

Prabhu Vs. K.M. Sharma

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Court : Delhi

Decided On : Feb-18-1997

Reported in : 66(1997)DLT476; 1997(41)DRJ191; 1997RLR242

Judge : Usha Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 811 of 1996

Appellant : Prabhu

Respondent : K.M. Sharma

Advocate for Pet/Ap. : I.J.S. Gulati and; V. Shankaran, Advs

Judgement :

Usha Mehra, J.

(1) Eviction petition on the ground of bona fide requirement was filed by the present respondent (Mr.K.M.Sharma). He is stated to be the owner/landlord of the premises bearing No. B-3/16, Model Town, Delhi. This premises was let out to late Shri Sukhbir Singh. After his death his legal heirs are in occupation of the premises in question. The tenanted premises consisted of one room, kitchen, bath and W.C. on the first floor with common stair case. This was let out for residential purpose on a monthly rent of Rs. 75.00 exclusive of electricity and water charges.

It had been the case of the respondent/landlord that he purchased the property on 7th December, 1980. The whole of this property was in occupation of various tenants. On the ground floor there are three rooms, besides a godown, a store, bath, two kitchens (unauthorisedly constructed) toilet/W .C. Along with open courtyard. Besides on the back side there are three shops on the ground floor. These were in occupation of three different tenants. When the petition of eviction was filed on 13th February, 1990 the whole of the ground floor was in occupation of tenants. Three shops were in occupation of S/Shri Krishan Kumar) Madan Mohan Bhanot and Smt. Nathi Devi (who died in 1985). The godown and the store were in occupation of M/s Anand Consumer Coop. Store. One room on the ground floor adjacent to the store was in occupation of Smt.Daya Pandey. Smt.Daya pandey sub-let the same to Shri Krishan Lal alias Kishan Kumar Along with one unauthorisedly constructed kitchen. Respondent/landlord filed various litigations with the tenants for eviction on various ground namely sub-letting, non-payment of rent, material alteration and addition and on the ground of bonafide requirement. He obtained eviction order against Shri Samey Pal Singh under [Section 14(l)(h)], against Smt.Nathi Devi under [Section 14(l)(b)] and against Smt.Daya Pandey under [Section 14(1)(b)] of Delhi Rent Control Act (in short the Act). It had been the case of the petitioner that inspire of the eviction order having been obtained, the tenants have not vacated the premises in their occupation. The tenanted rooms were still in their possession.

(2) That he needed the premises for himself and his family. His family consisted of himself, his wife, one aged uncle dependent on him and the servant who was living with him. He works in a nationalised bank as an Officer. His wife works, as Teacher in a Government High School. He has no other suitable residential accommodation with him. For want of accommodation he lives in a rented house. Because of paucity of accommodation his parents, sisters, in-laws and close relations cannot visit him nor live with him. His mother wants to live with him but due to shortage of accommodation he cannot call her to live with him. He requires at least three to four bed rooms to accommodate himself, his wife, his uncle and relations who visit and stay with him.

(3) This petition was contested by the petitioner herein on the grounds, namely (i) need of the landlord was not bona fide, (ii) he has suitable accommodation with him at F-8/B, Model Town, New Delhi, which he concealed at the time of filing the petition and finally the entire ground floor at B-3/16, Model Town, New Delhi, except one room which is with the LRs of late Shri Krishan Lal, are in his possession. The accommodation on the ground floor has been lying vacant. He has not occupied the same deliberately since March, 1987. He in fact wants the entire ground floor to be converted into commercial complex. The three rooms alleged to be shops are in fact meant for residence. These have illegally been converted into commercial purpose. He should, therefore, first take action against the occupants of those three rooms (shops). Moreover, possession of godown and the store on the ground floor has already been handed over to him.

(4) The Additional Rent Controller (in short ARC) vide his order dated 1st March, 1996 decided the question of ownership in favor of the respondent. He also admitted the purpose of letting to be residential. So far as the alternative accommodation pleaded by the petitioner herein bearing No. F-8/8, Model Town New Delhi, it was proved on record that, that accommodation was a tenanted accommodation with the respondent/landlord. The owner of that premises bearing No. F-8/8, Model Town, New Delhi has in fact served notice Exhibit AW-4/4 on the respondent to vacate that premises. Thus the learned Arc held that the respondent/landlord had no other suitable residential accommodation available with him for his residence. So far as the constitution of the respondent's family that is also not in dispute. He, however, by his testimony proved that his uncle Shri Banarsi Dass was also living with him and his uncle as well as of servant's name appear in his Ration Card. The Arc has not taken the need of his uncle Banarsi Dass living with him as his need. Arc rightly held that the need of a distant relation living with the landlord on compassionate ground cannot be treated as the need of the landlord. So far as regular servant living with him that fact has not been assailed before me. Even otherwise the Ration Card of the respondent clearly confirms that the landlord has a regular servant. Hence he requires an accommodation to accommodate that servant. The observation of the Arc that the landlord who has been working as a Divisional Manager with Union Bank of India and his wife who happens to be a Teacher enjoy a reasonable status in life,

therefore, their need of a regular servant and accommodation to accommodate such servant cannot be called sham need. So far as these admitted aspects are concerned, the decision of the Arc has not been in question before this Court.

(5) That the only ground on which the order of the Arc has been assailed is with regard to the bona fide requirement of the respondent. Admittedly, the respondent/ landlord is living in a tenanted premises where he has two rooms and one mezzanine room. His landlord has already served him with a legal notice to vacate the premises. On the ground floor of the property in question there are three rooms which have been used as shops ever since he purchased this property. Those three rooms happen to be on the back side of the house. Those rooms are being used as shops. It has been proved on record that these three rooms are in occupation of different tenants though eviction orders against Smt.Nathi Devi and Shri Samey Pal Singh had been passed. They did not vacate the premises in their possession. It was only Smt.Daya Pandey who vacated the room in her occupation and that too during the course of execution proceedings. These three rooms which are being used as shops are not attached with any bath or W.C. The map shows that these rooms cannot be used independently for residential purpose. therefore, if Daya Pandey vacated one of the shop that by itself cannot be used by the respondent for the purpose of his residence. For residence he requires kitchen, bath room, toilet, so far as the godown and the store are concerned, there is unimpeached testimony of Shri Rama Nand that M/s Anand Consumer Co-op. Store is still running its business using the godown and the store in question. Shri Rama Nand was the President of M/s Anand Consumer Co-op. Store uptill 1985. Appearing as AW-5 he testified that till 1985 the godown and store were being used by M/s Anand Consumer Co-op.Store. Thereafter one Mr.Anand Kumar became President of the Store. The respondent Mr.K.M.Sharma appearing as AW-3 by his testimony corroborated the testimony of Shri Rama Nand. Contention of Mr.Gulati that Rama Nand appeared before the Arc on behalf of the respondent/landlord does not mean that what he stated as AW-5 was concocted or wrong. A Parokar's testimony if truthful has to be accepted. It cannot be discarded merely on the ground that on some of the dates he appeared before the court on behalf of the landlord. Even in his lengthy cross examination, this petitioner could not dislodge nor could discredit his testimony. Shri Rama Nand

denied that Radhey Shyam was the share holder of M/s Anand Consumer Co-op Store Ltd. He also denied the suggestion that Radhey Shyam's name appeared in the share holders list. He rather reiterated that till such time he was President, the statement used to be sent to the Registrar of Societies, showing that the godown and the store was in occupation of the Society. He till 1985 did not hand over the possession of the store and the godown which was under the tenancy of the Co-operative Store Ltd. to the landlord. It was suggested to him that possession, of the godown and store were handed over on 7th November, 1992 which suggestion he denied. The present petitioner failed to prove on record that possession of store was handed over on 7th November, 1992. Thus, it cannot be said that the testimony of Rama Nand in any way proves that the godown and store had been vacated In November, 1992 or that the possession of the same was handed over to the respondent/landlord. The contention of counsel for the petitioner that the statement of Rama Nand was contradicted by the statement of Radhey Shyam, has no force. It is not disputed that Rama Nand was the President of the Store. Whereas Rama Nand stated that Radhey Shyam was not the share holder in the Store. It was for the petitioner or for that matter Radhey Shyam to have proved that he was having any connection with M/s Anand Consumer Co-op Store Ltd. Radhey Shyam did not produce any documentary evidence to prove that he was the member of this Store. He never handed over vacant possession of the store or godown to the respondent. Rather his stand had been that Rama Nand as President of the Store handed over the possession of the godown and the Store. Whereas Rama Nand denied the same. I see no reason to disbelieve the Testimony of Rama Nand. Radhey Shyam admitted that he could not produce share certificate to prove that he was member not could produce any receipt. He could not tell the names of other members of the Store. According to him Rama Nand signed the receipt issued to him but when Rama Nand appeared no such question was put to him. Radhey Shyam could not tell any other name in whose presence Rama Nand handed over the possession of the godown to the respondent landlord. therefore, the testimony of Radhey Shyam cannot be relied as against Shri Rama Nand who categorically stated that he never handed over the possession of the godown or store to the landlord. To my mind, the learned Arc rightly concluded that the godown and store are not available to the landlord.

From this it emerges that two rooms are in possession of the respondent/landlord as marked 'X' and 'X-I' on the plan Ex.AW-3/4. Marks 'X-2' is in possession of LRs of Krishan Lal. 'X-4' is the godown. The same is in possession of M/s Anand Consumer Co-op.Store Ltd. Along with the store. The LRs. of Krishan Lal are having possession of both the rooms and the kitchen. 'X-7' is the shop. Thus, in the possession of respondent/ landlord there are only two rooms on the ground floor and in between these two rooms there is open courtyard and two kitchens. There is no direct connection between rooms 'X' and 'X-I'. thereforee, the Arc taking these factors into consideration concluded that even if during the pendency of these proceedings one room has fallen vacant and occupied by the respondent still he requires more accommodation. Out of these three rooms, one room is a shop. The others are marked 'X' and 'X-I'. inspire of these rooms having been made available to the respondent it does not meet his requirements. He is a man of status. He requires one room for himself and his wife, one for the servant, which need cannot be called whimsical. thereforee, after housing the servant end himself and his wife, he is left with no other room to accommodate his visiting guests and relations. He would have no drawing or dining room. He wants to live a comfortable life. He cannot be dictated as to how he should live. The Arc rightly arrived at the conclusion that he being a man of status has to have sufficient space to fulfill all his needs. The reasoning given by the Arc while discussing the bona fide need of the respondent cannot be faulted with.

(6) I also find no force in the submission of counsel for the petitioner that since respondent has not filed any petition of eviction against the Co-Operative Store, thereforee, his need should not be considered bona fide. That by itself is no ground to hold that his intentions are mala fide. During the course of arguments, Mr.V.Shankaran appearing for the respondent contended that though eviction order had been obtained of the shop 'X-3' but the execution has been stayed by the High Court. Hence landlord is left with only two rooms on the ground floor marked 'X' and 'X-I' with common bath and common latrine. Eviction order sought against the tenant of room 'X-2' was dismissed. thereforee, with two rooms on the ground floor the need of the respondent/ landlord is not satisfied. He would occupy the house when he has full floor to himself. The ARC'S reasons are well founded. He has considered the case from all aspects and by taking into consideration

documentary evidence and oral evidence which had come on record, the Arc concluded that the respondent/landlord fully established his bonafide needs. I see no reason to interfere with the reasoning of the Arc which is based on the facts available on record.

(7) For the reasons stated above, I Find no merits in the petition. Dismissed.

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