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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 21.02.2024

Judgment pronounced on: 17.05.2024

+ **RC.REV. 179/2018, CM APPL. 17424/2018, CM APPL. 17425/2018**
ANAND KUMAR SALUJA Petitioner
Through: Mr. Mahesh K Chaudhary, Adv.

versus

GIRISH KAKAR & ANR. Respondents
Through: Dr. Arun Mohan, Sr. Adv. with Mr.
Arvind Bhatt, Ms. Ritika Choubey and
Mr. Yugant Makkar Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, (J)**

1. This is a petition under section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as 'DRC Act') seeking setting aside of the order dated 08.11.2017 ('impugned order') passed by the learned Additional Rent Controller-I, Central District, Tis Hazari Courts, Delhi, wherein an eviction order was passed in favour of the respondents and against the petitioner u/s 14(1)(e) r/w section 25B of the DRC Act in respect of part of the premises bearing No. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi-110005.

2. A detailed judgment has been passed in RC.REV. 156/2018, which also pertains to part of the aforementioned premises. However, since each petition raises its own additional and distinct issues, therefore, three separate judgments are being passed dealing with those distinct issues in



three Rent Control Revision Petitions respectively. Issues which are common and overlapping have been dealt in RC.REV. 156/2018, and may be read as forming part of the judgment in RC.REV.178/2018 and the present petition.

BACKGROUND OF THE CASE:

3. Mr. Anand Kumar Saluja, petitioner herein, claims to be a tenant in part of the premises bearing no. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi-110005 (shown in red in the site plan attached with the Eviction Petition, hereinafter referred to as 'tenanted premises'). It is to be noted that the petitioner herein died on 12.01.2023 and his wife (Parveen) and sons (Himanshu and Ashish) continue the present petition on his behalf.

4. The respondents on the other hand, being one Mr. Girish Kakar (respondent No.1) and his wife Ms. Sarita Kakar (respondent No.2), claim to be the landlords of the tenanted premises.

5. It was stated that the father of the petitioner, namely, Mr. H. L. Saluja, was inducted as a tenant into the tenanted premises by an uncle of respondent No. 1, namely, Mr. Pran Nath Kakar. However, after the death of the father of petitioner, the tenanted premises is being used and occupied by the petitioner himself.

6. An Eviction Petition under section 14(1)(e) r/w section 25B of the DRC Act was filed by the respondents against the petitioner, wherein the respondents averred that they required the premises for their business/professional use. The respondents averred that they previously operated a telecom, cybercafé, and travel business at 2290-91, Arya Samaj Road, Karol Bagh, New Delhi. However, the business was shut down upon the sale of the property on 17.12.2009. In light of the said circumstance, it was averred that respondent No.1 was unemployed and



therefore, required the tenanted premises for carrying on his business. It was further averred that the respondent No. 2 was working as a teacher, and giving tuitions to young children at property No. 26/8, Second Floor, Old Rajinder Nagar, New Delhi-110060, however, it was stated that this center has also shut down. Therefore, it was submitted that respondent No. 2 was also not carrying on any business but was willing to work and assist respondent No. 1 for earning a decent living for the whole family. It was further submitted that the respondents did not have any other reasonably suitable accommodation for carrying out their business/profession.

7. A notice of the Eviction Petition was served upon the petitioner and subsequently, an application seeking grant of leave to defend was filed by the petitioner, wherein the following grounds were taken:

a. The petitioner pleaded that the respondents were neither the owners nor the landlords of the tenanted premises and did not have any *locus standi* to file the Eviction Petition. It was averred that the tenanted premises was let out by one Mr. Pran Nath Kakar (uncle of respondent No. 1) to one Mr. H. L. Saluja (father of the petitioner). It was stated that Mr. H. L. Saluja paid rent to Mr. Pran Nath Kakar for the period November 1974 to February 1975. After the death of Mr. Pran Nath Kakar, his LRs became the landlords of the tenanted premises. The petitioner further averred that one Mr. Ram Kishan Kapoor had surrendered his tenancy rights in the month of October 1974 and thereafter, a new/fresh tenancy was created by Shri Pran Nath Kakar in favour of Shri H. L. Saluja. Therefore, in the said context, it was submitted that since the respondents never recognized the petitioner as a tenant, the Eviction Petition was not maintainable for want of landlord-tenant relationship.



b. It was further asserted that the respondent No.1 was still running the business of telecom, cybercafé and travel from property No. 2290-91, Arya Samaj Road, Karol Bagh, New Delhi and still remains in possession of this premises. It was also asserted that the respondents did not require the tenanted premises and this alleged *bonafide* need of the respondents was fake and *malafide*.

8. Meanwhile, the respondents in their reply to the application seeking grant of leave to defend, submitted that the tenanted premises in question, was purchased by the grandfather of the respondent No. 1, namely Mr. Ram Lal Kakar. Thereafter, a lease deed for a period of twenty years was executed in his favour by the Delhi Improvement Trust. After his demise, a renewal lease was granted by Delhi Development Authority ('DDA'), in favour of his three sons, namely Mr. Kishan Gopal Kakar, Mr. Prem Nath Kakar (father of respondent No. 1) and Mr. Pran Nath Kakar. Subsequently, litigation commenced amongst these relatives, titled as, 'Smt. Asha Kakar v. Krishan Gopal Kakar & Ors.', being C.S.(OS) No. 1574/1984 before this Court. During the pendency of this case, Mr. Prem Nath Kakar died leaving the respondent No. 1 as his heir. In this suit, a final decree of partition was passed, and the tenanted premises fell exclusively in the share of widow of Mr. Prem Nath and their children, which included respondent No. 1 and the daughters of Late Mr. Prem Nath Kakar, namely, Ms. Madhupreet Chahal and Ms. Payal Dawer. A Conveyance Deed dated 28.07.2010 was executed by DDA in favour of these four persons. Thereafter, the daughters sold their undivided interest in the tenanted property by way of registered sale deed to their mother Late Smt. Surendra Kakar, who died living behind a Will, by virtue of which, her share in the tenanted premises devolved upon the



respondents. Thus, the respondents became the owners of the tenanted premises.

9. After hearing both the parties, the learned ARC was of the view that there existed a landlord-tenant relationship between the parties and the respondents/landlords were competent to file the eviction petition as they were the owners as well as the landlords in respect of the tenanted premises. The learned ARC was also of the view that the respondents had made out a case of *bona fide* requirement. As far as the availability of a suitable and alternate accommodation was concerned, the learned ARC took the view that there was nothing on record which disclosed that the respondents owned any of the properties as was averred by the petitioner or that they were suitable alternate accommodation. In light of these circumstances, order dated 08.11.2017 was passed by the learned ARC, wherein a decree for eviction was passed in favour of the respondents and against the petitioners, directing them to vacate the tenanted premises.

10. Hence, the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER/TENANT

11. Mr. Chaudhary, learned counsel for the petitioner, primarily submits that the respondents have denied the existence of a landlord-tenant relationship as the same is evident from the Eviction Petition, the relevant portion of which reads as under:-

“6. Since the respondents(tenants) by their own version, were inducted into the property by the Shri Pran Nath Kakar (since deceased), without obtaining the consent of the other co-owners (at least not of Shri. Prem Nath Kakar), the tenancy so created does not bind the petitioners(landlords). Consequently, the Respondents cannot be treated as having lawful tenancy right over the



suit property and are thus not entitled to the protection of Delhi Rent Control, Act.”

12. Learned counsel for the petitioner further states that the alleged Conveyance Deed, Sale Deed and the family Will, are all self-created documents being executed between family members of the respondents without any title in their favour and hence, the same are not binding upon the petitioner. Learned counsel for the petitioner also submits that as per the respondents, the shop and 1/3rd share of property No. 2290 and 2291, Arya Samaj Road, Delhi fell into the share of Mr. Prem Nath Kakar and the same was sold on 17.12.2009 to Dynamic Buildwell Pvt. Ltd, whereas:

- (i) Firstly, the partition was not finalized till that date.
- (ii) Secondly, the same was not to be sold for 7 years as agreed.
- (iii) Thirdly, in Conveyance Deed dated 28.07.2010, the address of the respondents is still depicted as property No. 2290 Arya Samaj Road, Delhi, and the same is handwritten and signed for registration and cannot be attributed to any typographic mistake.

13. Hence, learned counsel for the petitioner states that the aforesaid document(s) show that the property No. 2290 and 2291, Arya Samaj Road, Delhi continues to be with the respondents and therefore, raises a triable issue.

14. Learned counsel for the petitioner further states that though the respondents disclosed having sold property No. 2290 Arya Samaj, Delhi, they very conveniently also concealed the purchase of property E-175 and E-176, Pandav Nagar, Delhi of a total area of 300 sq. yards *vide* registered Sale Deed dated 09.11.2010, situated in the area of village Gharonda, Neem Ka Bangar *alias* Patparganj, in the abadi of E-block, Main 40 ft. Road, Pandav Nagar, Delhi- 110091, for a total consideration of Rs. 45,00,000/-, which was registered *vide* registration no. 20799 in book no.



1, Vol. No. 5044 on page 181 to 187 on 11.10.2010 before the Sub-Registrar - VIII, New Delhi/Delhi.

15. It is argued by the learned counsel for the petitioner that the respondent No.1 gave a false statement in the Affidavit filed in compliance of order dated 28.08.2019 of this Court, being as follows:

“Decree was passed on 28.10.2014 to vacate F-444 by 30.11.2015. I kept on pleading with my then landlady (Pooja Mehta), that my house would be vacated soon after which I would move, especially keeping in view the study of my son Yugant who was then in Class 10th (2015-16).”

The petitioner states that despite there being a decree of ejection, the landlady therein, working in collusion with the petitioner, allowed them to reside there till after the filing of the present petition, which is highly improbable and only a story to defeat the legitimate rights of the petitioner.

16. It is further argued that there is no averment in the entire Eviction Petition which conveys that the respondents require the entire plot in one go and will renovate/reconstruct it after getting possession of the same. The respondents have wrongly claimed in the Eviction Petition that the tenanted premises were let out for residential purposes, whereas the same was in fact, let out for commercial purposes and was being used only for commercial purposes since the inception of the tenancy.

17. It is also argued by Mr. Chaudhary that the respondents are already in possession of seven rooms being one big office, Toilet/bath, kitchen, open courtyard and entire first/terrace floor with exclusive entrance and stairs in the same premises and have not occupied the same.

18. Mr. Chaudhary lastly stated that respondents do not require the tenanted premises bonafidely and the respondent No.1 is still running his



business of Telecom and Cyber Café and Travel at 2290-91, Arya Samaj Road, Karol Bagh, New Delhi.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/LANDLORDS

19. The respondents have disputed the submissions of the petitioner and have filed identical written submissions noted in detail in R.C. REV. 156/2018. The same are not repeated herein for the sake of brevity.

ANALYSIS AND CONCLUSION

20. I have heard learned counsel for the parties.

21. The parameters of revisional jurisdiction in rent revisions have been reiterated time and again. In a connected matter being RC.REV. 156/2018, I have already dealt in detail with regard to:

- a. Scope of a Rent Revision Petition.
- b. The DRC Act having outlived its utility.
- c. Learned ARC only being required to sift/comb through the application for leave to defend.
- d. Presumption of landlord's need being *bona fide*.
- e. Court not to sit in the armchair to decide the suitability of alternate accommodation.

22. With these five parameters, I will proceed to deal with the arguments of the petitioner pertaining to the factual matrix of this case.

23. In order to succeed in a petition under section 14(1)(e) of the DRC Act, the landlord is required to establish:

- i. Landlord-Tenant relationship between the parties.
- ii. The tenanted premises must be bonafidely required by the landlord either for himself or for his family members.



- iii. There should not be any other alternate suitable accommodation available with the landlord.

EXISTENCE OF A LANDLORD-TENANT RELATIONSHIP

24. Petitioner by way of the present petition contends that a dispute exists about the ownership of the tenanted premises and the respondents are not the landlords/owners of the said premises. Even as per the application seeking grant of leave to defend, case of the petitioner was that the respondents were neither the owners nor landlords of the tenanted premises, thereby, having no *locus standi* to press the eviction petition. As per the petitioner, the tenanted premises were let out by one Mr. Pran Nath Kakar to Mr. H. L. Saluja (father of the petitioner) for a period from November 1974 to February 1975, and after the demise of Mr. Kakar, his LRs have become the landlords of the said premises. Furthermore, the petitioner states that the respondents were never acknowledged or attorned as the owners/landlord by him nor was there any demand of rent made by the respondents.

25. Respondents in their eviction petition before the learned ARC averred that one Mr. Ram Kishan Kapoor had entered into a collaboration agreement with Mr. H. L. Saluja, whereby Mr. Saluja was to carry on a business on behalf of Mr. Kapoor and bore no personal interest in the tenanted premises. With the passage of time, Mr. Kapoor along with his family members totally disassociated themselves from the business being carried on from the tenanted premises and as of today, the tenanted premises is in actual physical possession, and in exclusive use, occupation and enjoyment of the petitioner and other persons who are also parties to the subject eviction petition. It is the case of the respondents that the business at the tenanted premises is in exclusive control of the petitioner.



Furthermore, respondents *vide* their reply to the application seeking grant of leave to defend, have established their claim of ownership over the tenanted premises by way of a chain of documents beginning from a decree of partition passed in C.S.(OS) No. 1574/1984, whereafter a conveyance deed dated 28.07.2010 was executed by DDA in favour of the respondent No.1, his mother and two sisters. Thereafter, a sale deed was executed by the sisters in favour of their mother, who in turn executed a registered Will dated 15.03.2013 in favour of the respondents.

26. The learned ARC after considering the rival submissions of both parties has correctly observed asunder:

“13.It has not been denied by the respondents that the tenanted premises was owned by the grandfather of the petitioner, namely, late Sh. Ram Lal Kakar. It has also not been denied that he died leaving behind three sons including father of the petitioner, namely, Sh. Prem Nath Kakar. Sh. Prem Nath Kakar also died leaving behind his legal heirs. Admittedly, petitioner Girish kakar is son of Mr. Prem Nath Kakar. By virtue of that also, he is at least a co-owner in the tenanted premises. A co-owner can also institute a petition seeking eviction of the tenant under the Delhi Rent Control Act.”

27. I find no infirmity in the observations of the learned ARC, who has rightly held that no challenge has been laid to the claim of ownership of the grandfather of respondent No. 1, inevitably making the respondent No. 1 as a co-owner of the tenanted premises. Insofar as the case of the petitioner not recognizing the respondents as owners/landlords is concerned, it has been correctly observed by the learned ARC that no doubt can be cast over the respondents being the descendants of Late Sh. Ram Lal Kakar. Considering the admission of the petitioner to the effect of being inducted as tenants by Sh. Pran Nath Kakar (uncle of respondent No. 1), the petitioner stands estopped from laying a challenge to the title of the respondents over the tenanted premises. As far as the allegation of



the non-payment of rent is concerned, it has been rightly observed held by the learned ARC that mere non-payment of rent by a tenant, even for a considerably long period does not extinguish the landlord-tenant relationship. The operative paragraphs containing the observations of the learned ARC is asunder:

“13. It has not been denied by the respondents that the tenanted premises was owned by the grandfather of the petitioner, namely, late Sh. Ram Lal Kakar. It has also not been denied that he died leaving behind three sons including father of the petitioner, namely, Sh. Prem Nath Kakar. Sh. Prem Nath Kakar also died leaving behind his legal heirs. Admittedly, petitioner Girish kakar is son of Mr. Prem Nath Kakar. By virtue of that also, he is atleast a co-owner in the tenanted premises. A co-owner can also institute a petition seeking eviction of the tenant under the Delhi Rent Control Act. Reference may also be made to decisions passed in the cases of Kanta Goel v. B.P. Pathak AIR 1977 SC 1599 and Pal Singh vs. Sunder Singh AIR 1989 SO 758. Thus, even being a co-owner the petitioner Girish Kakar is complete owner in respect of the entire property and he is competent to file the present eviction petition against the tenant without joining the other alleged co-owners and he is to be considered as an owner for the purposes of section 14(1)(e) of the Delhi Rent Control Act. There is nothing on record to show that other alleged co-owners have objected to the filing of the present petition.

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21. The principle is very clear that once a tenant always a tenant. The tenant cannot dispute the title of his landlord or his successor in interest. It cannot be disputed by any stretch of imagination that the petitioners are the successors in interest of Late Sh. Ram Lal Kakar by virtue of operation of law of interstate succession. The



respondents have admitted that they were admitted as tenants in the premises by Late Sh. Pran Nath Kakar, uncle of the petitioner Girish Kakar and accordingly, they are estopped from challenging the title of the petitioner Girish Kakar in view of the provisions of section 116 of the Evidence Act and in view of the partition decree. Once they cannot challenge the title of Late Sh. Pran Nath Kakar, they also cannot question the title of the petitioner Girish Kakar.

22. Further if the transfer of the landlord's title is valid, and even if the tenancy is not attorned in favour of the transferee, the lease continues. Thus, a transferee of the landlord's rights, steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. Attornment by the tenant is unnecessary to confer validity to the transfer of the landlord's rights and there is no such statutory requirement. Reference may be made to the case of Hajee K. Assainar v. Chacku Joseph AIR 1984 Ker 113. In the case of Mahendra Raghunathdas Gupta v. Vishvanath Bhikaji Mogul AIR 1997 SC 2437, it was held that attornment by tenant is not necessary though it is desirable. Mere non-payment of rent by tenant even for a considerably long period does not extinguish the landlord-tenant relationship. The possession of a tenant cannot be adverse to his landlord. The petitioners are, therefore, the landlords and owners of the tenanted premises.”

It has been held that in landlord-tenant disputes, the landlord does not have to establish his title as if it were a suit seeking declaration of title, instead, he only must show that his/her claim over the title better than that of the tenant. This Court in ***Babu Ram Gupta v. Chander Prakash***, [2023 SCC OnLine Del 1467] has observed that:



“27. The law is well settled to the effect that it is not open for the tenant to question the title of the landlord. It is also well settled that while deciding the eviction petition, the Rent Controller is not required to adjudicate intricate questions of title. All that the landlord needs to establish is that he is something more than a mere tenant.”

28. In view of the abovenoted submissions and legal propositions, I am of the view that a landlord-tenant relationship exists between the parties and the learned ARC has dealt with all rival contentions of the parties and rightly appreciated all the material on record.

BONAFIDE REQUIREMENT OF THE LANDLORD

29. Petitioner has contended that the respondents have failed to establish *bona fide* requirement for obtaining possession of the tenanted premises. The case of the respondents, as per the eviction petition filed before the learned ARC, is that tenanted premises would be ideal for their business requirements and if available, would render immense assistance for them, covering their genuine day-to-day needs, particularly for the purposes of enabling the respondents to earn a decent living for themselves and for their family.

30. Petitioner on the other hand, has reiterated his stance as laid down in his application seeking grant of leave to defend, wherein it is stated that the *bona fide* need of the respondents is fanciful and *malafide*. The petitioner submits that the respondents are already in possession of another premises being property No. 2290-91, Arya Samaj Road, Karol Bagh, Delhi and are running their business telecom, cyber cafe, and travel from there.

31. In the present case, there is no material on record to show that the purported *bona fide* need of the respondents is whimsical or fanciful. In



this context, the learned ARC has correctly observed in the impugned order asunder:

“35. In view of the settled legal position it is not for the respondents to dictate to the petitioners that they should manage their business in a particular way. The tenanted premises belongs to the petitioners and it is for the petitioners to see that how they can manage their work. It is the right of the petitioners to look after their need, and if the tenanted premises is suitable as per their needs, they have every right to possess the said premises and the respondents cannot contend that they should manage their work otherwise. The petitioners are themselves living in a rented accommodation and that too on the third floor. It cannot be expected from the petitioners that they run their businesses from third floor of a property. While deciding the question of bonafide requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlords could have adjusted.”

32. In the present case, respondents have clearly stated that the tenanted premises is required for a running a business as they are presently unemployed. Once the respondents have stated that they require the tenanted premises for earning a livelihood, the same is enough to draw a presumption in respondent’s favour.

33. The tenants are not to sit in the armchair of the landlord as the landlord possess the prerogative to determine their specific requirements, exercising full autonomy in this regard.¹ Reliance is placed on ***Ragavendra Kumar v. Prem Machinery & Co.***, [(2000) 1 SCC 679], wherein the Hon'ble Supreme Court was of the view that:

“10... It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical

¹ Tarun Kumar v. Parmanand Garg, 2023 SCC OnLine Del 7398, para 52



statement that his said houses and shops were not vacant and that the suit premises is suitable for his business purpose. It is a 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. (See Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353].) In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”

34. In addition, there is nothing placed on record to show that respondent No. 1 is running his business from property No. 2290-91, Arya Samaj Road, Karol Bagh, Delhi. The same is only a mere bald averment without any material to substantiate the same.

35. I find no reason to disbelieve the averments made by the respondents regarding their bona fide need of the tenanted premises. I am of the view that the respondents’ assertions that they require the tenanted premises for running a business, falls within the category of *bona fide* requirement. Hence, by no stretch of imagination can this need be classified as whimsical or fanciful. I find no infirmity in the order of the learned ARC on this account.

ALTERNATE SUITABLE ACCOMMODATION

36. Petitioner has contended that the respondents have sufficient suitable alternate accommodations available with them and have deliberately and intentionally concealed the same before the learned ARC while filing the eviction petition. According to the petitioner, following properties are under the ownership of the respondents:

- a. F-444, 3rd floor, New Rajinder Nagar, New Delhi – 110060.
- b. Property No. 2290-91, Arya Samaj Road, Karol Bagh, Delhi.



- c. Property bearing No. E-175 and E-176, admeasuring around 300 sq. yards in Patparganj, Pandav Nagar, Ilaqa Shahadara, Delhi – 110091.

It is stated by the petitioner that upon the revelation of these properties by the petitioner, the respondents have proceeded to sell the said properties and the non-disclosure of the same establishes *mala fides* on the part of the respondents.

37. On the other hand, the case of the respondents, even as per the eviction petition filed before the learned ARC, is that they do not possess any other reasonably suitable accommodation for themselves or their family members.

38. Insofar as the aforementioned properties are concerned, I am of the view:

I. F-444, 3rd floor, New Rajinder Nagar, New Delhi – 110060.

- a. Petitioner states that ejectment proceedings were initiated by one Ms. Pooja Mehta (the owner of the aforesaid property) against respondent No. 1 and his deceased mother. However, it is contended that the same was a collusive suit filed with an intention to establish *bona fide* requirement. Respondents, on the other hand, state that in mid-December 2009, they were inducted as tenants in the said premises and on 28.10.2014, a decree of ejectment was passed. Thereafter, execution proceedings were initiated, and ultimately, the bailiff threw out the respondents on 09.08.2018, upon which, they had to shift to a hotel. The respondents further stated that they proceeded to take another premises, being H-335, New Rajinder Nagar, New Delhi, on rent until 31.12.2022 and presently reside at R-829, upper first floor, New Rajinder Nagar, New Delhi on rent. Therefore, in this context, it would be apposite to hold that the respondents were not



the owners of property no. F-444, 3rd floor, New Rajinder Nagar, New Delhi – 110060. Insofar as the collusive nature of the suit filed by Ms. Pooja Mehta, I have held that assuming for the sake of arguments that the suit was collusive, an Additional Rent Controller in eviction proceedings or this Court in a Rent Revision cannot decide the legality or illegality of a decree passed in another case as that power lies with an Appellate Court.

- b. It will be relevant to mention that the petitioner has not raised the issue of availability of F-444, 3rd floor, New Rajinder Nagar, New Delhi – 110060 in the subject eviction petition. However, be that as it may, the learned ARC in a connected eviction petition being E. No. 1011/2014 (being subject matter of R.C. REV 156/2018), decided on 21.11.2017 has correctly appreciated the said fact while upholding as under:

“43. The assertion made by the respondents that the petitioners own the property F-444, Third Floor, New Rajinder Nagar, New Delhi appears to be a bald assertion. There is nothing on record including title documents of this property for believing that the petitioners are owners of this property. No material has been brought on record by the respondents to substantiate that the petitioners are owners of this property. The mere fact that the landlady Pooja Mehta has not enforced her right to obtain possession of the premises at F-444, New Rajinder Nagar despite having decree of possession in her favour and despite settlement that the premises will be vacated till 30.11.2015, does not by itself indicate that petitioner Girish Kakar is the real owner of the premises at F-444, New Rajinder Nagar, There is no reason to believe that the suit of possession filed by Ms. Pooja Mehta against the petitioner Girish Kakar is collusive and that the Petitioners are owners of the property



no. F-444, Third Floor, New Rajinder Nagar, New Delhi. This Court cannot sit in appeal against the decree of possession passed by another Court by holding that it was a collusive decree. It has been stated by Ld. Counsel for the petitioners that the petitioners have been residing at property bearing no. F-444, New Rajinder Nagar since much prior to 25.12.2010 and that's how in sale deeds dated 17.12.2009 and 08.09.2010, their address is stated to be that of property at F-444, New Rajinder Nagar. Even otherwise, the assertion of the respondents as made in the written statement dated 20.11.2017 that the premises at F-444 was given on rent by Ms. Pooja Mehta to the petitioner Girish Kakar on 25.12.2010, vide agreement dated 10.12.2010, cannot be taken into consideration as these dates do not find mentioned in application for leave to defend. Also, merely because the landlady Pooja Mehta did not object to the statement made by petitioner Girish Kakar in the case pending between them that he does not have any brother or sisters and is the only LR of his late mother, also does not imply that it is a collusive suit. Such statement could have also been made because there was no need for the sisters of Girish Kakar to have been made a party in the case since, they had not inherited the tenancy rights of Late Sh. Surendra Kakar in property no. F-444, New Rajinder Nagar. Even otherwise and more importantly, there is nothing on record which discloses that it is indeed petitioner Girish Kakar who is the owner of property F-444, New Rajinder Nagar.”

- c. In this view of the matter, I am of the opinion that the property F-444, Third Floor, New Rajinder Nagar, New Delhi, is not available with the Petitioner.

II. Property No. 2290-91, Arya Samaj Road, Karol Bagh, Delhi.



a. It is the case of the petitioners that as far as the aforesaid property is concerned, the deceased mother of the respondent No.1 was the 1/3rd owner and had purchased the other remaining two halves from the other two co-owners in 2008. On the other hand, respondents state that in the year 2009, three sale deeds were executed, each in favour of M/s Dynamic Buildwell (P) Ltd., whereafter, all three co-owners had sold their respective shares vide different sale deeds. However, the respondents in question, *vide* a sale deed dated 17.12.2009, sold the share held by their branch to M/s Dynamic Buildwell (P) Ltd. After perusing the material placed on record before this Court, it would be safe to conclude to that the aforesaid premises was also neither available with the respondents at the time of filing of the eviction petition nor is it available presently. The learned ARC, while dealing with these contentions, has also correctly held asunder:

“27. The respondents have not disputed the veracity of the aforesaid sale deed dated 17.12.2009. The said sale deed is a valid transfer of interest in the property bearing no. 2290-91, Karol Bagh, Delhi to another person. The petitioners cannot be said to be owners of this property. There is nothing to disbelieve the petitioners on this count. No further material has been brought on record by the respondents in their rejoinder to substantiate that the petitioners are owners of the aforementioned property.”

III. Property bearing No. E-175 and E-176, admeasuring around 300 sq. yards in Patparganj, Pandav Nagar, Illaqa Shahadara, Delhi – 110091.



- a. At the outset, the said property has also not been pleaded as an alternate suitable accommodation in the leave to defend. However, since the said property has been mentioned in the revision petition, I am dealing with the same.
- b. As per the petitioner, the aforesaid property was purchased by respondent No. 1 along with two other persons namely Sh. Rakesh Anand and Shri Subodh Jain from one Sh. Harvinder Singh. Petitioner claims that this property was available with the respondent No. 1 at the time of filing of the eviction petition. On the other hand, respondents contend long before filing of the eviction petition, in 2011-12, this property was sold on Power of Attorney basis. Later, the purchasers requested for execution and registration of sale deeds whereafter, sale deeds were executed from 2011 to 2015. In support of this contention, respondents have placed several sale deeds on record dated 03.06.2013, 31.10.2011, 19.11.2011, 20.12.2011, 16.02.2015, 17.10.2015 and 18.10.2015, whereby the respondents have sold different portions of the aforesaid premises to different people.
- c. The learned ARC in another eviction petition being E. No. 77325/2016, decided on almost similar facts on 31.10.2017, has held:

“32. The court is of the view that mere mention of address of certain properties as the residential address of the petitioners does not confer title of these properties to the petitioners. Copies of the sale deeds executed in favour of other persons of properties bearing house no. 2290 and 2291, Arya Samaj Road, house no. 26/8, Old Rajinder Nagar and house no. E-175 and 176, Pandav Nagar; Delhi are-on record. The sale deeds are valid documents that have transferred the title of the



properties to other persons. The Petitioners cannot be said to be owners of these properties; There is nothing to disbelieve the petitioners on this count.”

d. Therefore, this property was also not under the control or ownership of the respondents at the time of filing of the eviction petition as the property had already been sold on Power of Attorney basis in 2011-2012 and subsequently by registered sale deeds between 2011-2015.

39. Hence, I am of the view that the three properties alleged to have been at the disposal of the respondents were/are not available to them and hence, there is no question of them being suitable.

40. In light of the above discussion, I am of the view that the respondents/landlords have satisfied the conditions under section 14(1)(e) of the DRC Act.

41. The order dated 08.11.2017 does not suffer from any illegality or infirmity. The learned ARC has correctly dismissed the leave to defend application and has also rightly appreciated the settled law and the facts of the case.

42. With these observations and the ones made in R.C. REV 156/2018, the order dated 08.11.2017 passed by the learned Additional Rent Controller-I, Central District, Tis Hazari Courts, Delhi passing an eviction order in respect of part of premises bearing no. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi, in favour of the respondents and against the petitioner, is upheld.

43. Accordingly, the petition is dismissed, and the interim order stands vacated.

JASMEET SINGH, J



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MAY 17th, 2024/sj

Click here to check corrigendum, if any