

Delhi High Court Jagmohan Singh Wadhwa vs K.M. Bhatnagar on 21 July, 1995
 Equivalent citations: 1995 IIIAD Delhi 525, 59 (1995) DLT 707, 1995 (34) DRJ
 279, 1995 RLR 527 Author: A Kumar Bench: A Kumar JUDGMENT Arun
 Kumar, J. (1) The petitioner filed the present eviction petition on the ground
 contained in clause (e) of the proviso to Sub-section (1) of Section 14 of the Delhi
 Rent Control Act (hereinafter referred to as the Act) against the respondent to
 his eviction from premises No.3/15, Vikram Vihar, Lajpat Nagar-IV, New- Delhi.
 The petitioner purchased the property vide a duly registered sale deed dated
 15/12/1980. The petitioner is residing on the first floor of the premises while
 the respondent tenant occupies the ground floor. The petitioner filed a site plan
 of the tenancy premises which is Ex.AW 3/3. Though the respondent disputed
 the site plan yet the respondent has admitted in the written statement that
 the tenancy premises consists of two rooms, one kitchen, one bath and W.C.
 Along with front and back courtyards. The accommodation available with the
 petitioner landlord on the first floor of the property is almost similar consisting
 of two rooms and kitchen, bath, W.C. There are two balconies on the first
 floor on the front side as well as backside which the petitioner has covered
 for purposes of protection from sun and rain. The width of the balconies is
 about 3 ft.. (2) The premises was let out to the respondent in the year 1976
 by its erstwhile owner. The petitioner purchased the property in December
 1980. At the time of the sale of the property in favor of the petitioner the
 erstwhile owner issued a letter of allotment dated 5th December 1980, Ex.A-
 1/R-1, informing the tenant that the property had been sold to the present
 petitioner and in future rent be paid to the petitioner. Thereafter since January
 1981 the respondent started paying rent to the petitioner. The present eviction
 petition was filed on 5th September 1986 on the ground that the accommodation
 available with the petitioner in property was not sufficient for requirement of
 the petitioner and his family and, therefore, the tenant should be directed to
 vacate the portion in his tenancy. The petitioner's family consists of himself,
 his wife and three children. At the time of filing of the petition the age of the
 children of the petitioner was: son - 16 years, two daughters (twins) - 14 years.
 According to the petitioner all his children were studying in Delhi at the time
 of filing of the petition. The case of the petitioner as set out in the eviction
 petition is that he was employed and getting a salary of about Rs.5,000.00 per
 month whereas his wife who was employed as a teacher was getting a salary of
 about Rs. 2400.00 per month. The petitioner claiming to be a man of status
 sought accommodation to live comfortably along with members of his family.
 According to the petitioner at least one bed room was required for the petitioner
 and his wife. One bed room was required for his son and at least one bed room
 is required for his both daughters. Besides this the petitioner required to have
 a drawing-cum-dining room and study. Therefore, the petitioner set up a case
 for at least 5 rooms. (3) In the written statement the tenant denied that the
 petitioner was the owner of the premises though the relationship of landlord and
 tenant was admitted. Further according to the respondent/tenant the children
 of the petitioner were studying in Punjab and it was not necessary to consider
 their requirement. Minus the requirement of the children, the petitioner had

sufficient accommodation for his and his wife's residence and the case of bona fide requirement was not made out. (4) The main defense set up by the tenant was that premises had been let out for residential and commercial purposes and, therefore, the petition for personal bona fide need under clause (e) of the proviso to Sub-section (1) of Section 14 of the Act was not maintainable. According to the tenant his wife had started a business in the name of M/s Nidhi Enterprises and his son was running a firm in the name of M/s R.K. Industrial Appliances at the premises in suit. Both these firms were having their office-cum-storeroom at the premises in question. M/s R.K. Industrial Appliances was stated to be a firm "supplying fire protection equipments to various offices. While M/s Nidhi Enterprises was alleged to be holding exhibitions for sale of textiles. It was further alleged by the tenant that the rent of the premises is Rs. 400.00 per month and the landlord wanted the rent to be increased @ RS. 800.00 per month and on refusal of the tenant to do so the present eviction petition had been filed. (5) The Addl. Rent Controller vide the impugned judgment dated 5th August 1989 decided the question of ownership, bona fide requirement and other reasonably suitable residential accommodation in favor of the petitioner landlord. However, on the question of purpose of letting the plea of the tenant was accepted and it was held that the premises was let out for residential-cum-commercial purpose. Thus the landlord was non-suited. The landlord has come up in revision against the said order of the Addl. Rent Controller. (6) I have heard learned counsel for the parties and have gone through the record. The findings of the Controller which are in favor of the petitioner have not been seriously challenged by the counsel for the respondent. Even otherwise the ownership of the petitioner of the property in suit is fully established from a duly registered sale deed dated 15/12/1980, Ex.AW 3/1. The petitioner also examined a Clerk from the office of L&DO (AW-2) who stated that the property in suit had been sold by Hassa Ram after obtaining necessary permission from the L&DO. The letter of permission is Ex.AW 2/1. The property has also been mutated in the name of the petitioner. The tenant in any case did not dispute the relationship of landlord and tenant between the parties. Except for a bare denial of ownership the respondent did not even suggest as to who else was the owner of the premises, therefore the fact that the petitioner is the owner of the premises cannot be doubted. (7) Regarding bona fide requirement of the petitioner for the premises it has to be seen that the petitioner has available with him only two rooms. His family consists of himself, his wife and three children, who are by now all in their mid twenties. The plea of the tenant that the children were studying in Punjab did not find favor with the Addl. Rent Controller in view of the fact that the landlord produced witness from the school where his three children were studying in Delhi. The witness AW-1 from Frank Anthony School produced the record from School that all the three children were in the said school. Besides this the petitioner himself stated that his children have always been living with him and have never studied in Punjab. The petitioner has also produced a copy of the ration card to show that he is living in the premises along with his children. In cross-examination on this point the respondent himself was vague and uncertain. Therefore, the

Addl. Rent-Controller rightly held that the petitioner's family consists of five members. For such a family two rooms can be hardly said to be sufficient accommodation. Three grown up children, they can hardly be called as children now, cannot be accommodated in one room. The respondent failed to show that the petitioner has any other accommodation available with him. The petitioner as well as his wife were both stated to be earning members and had reasonably good salaries. The respondent was not able to contradict this fact. A bare denial on the part of the respondent about accommodation pleaded by the landlord to be available with him is of no consequence. The respondent, if he was serious about his plea in this behalf ought to have at least filed a site plan to controvert the case of the landlord. This he never did which shows that the case set up by the petitioner regarding his bona fide need cannot be doubted. The tenant also alleged that there was a room available with the landlord on the terrace floor. A Local Commissioner was appointed by the Addl. Rent Controller who visited the premises after giving notice in writing to both the parties. The report of the Local Commissioner showed that there was no room on the terrace floor. Accordingly the Addl. Rent Controller rightly held that there was no room available to the petitioner on the terrace floor and the only accommodation available with the petitioner was on the first floor in the shape of one room, one drawing-cum-dining, one kitchen, one bath and one W.C. besides two covered balconies in front and rear. I accept the finding of the Addl. Rent Controller that the petitioner bona fide requires the premises in dispute for residence of himself and his family and he has no other reasonably alternative accommodation available to him for the purpose. (8) This brings me to the main question in controversy in the present case, i.e. the letting purpose. Admittedly there is no written agreement regarding creation of tenancy. The rent receipts which are on record did not help in deciding the issue. Certain rent receipts (EX.RW 4/1 to Rw 4/2) were issued by the previous landlord. There are also rent receipts Ex.R-1 to R-3 issued by the present petitioner on record. These rent receipts do not contain any mention about letting purpose of the premises. The petitioner produced counter foils of rent receipts, EX.AW 3/6 & Aw 3/7 which contain the word 'residential'. However, the case of the respondent is that the word 'residential' has been interpolated later on. Of course the landlord denied the suggestion about interpolation yet some doubt has been cast about the veracity of these counter foils. Therefore, I am of the view that the rent receipts or the counter foils of some of the rent receipts placed on record do not help in deciding the letting purpose in this case. Non mention of the letting purpose in the admitted rent receipts cannot be said to lead to the conclusion that it means the purpose of letting was residential cum-commercial. The absence of mention of letting purpose in the rent receipts could be used by both parties to support their respective cases. Therefore, I would prefer to ignore the rent receipts for purpose of deciding the letting purpose in the present case. (9) The learned counsel for the petitioner landlord has heavily relied on a clause in the lease deed executed by the President of India granting perpetual lease with respect to the suit property. Certified copy of the lease deed is Ex. Public Witness 3/2. Sub-clause (vi) of clause (e) of the said lease

deed reads as under:-"(VI)not without the consent of the chief commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a single storeyed building consisting of one residential flat or a double storeyed building consisting of one or two residential flats in. all with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said land;" (10) In view of this clause it is argued that the premises could not be used by anyone much less by a tenant for any business or trade without the permission of the paramount Lesser. It is nobody's case that no such permission was ever obtained by anyone. It is true that in view of this clause the property could not be used for any commercial activity, yet this clause by itself cannot be sufficient to hold as to whether in the present case the property was initially let out for residential purpose alone or for residence-cum-commercial purpose. It is not unknown that in spite of such clauses properties have been let out for residential-cum-commercial purposes. (11) The learned Addl. Rent Controller has rightly observed that "it is well settled that where there is no covenant as to the user of the premises and the question is as to what user was contemplated, the Court will infer the use contemplated from description of the premises, in the a banshee of tenancy agreement. The Court may even make such an inference from the surrounding circumstances at the time of letting, particularly from the nature of the physical premises, the area where the property situated". (12) The lest was correctly stated but it appears to me that the learned Addl.Rent Controller erred in applying the test in the facts of the present case. It has heavily weighed with the Addl. Rent Controller that the petitioner failed to produce the original landlord who let out the premises or his representative who used to manage the property on his behalf. This assumed impossible in view of the fact that the petitioner was not the owner of the premises at the time of its letting to the respondent and, therefore, the petitioner could not possibly know the exact terms and conditions of letting. The learned counsel for the petitioner pointed out that both erstwhile owner as well as his representative who used to manage the property had died much before Filing of the eviction petition. . This fact was never disputed on behalf of the respondent. Therefore, it was impossible to produce them in evidence. The petitioner landlord clearly pleaded in the eviction petition that the premises was let for residential purpose alone. This statement he supported when he appeared as a witness in support of his case. The tenant denied this assertion and set up a case that the premises was let for residential-cum-commercial purpose. The case .of the respondent in this behalf was that he was using a portion of the suit premises for business of the firms M/s R.K. Industrial Appliances and M/s Nidhi Enterprises. In the written statement he stated that these firms were there since occupation of the suit premises by the tenant. However, in cross examination he stated "my wife started Nidhi Enterprises in the name of my daughter, xx xx xx I do not remember when she started this business because it was only an informal business, xx xx xx I have not brought any record to show in which year I started this business and same is my reply with regard to M/s R.K. Industrial

Appliances". Further it is admitted by the respondent in his cross examination that the two Firms were not registered under the Shops and Establishment Act or under the Income Tax Act or the Sales Tax Act. No account books of the two alleged firms' were produced. Thus, no evidence has been produced to show as to when the alleged business started. (13) Whatever documents that were produced on record by the respondent regarding alleged business of the two firms pertain to the year 1983-84 and thereafter. The respondent failed to produce any material or give any evidence on record to show that the alleged two Firms started business at the time of letting of the premises in the year 1976. Further the tenant himself says that the businesses were of informal nature which knocks out completely the case of the respondent that the premises were let out for residential-cum-commercial purpose. Admittedly there was no formal commercial activity in the premises. Further the evidence on record led by the respondent regarding his alleged business activity in the premises at best shows that the respondent was using the address of the premises for purposes of some business of supplying material. Such type of user for correspondence purposes cannot be said to be use of the premises for commercial purpose. (14) In this context we have to see the statutory provisions also. Clause (e) uses the 'words "premises let for residential purposes". The Explanation further runs:- "Explanation:- For the purposes of this clause,"premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;" (15) In view of these statutory provisions it becomes important to ascertain as to whether the premises was let for residential purposes or for residential-cum-commercial purposes. Time of letting is of relevance. As noticed above the respondent has failed to place any material on record to show that the premises was initially let for residential-cum-commercial purpose. The evidence regarding the alleged commercial use placed on record by the respondent is of the year 1983-84 onwards. On being cross examined on the question to find out the time when the alleged commercial activity started, the respondent failed to throw any light On the other hand he stated that the alleged business was informal. Therefore, the respondent has failed to establish that the premises was let to him for residential- cum-commercial purposes. Even if the respondent subsequently started using the premises for some incidental commercial purpose without the consent of the landlord, the Explanation to clause (e) will fully cover the case. The result is that it cannot be said to be a case which is not covered under clause (e) of the proviso. It is not the respondent's case that he was carrying on commercial activity in the premises with the consent of the landlord. EX.RP I, which is a copy of the house tax survey report and which is duly signed by the .respondent himself shows that the premises was being used for residential purposes only. The survey report is of the year 1976, i.e. the year when the premises is alleged to have been let to the respondent. Therefore, the said survey report supports the case of the petitioner that the premises was let for residential purpose and it destroys the case of the respondent that it was let for residential -cum-commercial purpose. (16) There is yet another important aspect which needs to be examined in this behalf. Admittedly the tenancy

premises consists of two rooms only. The size of the family of the respondent as per his own statement as RW-4, is himself, his wife, three daughters and two sons who all are living in the tenancy premises. Further the respondent stated as RW-4 that one room, was being used by him and his wife as their bedroom and the other room was being used by the children. If the only two rooms which are available in the tenancy premises are being used as bed rooms by the family, I fail to understand where the alleged commercial activity is being carried on in the premises. The nature of the premises, therefore, becomes important. The only material placed on record to show business activity is some correspondence regarding supply of material etc. A landlord will never be in a position to know that there is some business activity in such a case. He is not supposed to intercept the correspondence of the tenant. Therefore, it is clear that the dominant use of the premises is in any case for residential purposes and assuming that the tenant had some sort of incidental business, the premises cannot be said to have been let out for residential-cum- commercial purposes. The finding of the Addl. Rent Controller in this connection is erroneous and is contrary to the material on record. (17) The fact that in Lajpat Nagar area there is lot of commercial activity has no bearing on the facts of the case. The commercial activity in the area is more in the nature of shops whereas in the present case the alleged business activity appears to be a business of supply of goods on orders being received through mail. Secondly, the tenant admittedly using the only two rooms in the premises for residence of himself and his five grown up offspring. (18) In view of the above facts the finding of the Addl. Rent Controller that the premises was let for residential-cum-commercial purposes cannot be sustained. The same is hereby set aside and it is held that the premises was let for residential purposes alone. The case of the petitioner is, therefore, fully covered under clause (e) of the proviso to Sub-section (1) of Section 14 of the Act. An eviction order is passed in favor of the petitioner and against the respondent regarding premises as per site plan EX.AW 3/3. The respondent is granted six months' time to vacate the premises in view of provisions of Section 14(7) of the Act. There will be no order as to costs.