Delhi High Court Krishan Lal vs R N Bakshi on 19 May, 2010 Author: Hima Kohli * IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RC.REV. No.117/2010 & CMs No.9379-80/2010

Decided on 19.05.2010

IN THE MATTER OF :

KRISHAN LAL ..... Petitioner
Through : Mr. Nishant Dutta, Adv.

versus

R N BAKSHI ..... Respondent
Through : Nemo.

CORAM

- HON'BLE MS.JUSTICE HIMA KOHLI

1. Whether Reporters of Local papers may Yes be allowed to see the Judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be Yes reported in the Digest?

HIMA KOHLI, J. 1. The present petition is directed against the order dated 5.3.2010 passed by the learned Additional Rent Controller dismissing the leave to defend application filed by the petitioner/tenant in respect of an eviction petition filed by the respondent/landlord under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958 (in short 'the Act') and simultaneously passing an eviction order in favour of the respondent/landlord, in respect of one shop bearing private No.1, situated on the ground floor of the property bearing No.J-80, Rajouri Garden, New Delhi. 2. Briefly stated, the facts of the case are that the respondent/landlord filed an eviction petition under Section 14(1)(e) of the Act, stating inter alia that the aforesaid shop was let out to the petitioner/tenant for commercial purposes in the year 1959 at a monthly rent of Rs.30/-, which subsequently stood enhanced to Rs.720/- per month. The respondent/landlord is a senior citizen aged 82 years and has got three sons and one daughter. All the children are stated to be married. His three sons are settled abroad. The respondent/landlord averred that he wanted to carry on his business of stationery and photostat in the shop in question, for maintaining himself and his dependent family members. It is an admitted position that there are three rooms on the front side of the suit premises, out of which one is in

occupation of the petitioner/tenant and the second room is in occupation of the other tenant. The respondent/landlord has stated that the third room is being used by him as a garage for parking his car for the past 20 years. He, therefore, claimed that he did not have other suitable accommodation to start his business, except for the tenanted premises under the occupation of the petitioner/tenant, subject matter of the eviction petition. 3. After service was effected on the petitioner/tenant under the Third Schedule, a leave to defend application was filed by him. In the said application, while the petitioner/tenant did not dispute relationship of landlord and tenant between the parties, he sought leave to contest the eviction petition on various grounds including the ground that the requirement as set out by the respondent/landlord for getting the tenanted premises vacated, is not bona fide; that the respondent/landlord does not have any other financial obligation, except for looking after himself and his spouse, his three sons being well settled abroad; that the eviction petition is being used as a handle to pressurize the petitioner/tenant to increase the rate of rent; that the respondent/landlord did not specify as to what kind of business he intends to carry on and lastly, it was stated that the respondent/landlord has ample space in his drive way to park his car there, while putting to use the space for the garage, as a shop. 4. In the reply to the application for leave to defend, it was stated by the respondent/landlord that he had retired from government service in the year 1984 and at that time, his pension was fixed at Rs.873/- per month, which after revision is Rs.7,721/- per month. It was averred that the said amount is insufficient to maintain him and his family members and that he does not have any other source of income and hence, the requirement to use the tenanted premises under the occupation of the petitioner/tenant for carrying on his business, is bona fide. It was further stated that the garage could not be converted into a shop and that he wanted to use the garage for parking his car as he could not keep his car outside the house. 5. After hearing the counsels for the parties, the learned Additional Rent Controller dismissed the leave to defend application of the petitioner/tenant by holding that he had not been able to raise any triable issue which entitled him to contest the eviction petition on merits. Aggrieved by the said order, the petitioner/tenant has filed the present petition. 6. Counsel for the petitioner/tenant has raised two fold grounds to assail the impugned order, which are interlinked. His first contention is that the learned Additional Rent Controller failed to consider the submission of the petitioner/tenant that the respondent/landlord could easily put the garage to use as a shop by parking his car in the drive way of the suit premises. His second argument is that the learned Additional Rent Controller failed to appreciate the submission made on behalf of the petitioner/tenant that considering the fact that the garage in question was available for being put to use as a shop and was not being so used by the respondent/landlord, his requirement for the tenanted premises could not be treated as bona fide. He stated that on many occasions, the landlord has actually parked his car in the drive way which shows that the car could be parked there on a permanent basis, without displacing the petitioner/tenant. In support of his submissions, he relies on the judgment of the Supreme Court in the case of Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta,

reported as (1999) 6 SCC 222. 7. Learned counsel for the petitioner/tenant has been heard and the documents placed on the record, perused. This Court need not delve into the other contentions raised in the leave to defend application filed by the petitioner/tenant in view of the limited grounds urged to assail the impugned order, as set out in the foregoing para. The submissions made on behalf of the petitioner/tenant with regard to the availability of the garage to the respondent/landlord for being put to use as a shop, has been dealt with by the learned Additional Rent Controller in para 12 of the impugned order. It was observed that the tenant could not dictate to the landlord the manner in which he was to use the space available with him and further, that no space would be left for ingress and egress into the house, if the car is parked in the drive way. For arriving at the said conclusion, the learned Additional Rent Controller relied on the following judgments : 1. Sarla Ahuja vs. United India Insurance Co. Ltd., (1998) 8 SCC 119; 2. Rishi Kumar Govil vs. Maqsoodan, 2007 (1) RCR (Rent) 405. 3. Sudesh Kumari Soni vs. Prabha Khanna, 2008 (2) RCR (Rent) 534; and 4. Mahendra Trivedi vs. Jai Prakash Verma, 157 (2009) DLT 690 8. It is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bonafides of requirement of landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and 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 tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or not genuine. In this regard, a few decisions, apposite on this point may be referred to: - 1. Prativa Devi vs. T.V. Krishnan (1996) 5 SCC 353 2. Sarla Ahuja vs. United India Insurance Co. Ltd. AIR 1999 SC 3. K.K. Ohri vs. Dr. Balraj Seth & Ors. 82(1999)DLT 906 4. Ragavendra Kumar vs. Firm Prem Machinery & Co.(2001) 1 SCR 77 5. Deep Chandra Juneja vs. Smt. Lajwanti Kathuria (Dead) through LRs AIR 2008 SC 3095 6. Smt. Sudesh Kumari Soni & Anr. Vs. Smt. Prabha Khanna & Anr. 153 (2008) DLT 652 9. In the present case, the question of testing the bona fides of the landlord merely on the ground raised by the petitioner/tenant that the space available to him and being put to use for parking his vehicle, can be utilized for running a shop, does not arise. The foundation on which this argument has been laid, is itself fallacious. The petitioner/tenant is under a misconceived conception that it is for him to choose as to how the respondent/landlord ought to live and put to use his premises. The submission of the counsel for the petitioner/tenant that the drive way can be put to permanent use by the respondent/landlord as a garage, is held to be devoid of merits. Merely because the respondent/landlord has on some occasions used the drive way to park his vehicle, cannot be a ground to urge that he should park his car in the drive way

on a permanent basis. 10. It is a matter of common knowledge that the roads in Delhi are spilling over with vehicular traffic. While vehicles on the road are ever increasing in numbers, the parking space available on the roads has shrunk on account of development work and road expansion activities undertaken by the civic authorities. Thus, the stress and strain of living in a metropolitan city is most visible on the roads, where competing claims are often sought to be resolved by use of muscle power. Every other day there are reports of altercations and ugly disputes, sometimes resulting in physical assault and murder, sparked off from paucity of parking space for vehicles. In such circumstance, the insistence on the part of the petitioner/tenant that the respondent/landlord, who is a senior citizen, aged 82 years, ought not to use the space available as a garage in his own premises, for purposes of parking his car, and instead, put it to use for running a shop, is wholly untenable and cannot be sustained. In today's day and time, parking of the car by the respondent/landlord in a portion of his residence facing the road, which he has designated as a garage, cannot be called a luxury, but a sheer necessity, particularly, when even the civic authorities have woken up to the need of imposing road tax on users of public space for the purposes of parking private vehicles. 11. The submission made on behalf of the petitioner/tenant that the respondent/landlord ought to park his car in the drive way is therefore, unacceptable and turned down. The landlord is the best judge of his requirements. He is justified in stating that the ingress and egress to his residence would be jeopardized/obstructed if the car was to be parked permanently in the drive way. In any case, as noted above, it is the choice of the respondent/landlord where to park his vehicle and if the room facing the main road is available for being used as a garage for parking his car, he cannot be asked to put it to a different use, only to ensure that status quo with regard to the tenanted premises is maintained in favour of the petitioner/tenant. Nor can the need of the respondent/landlord be treated to be mala fide or non-genuine. The grounds raised by the petitioner/tenant for seeking leave to defend, if accepted, would amount to depriving the respondent/landlord of the garage for the purposes of parking his vehicle, which are neither bona fide, nor reasonable. The judgment cited by the counsel for the petitioner/tenant also does not advance his case. The respondent/landlord is not under any obligation to use the garage as a shop, as suggested by the petitioner/tenant. His refusal to do so, cannot be treated as unreasonable. Nor can the space being put to use as a garage, be treated as an "reasonably suitable alternate accommodation", so as to disentitle the respondent/landlord to the relief sought under Section 14(1)(e) of the Act. 12. This Court, therefore, concurs with the findings of the learned Additional Rent Controller. The impugned order is held to be in accordance with law. The present petition is dismissed as being devoid of merits. (HIMA KOHLI) MAY 19, 2010 JUDGE sk