges. Petitioners 2 and 3 are sons of petitioner No. 1. The petitioners live in their ancestral house in Village Basant Nagar which is a rural area and is alleged to be quite close to the tenanted premises. Petitioner No. 1 is a retired Government servant while petitioners 2 and 3 are in Government service. The petitioners made the plea that the suit property was jointly owned by all of them as a H.U.F. of which petitioner No. 1 is the Karta. It was alleged that premises was let out to the respondent for residential purposes only. The petitioners are in occupation of two rooms in House No. 47, Village Basant Nagar and four rooms in House No. 47-B in the same village. It is stated that all the six rooms are dark and dingy without proper ventilation and that both the houses do not have kitchen and toilet facilities and are unfit for human occupation and, therefore, unsuitable and insufficient for the petitioners requirement as well as need of the members of the family dependent on them.

4. It is alleged that the size of the family has increased over the years and there are grown up members. The family of petitioner No. 2 comprises of himself, his wife, one daughter aged 14 years, one son aged 20 years, second son aged 13 years and third son aged 7 years with another daughter who has since been married. The family of petitioner No. 3 is stated to comprise of himself, his wife, one son aged 10 years, one daughter aged 7 years and another daughter aged 3 years. The petitioners allege that they have good status in the society and require the suit premises bona fide for residence of themselves and for family and there is no other reasonable, suitable accommodation available for the members. The respondent who has continuously resided in the premises from 1975 filed a written

statement alleging that the petitioners have not disclosed the extent of accommodation available with them. The title to the property was also denied and it was claimed that there is no relationship of landlord and tenant between him and petitioners 2 and 3. The suit premises were let out for residential and commercial purposes as the tenancy was not created with effect from March 1, 1975 but in 1977 when the rate of rent was fixed at Rs. 900/- per month. It was, however, stated that no writing was effected at the time of creation of the tenancy. The plea that the property belonged to HUF of which petitioner No. 1 was Karta was also denied. The respondent further denied that the family of the petitioners consisted of the members alleged in the petition or that the petitioners have taken any loan of Rs. 18,000/- which had to be repaid at the time of letting out. The ground of bona fide need was denied and it was stated that the petitioners filed the petition with ulterior motive.

5. The Additional Rent Controller appraised the evidence on record and held that petitioner No. 1 alone was the owner of the suit property and petitioners 2 and 3 did not have any share or title thereto. This finding is not seriously contested in the present petition and it will not be, therefore, necessary to deal with the same. It was, however, held that the need of petitioners 2 and 3 who are the sons of petitioner No. 1 cannot be ignored as they did not own any property in their individual names except the share in the ancestral property in Village Basant Nagar. Paragraph 14 of the judgment may be referred to in this regard :

'14. But then, the fact remains that petitioner Nos. 2 and 3 are sons of the petitioner No. 1. It is not disputed that petitioner Nos. 2 and 3 do not own any property in their individual names except the share in the ancestral property at Village Basant Nagar, with regard to the sufficiency or suitability of which we shall revert later. Petitioner No. 1 has prayed for an eviction order for the purpose of residence of himself as also for the residence of petitioner Nos. 2 and 3, who are his sons as also for the families of the latter two. The case of the petitioner has to be examined further in this light.'

6. The purpose of letting was next discussed and it was held, on appraisal of evidence and documents on record that it was residential. Paragraphs 19 and 20

may be referred to as below:

'19. From the above documents, to the authenticity of which there is no dispute it is sufficiently demonstrated that the respondent was paying charges in the nature of rental at the rate of Rs. 850/- per month to the petitioner even w.e.f. March, 1975 and that he acknowledged on all these documents that the letting was for residential purposes only. This continued even after the charges in the nature of rental stood increased to Rs. 900/- p.m. as shown by document Ex.AW1/9 pertaining to Sept., 1977.

20. From the above, I find that the petitioners had not at any stage agreed to the letting purpose to be anything but residential. The question which arises further is as to whether the premises had been used for purpose other than residence and as to how far such user by the respondent can bind the petitioners.'

Further, the Additional Rent Controller came to the conclusion that the plea that letting purpose was composite one for residential and commercial is a falsehood as the premises had been let out for residential purposes only. There is no challenge to this finding as recorded by the Rent Controller by learned Counsel for the respondent. The same is, accordingly, affirmed.

7. The pleas of the petitioners with regard to the bona fide requirement of the tenanted premises were elaborately discussed and the need for the requirement of petitioners 2 and 3 was upheld. Paragraph 24 of the judgment makes the following reading:

'The petition had alleged that the petitioner No. 1 was an aged man of 70 years (petition was filed on 11.7.86) and that he could not live without the assistance and company of his sons petitioner Nos. 2 and 3. It thus appears that the petitioner No. 1 claims eviction on the ground of bona fide need for residence for himself as also for the purpose of residence of petitioner Nos. 2 and 3. It is not disputed on behalf of the respondent that petitioner Nos. 2 and 3 do not own any property in their name, except their claim in respect of the suit property. The petitioner No. 1 and his sons petitioner Nos. 2 and 3 along with their respective families are presently living together. Even if it be said that they do not share the mess with each other, it

cannot be inferred that the petitioner Nos. 2 and 3 are not dependent on their father petitioner No. 1 for the purpose of residence. There can be no quarrel with the desire of petitioner No. 1 to live in the evening of his life with his grown up children and their respective families. It is settled law that even those children who have capacity to earn can always be dependent on their father for the purpose of residence. thereforee, even though petitioner Nos. 2 and 3 have not been proved to be co-owners in respect of the suit property the petition can be maintained by petitioner No. 1 alone for the purpose of residence including of petitioner Nos. 2 and 3 and their respective families.'

The number of members of family of petitioner No. 2 and their requirement was then considered and the same is stated in paragraph 26 which may also be reproduced as under:

'26. Petition had alleged that the family of the petitioner No. 2 comprises of himself, his wife, one daughter aged 14 years, one son aged 20 years, 2nd son aged 13 years 3rd son aged 7 years with second daughter since married. Family of petitioner No. 3 was stated to comprise of at that time the petitioner No. 3 himself, his wife, his son aged 10 years, one daughter aged 7 years and 2nd daughter aged 3 years. The respondent took a convenient way out by denying each of these allegations without specifically stating as to what was the actual constitution of two said families, if not according to the averment of the petition. AW1 appearing in support of his case on 21.7.87 has testified that family of petitioner No. 2 consisted of himself, his wife three sons aged 21 years, 11 years and 8 years respectively with one un-married daughter aged 15 years and one daughter since married. In this way, the age of 2nd son only was at variance from the averment of the petition. In absence of any evidence to the contrary, I would rather go by evidence of AW1. After the statement of AW1 recorded on 21.7.87 more than seven years have elapsed. thereforee, the family of petitioner No. 2 as of today, includes himself, his wife, three sons aged 28 years, 18 years and 15 years respectively besides one daughter 22 years and apparently of marriageable age.'

The ultimate finding for the need and requirement of the petitioners was recorded in paragraph 28 of the judgment which may be reproduced as follows:

'28. From the above, I find the requirements of the petitioner No. 1 and his dependents include one room for petitioner No. 1 himself, one room each for petitioner Nos. 2 and 3 and their respective wives. Besides the above this family includes three grown up and adult sons of marriageable age and one grown up and adult daughter of marriageable age along with three minor children. It is settled law that grown up children require separate rooms to live in a manner he or she likes (Brij Mohan v. Shripal Jain, : 49(1993)DLT543 . In this view of the matter, while the minor three children can be accommodated with the elders of the family, the four adult children do require separate rooms for their purposes. The minimum requirement of this family, therefore, comes to atleast seven bed rooms.'

8. The learned Additional Rent Controller rejected the pleas of the respondent that the petitioners owned two fully developed houses at Vasant Vihar and one property in Village Basant Nagar on appraisal of evidence on record and concluded that there was a vague and non-specific evidence which cannot be given any credit. The respondent therefore, miserably failed to prove this allegation on this point. The petitioners did not deny that they were living in House Nos. 47 and 47-B in Village Basant Nagar but the premises available contained dark and dingy rooms and they were not suitable for the residence of the petitioners and their respective families and in one of the rooms the brothers of petitioner No. 1 were also living. The Additional Rent Controller, however, held that petitioner No. 1 was the sole owner of House No. 47-B, Village Basant Nagar which was self occupied. The petitioners were, therefore, provided with four rooms as well as one additional room, kitchen, latrine and bath room in that house. The other property 48/3, Village Basant Nagar was alleged to be inspected on November 28, 1983 by House Tax Department, official of Municipal Corporation and was alleged to be owned by petitioner No. 1. In view of the same the plea of the petitioners that they required the demised, premises bona fide was rejected. Paragraph 37 of the judgment analysing the reasons of the Additional Rent Controller reads as follows:

'37 In the present case the petitioner and his family have admittedly lived in their present residence in Village Basant Nagar, New Delhi for their entire lives since birth. The suit property had been constructed some time in the early 1970 after grant of the perpetual lease in the plot beneath the same. It was given initially on license basis and then let out from the period 1975 onwards. The petitioners definitely had an option to occupy the suit property at that stage. It was claimed in the petition that a loan of Rs. 18,000/- had been taken for construction which had to be repaid and so the premises had been rented out. But this fact/pleading has by and large remained unproved. The person from whom the loan had been taken and the terms of the loan have not been proved. Even if one ignores this fact, it has to be borne in mind that the petitioner admitted possession of only six rooms in House No. 47 and 47-B, Village Basant Nagar, New Delhi which were stated to be unsuitable as inhabitable on account of them being dark and dingy rooms without ventilation. It was also claimed that these two properties lacked kitchen and toilet facilities. The evidence on the record has rather dispelled this claim. As already seen, it has been proved that a kitchen, latrine and bath do exist in this accommodation and are available to the petitioners. Beside this, the respondent has also proved that the petitioners also owned and occupied part of property No. 48/ 3, Village Basant Nagar. This property stated to be adjoining to the other two properties provides two additional rooms to the petitioners and thereby making available to him in all eight rooms. The petitioner had concealed this accommodation in the petition and therefore he cannot be now heard to state that this additional accommodation is also un-suitable in any manner.'

9. The facts are not in dispute in the present case. The premises were let out to the respondent in the year 1975 and he has resided in the same since then. Petitioner No. 1 is possessed of some accommodation in the village in H. Nos. 47 and 47-B and 48/3 though it is held by the Additional Rent Controller that the premises at 48/3 Village Basant Nagar were not disclosed. However, it is stated that the petitioners have eight rooms available in the above property and, therefore, the need for the present premises cannot be held to be bona fide. The Additional Rent Controller has clearly fallen in error by holding that the alternative premises as available to the petitioners will suffice their requirements and the need of their respective families. It was specifically held that the minimum requirement

of the family would come to at least 7 bed rooms though the Controller again committed material irregularity in not assessing the requirement and need on the basis of the actual number of family members which have already been indicated in the earlier part of this judgment. He has stated that 'while the minor three children can be accommodated with the elders of the family, the four adult children do require separate rooms for their purposes.' It is well settled that the landlord cannot be dictated the way he shall reside nor can the mode of division of rooms can be prescribed for each family member. Sometimes the children in the family cannot be accommodated in the rooms used by the adults and it is illogical to hold that minor children can be accommodated with the elders of the family. The accepted need of seven rooms is, therefore, also understated.

10. The Legislature did not intend that if the landlord was occupying even one room anywhere in the urban area he must be forced to live in that room and should not be allowed to evict a tenant from his own house which alone can fulfill his need for a reasonable accommodation for his family.

11. The Full Bench of the Punjab High Court in *Sant Ram Das Raj Kalka v. Karam Chand Mangal Ram*, , had evaluated the definition of requirement and came to the conclusion that where the landlord establishes that he has made his application for eviction in good faith and he requires the premises for his own accommodation and further that the premises already in occupation do not meet his requirements and needs, he is entitled to evict his tenant.

12. The petitioners are provided with some accommodation in the village and it is argued that they now desire to move to the present accommodation as it is situated in a better area and will meet the requirements of the family. There is no mala fide in the same nor the desire can be termed to be unreasonable and uncalled for. As a broad workable rule the landlord must be left to assess his requirements in the background of his position, circumstances, status in life and social and other responsibilities, and other relevant factors can formulate the criteria to assess the bonafide requirement. This is so held in the judgment reported as *Shri Om Parkash Singal v. Shri Roshan Lal Khanna*, 1969 (1) R C R 391 of the judgment reads as under:

7. The main plank on which the respondent's learned Counsel has sought to support the learned Tribunal's order is that the impugned conclusion is one of the fact and, therefore, not open to challenge on second appeal under Section 39 of the Act. Reliance for this submission has been placed on *Prakash Chander Gupta v. Tarn Chand Malik*, 1968 D.L.T. 200; *Manohar Singh v. Kanshi Ram & Sons*, 1967 D.L.T. 590; *Shri V.N. Sarin v. Major Ajit Kumar Poplai*, 1965 P.L.R. 678. *Roop Lal Mehra v. Smt. Kamla Soni*, 1966 P.L.R. 146 (Delhi Section); and *Hari Shankar v. Girdhari Lal*, AIR 1963 S.C. 698.

Section 14(1) Proviso (e) of the Act may now be reproduced :

14. Protection of tenant against eviction--(1) Notwithstanding anything to the contrary contained in any other law or contract no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favor of the landlord against a tenant.

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of the premises on one or more of the following grounds only, namely :

x xx xx xx(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him if he is the owner thereof or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonable suitable residential accommodation.'

In *Roop Lal Mehra's* case, cited on behalf of the respondent the Court observed as follows :

'The attention of the Courts will have, therefore, to be directed to find out: (a) whether or not the requirement of possession is bona fide, and (b) whether or not the premises already in possession of the landlord afford a reasonably suitable alternative accommodation. It would also not be correct to suggest that the question of accommodation, actually in possession of the landlord, being 'reasonably suitable' is to be judged only in the context of physical sufficiency of

the accommodation. In terms of physical sufficiency, three rooms in possession of a landlord with a family of three, may be sufficient, yet Court may hold that accommodation insufficient having regard to various circumstances, such as, the social status of the family or traditions and customs observed by it. In that view the decision of the landlord, would be both subjective and objective. Subjective in the sense that the matter has not to be decided from the stand-point of the Rent Controller or the tenant but from that of landlord. In deciding this from the point of view of the landlord, various considerations, mentioned above, would be relevant. So long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale. Similarly, the suitability of the other accommodation will also have to be decided from the stand-point of a reasonable landlord.

True, that the necessity for such legislation has arisen with a view to protecting the tenants from unscrupulous landlords, who may adopt devices to extract exorbitant rent, but at the same time the statute is not intended to deprive a landlord of his bona fide desire, so long as that desire is confined within reasonable limits, judged from a practical and not fanciful point of view, to be more comfortable by occupying his own house. It is objective in the sense that the authorities under the Act have not been rendered powerless to pronounce dissatisfaction with the bona fides of the landlord's claim, provided they judge it from the point of view of the landlord. The law does not require a landlord to sacrifice his own comforts and requirements merely on the ground that the premises are with a tenant. Whether or not the alternate accommodation available to the landlord is suitable or not, must, therefore, be decided after taking into account all relevant circumstances, but in deciding that the authorities must step into the position of the landlord and decide in what 1 venture to call a broad common sense way as a man of the world. In so deciding the social customs, conventions and habits, usages and practices of the society also cannot be completely ruled out as irrelevant. The problem will in all cases have to be approached from a practical point of view and from the point of a reasonable man and not from that of a whimsical landlord, who may be wanting a premises for satisfaction of his mere whims. Whatever may be

the scope of the expression : 'required bona fide by the landlord' it appears to be fairly clear that read as a whole, Clause (e) of proviso to Sub-section (1) of Section 14 does not make the landlords sole arbiters of subjectively deciding the question of their requirements. It is possible mat the later part of the clause has been, added to avoid an argument that once a landlord is able to show that he in fact desires possession and genuinely intends to occupy it, his claim becomes unanswerable. I think, the clause does confer a power of scrutiny, though of limited nature, on the authorities charged with the function of deciding disputes under the said Act'.

After taking into account a finding of fact, which was not questioned in the High Court, the second appeal presented by the tenant was allowed in the reported case. The ratio of, and the trend of discussion in this decision do not seem to help the respondent. The word 'bona fide' as used in Proviso (e) has been considered judicially in a number of decisions and this interpretation is no longer in controversy. It means, genuinely or in good faith, and it conveys an idea of absence of intent to deceive. If the owner-landlord is not considered to be seeking eviction on false pretext of acquiring additional accommodation with some collateral purpose or oblique motive and his requirement cannot be considered to be inspired by a pure fanciful whim, the plea of bona fide requirement put forth by the landlord-owner, deserves ordinarily to be upheld. As a broad workable rule, the landlord must be left to assess his requirements in the background of his position, circumstances, status in life and social and other responsibilities and other relevant factors. The order of the learned Tribunal below seems to suggest that unless the landlord can satisfy the Controller or the Tribunal the absolute necessity for additional accommodation, the requirement cannot be considered to be bona fide. This line of approach is, in my view, erroneous and the error involves a substantial question of law. While considering the question of ejectment on the ground of bona fide requirement of the landlord owner, it is eminently desirable to strike a proper and just balance between the rights of the owner on the one hand and those of the tenant as protected by the law on the other. The owner is entitled to make himself comfortable and is, normally speaking, the best Judge of his own requirements, unless he can be considered to be abusing or misusing this right to acquire possession of his property in eviction proceedings, which means that he is

seeking to get possession under the veil of bona fide requirement, but for some other purpose, his claim demands acceptance. Of course, in some rare cases, when his claim prima facie appears to be wholly unreasonable, when considered in the background of his status, position and other family circumstances, the Controller or the Tribunal may be persuaded judicially to negative his bona fides. Such, however, is by no means the case before me.'

13. The Supreme Court in *Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon*, : [1998]2SCR470 has also defined the phrase 'bona fide need' or 'bona fide requirement' and reliance is placed on this judgment by learned Counsel for the respondent. Paragraph 18 reads as follows:

'The phrase 'bona fide need' or 'bona fide requirement' occurs not only in the Delhi Rent Control Act but in the Rent Control legislation of other States also. What is the meaning of this phrase has been considered innumerable times by various High Courts as also by this Court and requires no citations to explain its legal implication. Even then reference may be made to the decision of this Court in *Ram Das v. Ishwar Chander*, : AIR 1988 SC1422 , in which it was indicated that 'bona fide need' should be genuine, honest and conceived in good faith. It was also indicated that landlord's desire for possession, however honest it might otherwise be, has inevitably, a subjective element in it. The 'desire' to become 'requirement' must have the objective element of a 'need' which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down. These observations were made in respect of the provisions contained in E.P. Urban Rent Restriction Act, 1949.'

14. There is no dispute that the need of the landlord must be bona fide and genuine and cannot be determined on false and illusory factors. In the present case, the petitioners as well as the respective families comprise of large numbers and even the Additional Rent Controller has assessed their requirement of a minimum of 7 bed rooms though he has erroneously stated that the minor children can be accommodated with the elders of the family. It has been highly emphasised that the petitioners are comfortably residing in the village and they have additional accommodation available with them in another property which was not disclosed in

the eviction petition. Firstly, the additional accommodation is in the rural area and it has been vehemently stressed that the rooms are dark and dingy and it will not be possible to lead a comfortable life in those surroundings when basic amenities of life are not available. Secondly, the determination of the Controller about the accommodation was made on the basis of Inspection report which was indeed beyond the pleadings of the parties. The petitioners did not have any opportunity to explain the same. Lastly, the law is well settled that the land lord is the best Judge of his residential requirement and whether an alternative accommodation is actually available would depend upon the landlord's rights to such accommodation as well as the suitability of the same. In *Prativa Devi (Smt.) v. T.V. Krishnan*, : (1996)5SCC353 , the Supreme Court set aside the judgment of this Court and stated the facts and law in paragraph 2 of the judgment which reads as follows:

2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjang Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and thereforee she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best Judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks mat because of her age she needs to be looked after. Now, that is a look out of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous ad vice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.'

15. The law is, therefore, well settled that the landlord is entitled to assess the need and requirement for himself and his other family members. Neither the Court nor the tenant can dictate to him the mode and manner in which he should live or to prescribe for him a residential standard of their own. The facts as enumerated above, will clearly establish that the suit property is situated in a more developed area whereas the petitioner/landlord is provided with some accommodation in rural area. The family has grown into large number and the minimum need even assessed by the Rent Controller is of seven bed rooms. The alternative accommodation as available to the petitioners is, therefore, not relevant to determine their bona fide requirement as well as the need of the respective families. The plea as raised by learned Counsel for the respondent that the petitioners are happily living in the accommodation available to them in Village Basant Nagar and that the present need is not bona fide is clearly without any justification and basis. On a specific query as to whether the respondent will be willing to exchange the premises which are presently in his possession with the accommodation which is available with the petitioners in the village, it has been stated that it will not be possible as the respondent will not be comfortable in that vicinity. In this background it will not be logical to prescribe two different yardsticks for the landlord and the tenant.

16. In view of the above reasons, the petition is allowed and the Order dated November 2, 1994 passed by the Additional Rent Controller is set aside. The decree of eviction is passed under Section 14(1)(e) of the Act in favor of the petitioner. The decree, however, shall not be executable before the expiry of six months from today. There will be no order as to costs.