

Shiv Sarup Gupta vs Dr. Mahesh Chand Gupta on 30 July, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2507, 1999 AIR SCW 2666, (1999) 3 KER LT 20, (1999) 5 JT 201 (SC), 1999 (4) SCALE 334, 1999 (4) LRI 105, 1999 SCFBRC 330, 1999 HRR 396, 1999 (5) KANT LD 263, 1999 (7) ADSC 69, 1999 (6) SCC 222, 1999 (5) JT 201, 1999 (8) SRJ 89, 1999 (2) UJ (SC) 1261, 1999 UJ(SC) 2 1261, (1999) 2 GUJ LH 891, (1999) 2 RENCJ 388, (1999) 2 RENCJ 141, (1999) 2 RENTLR 211, (1999) 3 SCJ 215, (1999) 6 SUPREME 330, (1999) 4 SCALE 334, (1999) 3 CURCC 181, (1999) 80 DLT 731

Author: R.C. Lahoti

Bench: V.N. Khare, R.C. Lahoti

PETITIONER:

SHIV SARUP GUPTA

Vs.

RESPONDENT:

DR. MAHESH CHAND GUPTA

DATE OF JUDGMENT:

30/07/1999

BENCH:

V.N. Khare, R.C. Lahoti.

JUDGMENT:

R.C. Lahoti, J.

The appellant, a tenant in a residential accommodation has sought for special leave to appeal feeling aggrieved by an order of the High Court of Delhi which has in exercise of jurisdiction conferred by Section 25-B (8) of Delhi Rent Control Act, 1958 allowed a civil revision and directed the appellant to be ejected from the suit accommodation reversing an order of Additional Rent Controller, Delhi dismissing the landlord's application for recovery of possession of the suit premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14 of Delhi Rent Control Act, 1958 (hereinafter the Act, for short).

Leave granted.

The suit premises are situated at D-219, Defence Colony, New Delhi. The building has two floors and a Barsati. The accommodation in each of the two floors consists of two bathrooms, two bedrooms, a study room, a glazed verandah, a drawing-cum-dining room and a kitchen. There is a garage on the ground floor and a servant room on the Barsati floor. The landlord is occupying the ground floor. In July, 1978 the first floor and the Barsati were let out by the landlord to the tenant -appellant for residential purpose. There was some controversy whether one room of the suit premises had formed part of the tenancy or was illegally encroached upon and taken possession of by the tenant. However, that controversy is over and the parties before us have proceeded on assumption that the.. premises in occupation of the tenant are all included in the tenancy.

The landlord-respondent is a practising doctor presently about 78 years of age. In January, 1988 when the proceedings for eviction were initiated, the family of the landlord consisted of himself, his wife, a sqn Munish (also a practising doctor), daughter-in-law and a grand son. The landlord has three other sons, namely, Dr. Sunil Gupta, Dr. Anil Gupta and Shri Deepak Gupta. Dr. Anil Gupta and one more - two sons are non-resident Indians settled abroad. The third one has his own business and is residing separately from the father. The need pleaded in the application for eviction was that the accommodation on the ground floor in possession of the landlord was not sufficient to meet his and his family's residential requirement. The landlord had a mother-in-law, suffering from various ailments and was practically a dependent on the son-in-law, a doctor by profession. The two doctors in the family needed some accommodation as a part of their residential unit for attending to the patients who visited them either in emergency or with previous appointment at timings other than the fixed hours of the clinic which was being run at 2544, Sir Syed Ahmed Road, Darya Ganj, New Delhi in a part of a house belonging to Joint Hindu Family of the landlord which had many other members as well. Undisputedly, the joint family house is a commercial property and the portions other than the one occupied by the landlord for clinic are in possession of the tenants, Admittedly, there is a house property situated at C-217, Sarvodya Enclave, New Delhi. The house there stands on a plot belonging to the wife of the landlord and had come up some time in the year 1986. Eversince the date of ' construction and also at the time of initiation of the present proceedings it was in occupation of a tenant and hence not available to the landlord or his wife for their residence. Before the Rent Controller, the plea taken and sought to be substantiated by some evidence by the landlord was that the landlord's wife had executed a will whereby the Sarvodya Enclave property was proposed to be bequeathed to Dr. Anil Gupta, the NRI son and it is he who had invested his own funds in constructing the property.

During the pendency of the proceedings before the Rent Controller, the mother-in-law of the landlord expired. The wife of the landlord also died. So far as the requirement of the landlord by reference to the need of the mother-in-law and of the wife as a member of the family, is concerned, has come to an end.

The learned Additional Rent Controller held that the landlord was the owner of the suit premises and that the purpose of the letting was residential one. However, on the solitary ground for ejectment, he held the alleged need of the landlord to be not bonafide. He further held that consequent upon the death of the mother-in-law and the wife of the landlord, the accommodation in possession of the landlord was sufficient to satisfy his requirement and therefore it could not be held

that the landlord was bonafidely in need of any additional accommodation. The learned Additional Rent Controller was also impressed by an admission of the landlord-respondent made in his statement that the Sarvodya Enclave property if available to the landlord would have been sufficient to meet his requirement. The death of the landlord's wife in whose name stood the property was a subsequent event having impact on the availability of the said accommodation to the landlord for satisfying his alleged need. In view of these findings the Additional Rent Controller has by order dated 24.8.1995, dismissed the application for eviction.

The landlord preferred a revision to the High Court. The landlord also moved an application styled as one under Order 41 Rule 27 read with section 151 of the CPC inviting the attention of the High Court to the effect of the death of his wife Sushila Devi on 13th January, 1995 and annexing with the application copy of a registered will dated 13th June, 1994 executed by late Smt. Sushila Devi. By the said will Smt. Sushila Devi has bequeathed her house property no. C-217, Sarvodya Enclave in favour of her four sons subject to Dr. Anil Gupta being reimbursed by the sons for Rs. 2 lacs, the amount spent by him on construction over the said property. The application proceeded to state that it was a material evidence to decide the controversy between the parties and so the evidence deserved to be taken on record and the petition disposed of after taking the said evidence into consideration. Apart from the copy of the registered will, the copies of the lease deed dated 12.7.78 of the plot in favour of the deceased, and the letter-cum-order from the DDA dated 29.8.1996 intimating mutation of plot/property number C217, Sarvodya Enclave in favour of the four sons in place of their deceased mother late Sushila Devi were also filed. The application was opposed on behalf of the tenant. It appears that the High Court heard the final' arguments. By the impugned order, the revision filed by the landlord has been allowed and eviction of the tenant ordered recording a finding of the premises in occupation of the tenant being needed bonafide for the residence of the landlord and his family. The will dated 30th June, 1994 executed by late Sushila Devi filed before the High Court along with the application for additional evidence by the landlord has been taken into consideration by the High Court though the application does not appear to have been formally allowed and the documents annexed therewith were not formally taken on record and admitted - muchless proved - in evidence.

Before this Court, Ms. Syamla Pappu, the learned senior counsel for the tenant-appellant has submitted that the High Court has committed a jurisdictional error in reversing the findings of facts recorded by. the Additional Rent Controller. The jurisdiction so exercised by the High Court is not one vested in it by sub-section (8) of Section 25B of the Act. The learned senior counsel further submitted that the findings of act arrived at by the learned Additional Rent Controller were based on evidence and reasonably arrived at; there was no occasion to interfere with and reverse the same. The learned senior counsel also submitted that the High Court has committed a serious jurisdictional irregularity by taking into consideration the documents filed for the first time by the landlord before the High Court without formally admitting the same in evidence and without affording the tenantappellant an opportunity of rebutting the additional evidence.

Shri Arun Jaitley, the learned senior counsel for the landlord-respondent has supported the order of the High Court. He submitted that the documents placed before the High court by the landlord along with his application merely intended a subsequent event to be brought to the notice of the

High Court. The documents were of undoubted veracity. He further submitted that the ultimate finding arrived at by the High Court would not be dislodged even if the documents accompanying the application were excluded from consideration. At ' the end submitted Shri Jaitley that the finding arrived at by the High Court was the only finding that co[^]ld have been reasonably arrived at from the material available on record and hence the conclusion arrived at by the Additional Rent Controller being not one 'according to law' within the meaning of Section 25-B (8) was rightly set aside by the High court, in any case the present one was not a fit case for the exercise of jurisdiction under Article 136 of the Constitution, persuasively appealed the learned senior counsel.

Section 25-B of Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted into the body of the main Act by Act No .18 of 1976 with effect from 1.12.1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section 25-B, provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit'. The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-Section (8) of Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law. [See; Sarla Ahuja Vs. United India Insurance Co .Ltd. -(1998) 8 SCC 119 and Ram Narain Arora Vs. Asha Rani and Ors. - (1999) I SCC 141.] A perusal of Section 14 of the Act shows that the law has imposed restrictions on the recovery of possession. of any premises by landlord from a tenant notwithstanding any law or contract to the

contrary. However, an order for recovery of possession is permissible on one or more of the specified ground[^]. One such ground is the premises let for residential purposes being required bona fide by the landlord for occupation as residence for himself or for any member of his family dependent on him. What is a bona fide requirement is not defined in the Act. The words 'need' and 'require' both denote a certain degree of want with a thrust within demanding fulfilment. 'Need' or 'requirement' qualified by word 'bonafide' or 'genuine' preceding as an adjective - is an expression often used in Rent Control Laws. 'Bonafide or genuine need' of the landlord or that the landlord 'genuinely requires' or "requires bonafide" an accommodation for occupation by or use for himself is an accepted ground for eviction and such expression is often employed by Rent Control legislation draftsman. The two expressions are interchangeable in practice and carry the same meaning.

Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitely define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contrast-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one, but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he

unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of nonavailability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.

A few decided cases apposite to the point may be referred. A Division Bench of Madhya Bharat High Court in *Motilal Vs. Badrilal* - ILR 1954 MB 1. interpreted clause

(g) of the Madhya Bharat Sthan Niyamtran Vidhan Samvat, 2006 where-under a landlord was entitled to eject a tenant if he "really needs a house for himself and he possesses no other accommodation belonging to him elsewhere". It was held that the landlord was made the sole arbiter of his own requirements but he must prove that he in fact wants and genuinely intended to occupy-the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the premises. As to alternative accommodation disentitling the landlord to the relief of possession it was held that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. This statement of law was cited with approval before a Full Bench of the High Court of Madhya Pradesh in *Damodar Sharma & Anr. Vs. Nandram Deviram* - AIR 1960 MP 345. Pandey, J. recording the majority opinion emphasised the distinction between the expressions 'genuinely requires' and 'reasonably requires' and said:-

"It is wrong to say that "genuinely requires" is the same as "reasonably requires". There is a distinction between the two phrases. The former phrase refers to a state of mind; the latter to an objective standard. "Genuine requirement" would vary according to the idiosyncrasy of the individual and the time and circumstances in which he lives and thinks. Reasonable requirement belongs to the "knowledge of the law" and means reasonable not in the mind of the person requiring the accommodation but reasonable according to the actual facts. In my opinion, in this part of Sec.4(g), the landlord is made the sole arbiter of his own requirements but he must prove that he, in fact, wants and genuinely intends to occupy the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the

premises".

As to impact of availability of another vacant accommodation with the landlord it was held in Damodar's case (supra) that it must satisfy the test of suitability for satisfying the need of the landlord.

The abovesaid Full Bench decision of the High Court of Madhya Pradesh was cited with approval before this Court in Saryats TJ3. Vs. Nerai Chand 1965 JLJ 973 (SC).

In M. M. Quasim Vs. Manohar Lal Sharma - AIR 1981 SC 1113 this Court has held (vide para 18) that the landlord does not have an unfettered right to choose the premises but merely showing that the landlord has some other vacant premises in his possession may not be sufficient to negative the landlord's claim if the vacant premises were not suitable for the purpose for which he required the premises. This Court cautioned that the Court must understand and appreciate the relationship between the legal rules and necessities of life.

In Ram Pass Vs. Ishwar Chander and Ors - AIP 1988 SC 1422 this Court has held that:-

" the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down".

In Sarla Ahuja Vs. United India Insurance Co.Ltd.

- 1998 (8) SCC 119 this Court has held that the Rent Controller should not proceed on the assumption that the landlord's requirement is not bonafide. 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 not for the tenant to dictate terms to the landlord as to how else he can adjust himself without giving possession of the tenanted premises. While deciding the question of bonafides of the requirement of the landlord, it is 'quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

In Pratiba Devi (Smt) Vs. T.V. Krishnan, 1996 (5) SCC 353 this court has held that in considering the availability of alternative accommodation, not availability merely but also whether the landlord has the legal right to such accommodation has to be considered.

Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day the family of the landlord consists of the landlord himself (a practising doctor), his son (again a practising doctor), the daughter-in-law

and two grand children who are gradually growing in their age. Looking at the size of the family, availability of three bed rooms in the premises .in which the landlord may live, is a requirement which is natural and consistent with the sense of decency - not to talk of comfort and convenience. There is nothing unreasonable in a family with two practising doctors as members thereof needing a room or two or a room with a veranda to be used as a residential clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are bare necessities for a comfortable living. The landlord has been living in Defence Colony locality for more than 35 years. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord, and the death of the landlord's mother-in-law, are events which have hardly any bearing on the case of felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural, sincere and honest and hence a bonafide need. There is no material available on record to doubt the genuineness of such need. It continues to subsist in spite of the two deaths. It is not the case of the tenant - appellant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family may move to Sarvodaya Enclave House if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire family must shift to Sarvodaya Enclave house which is admittedly situated at a distance of about 7-8 kilometers from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood- and .the environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned senior counsel for the respondent, has very rightly submitted that it could not have been the intendment of the Rent Control Law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy. In addition, we find that on the date of the initiation of the proceedings, Sarvodaya Enclave property was belonging to the wife of the landlord or to one of his sons resident abroad and was in actual occupation of a tenant. On the death of the wife of the landlord if any one of the two wills (one which was in existence at the time of initiation of the proceedings or the one, which appears to have been subsequently executed by the landlords' wife and filed before the High Court) was to be given effect to then the ownership in the property has passed on to one son or jointly to four sons of the landlord. If the will itself is excluded from consideration as not proved then also the ownership in the property has passed on to the four sons jointly. Sarvodaya Enclave property does not belong to the landlord and is not available for his occupation as an owner. To these facts the applicability of law laid down in Prativa Devi's case (Supra) is squarely attracted. In our opinion, the availability of Sarvodaya Enclave property is not of any relevance or germane to determining the need and the bonafides of the need of the landlord. We are not therefore inclined to attach any weight to the application for additional evidence filed by the landlord before the High Court though we agree with the learned counsel for the tenant - appellant that the High Court was not justified in taking into consideration the contents of the will without

formally admitting the same in evidence and affording the parties opportunity of adducing evidence in proof and dis-proof thereof.

For the forgoing reasons, we are of the opinion that the High Court did not commit any jurisdictional error in reversing the order of the Rent Controller and upholding the landlord's claim for eviction. In spite of excluding from consideration, the documents' which were proposed to be filed by the landlord on the record of the High Court, the ultimate finding of the High Court is liable to be upheld. On the material available on record, the only conclusion which could have been drawn is the one drawn by the High Court. The order of the Rent Controller was not according to law and was, therefore, rightly set aside.

The appeal is dismissed. The tenant appellant is however granted six months time to vacate the premises subject to filing usual undertaking within a period of one month on the affidavit of the appellant to deliver vacant and peaceful possession over the premises to the landlord at the end of the extended time and in between regularly paying the rent. Costs as incurred.