

4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: October 24, 2008

Date of Order: November 27, 2008

+ RCR 57/2008

%

27.11.2008

KRISHAN KUMAR ALAG

...Petitioner

Through: Mr. K.R. Chawla, Adv.

Versus

JAMBU PRASAD JAIN DECD. THR. LR'S

ANAND KUMAR JAIN

...Respondent

Through: Mr. Chaman Lal Sachdeva, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not ? Yes.
3. Whether judgment should be reported in Digest ? Yes.

JUDGMENT:

1. The petitioner is aggrieved by an order of the learned ARC dismissing an application of the petitioner under Section 25-B of Delhi Rent Control Act for grant of leave to contest.
2. The petitioner is a tenant in respect of one room, a small kolki, verandah, bath and WC on the ground floor in premises no.1525, Chandrawal Road, Subzi Mandi, Delhi. The premises is built on 60 sq.yds. The respondent/landlord filed an Eviction Petition on the ground of bonafide requirement submitting that his family has considerably increased. He was having only one room, one store and kitchen, bath and latrine on

RCR 57/2008

Page 1 of 7

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

S

first floor and 2 rooms on second floor. His family dependent upon him for residential purpose consisted of himself, his wife, one son Anand Kumar Jain and 2 grandsons namely Navin Jain and Yogesh Jain aged 26 and 23 years. While Navin Jain was married, Yogesh Jain was of marriageable age. Thus, he needed the premises for this family of 6 members. He himself, aged 86 years was suffering from knee trouble and finding it difficult to climb stairs. The 3 rooms in his occupation were highly insufficient.

3. The tenant sought leave to defend on various grounds including that no permission under Slum Areas (Improvement and Clearance) Act had been sought by the landlord, that Anand Kumar Jain, son of landlord was not dependent on the landlord and had acquired flat no. 30, Pocket 7, Sector 2, Rohini, Delhi where he was residing; the other sons of landlord namely Hemant Kumar Jain, M.P. Jain, P.K. Jain and Darshan Kumar Jain were living in their respective houses at different places and petitioner used to visit them and stay there for days; the landlord's wife was owner of property no. 757, Nai Basti, Mukim Pura, Subzi Mandi which accommodation was also available to the petitioner and his family; the petitioner's other brothers who had also inherited tenancy rights from their father, the original tenant, have not been made a party and that the petitioner does not require the

6

premises for bonafide necessity.

4. During pendency of the petition, the petitioner died and his son Anand Kumar Jain, in whose favour petitioner had left a 'Will' was brought on record as a party. Subsequently, another objection was taken that other legal heirs of the deceased had not been made a party and the 'Will' was not a genuine 'Will'. It was also stated that bonafide requirement of the petitioner had gone and therefore petition was liable to be dismissed.

5. During pendency of petition, one application was made under Section 151 that Navin Jain, son of Anand Kumar Jain had shifted to Shakti Nagar on 4th August, 2005. In reply to this application, it was admitted that Navin Jain had to shift to 19/16, Shakti Nagar a rented accommodation, due to paucity of accommodation in the premises in question. This shifting was temporary and he shall be coming back as and when premises was vacated.

6. The learned ARC considered the documents and the affidavits of both the parties and came to conclusion that provisions of Section 19 of Slum Areas Act were not applicable in view of judgment of the Supreme Court in **Ravi Dutt vs. Rattan Lal**, 1984 RLR (SC) 153. The other contentions raised by the tenant also did not find favour with the ARC and the application for leave to contest was dismissed.

7

7. It is argued by the petitioner that the learned ARC should have held that Anand Kumar Jain has acquired the flat and residing in flat no. 30, Pocket 7, Sector 2, Rohini, Delhi along with his family members since the petitioner has produced the electricity bills of the aforesaid property in the name of Anand Kumar Jain and this fact has been concealed by the respondent.

8. The other ground taken is that the original owner Jamboo Prasad Jain has expired and Navin Jain, his grand son has divorced his wife therefore needs stand diminished. The learned Rent Controller should have held that Anand Kumar Jain inherited house no. 757, Nai Basti, Mukim Pura, Delhi from his mother. The ARC also did not take into account that Navin Jain had shifted to Shakti Nagar, Delhi and his requirement has already been met so ARC should have held that premises was not required bonafidely. It was a case of asking additional accommodation and therefore the petitioner should have been granted leave to defend.

9. It is not pointed out by the petitioner how the order of the learned ARC was bad in law. The petitioner has failed to show that there was any judgment overruling **Ravi Dutt case** (supra). Thus, the question of permission under Section 19 of Slum Areas Act is not here. The petitioner has also failed to show how property no. 757, Nai Basti, Mukim Pura Delhi was owned by Anand Kumar Jain or Navin Jain. In fact, the landlord placed on

8

record the copies of sale deeds of this property showing that his mother had disposed of this property during her lifetime and the property was not inherited by any of her LRs after her death.

10. If any member of the family of landlord during pendency of the Eviction Petition, due to paucity of accommodation, takes a premises on rent and shifts to that rented premises that does not mean that the bonafide requirement has gone. Rather this fortifies the bonafide necessity of the landlord and shows that the necessity of the landlord was so pressing and grave that the landlord was hard pressed due to necessity and had to take accommodation on rent for the time being. The fact of shifting to a rented accommodation due to non-vacating of the premises by the tenant rather proves the bonafide necessity. Mere this fact was sufficient to allow the Eviction Petition of the landlord so that his son who had shifted to rented accommodation temporarily, can join him back.

11. It was not necessary for the landlord to implead all the brothers of the petitioner as a party. It is well settled law that after death of the tenant, his legal heirs inherit the property as joint tenants and if one of them alone occupies the tenanted premises, it is considered that others have surrendered their rights in his favour. LRs are not considered tenants-in-common

8

so as to have separate and severe rights in the tenanted premises. It is sufficient if the LR in occupation of the tenanted premises are made as a party and it is not necessary to bring on record each and every LR of deceased. Moreover, in this case the petitioner had been giving rent and he was being issued rent receipts continuously for years together, after death of his father and none of his brother raised in disputed premises. All these rent receipts were placed on record of ARC. Therefore, this plea was rightly rejected by the ARC.

12. The petitioner had no right to challenge the inheritance of property by Mr. Anand Kumar Jain on the basis of 'Will'. The petitioner being a third person cannot contest the genuineness of the 'Will'. If there had been any dispute, the other brothers of Anand Kumar Jain would have raised a claim/stake over the property. Since none of the brothers of landlord had raised any dispute in respect of genuineness of the 'Will', the petitioner is nobody to contest the genuineness of the 'Will' and raise a dispute about the ownership.

13. The Court below had considered the allegation of acquiring the flat no. 30, Pocket 7, Sector 2, Rohini, Delhi and came to conclusion that this allegation was false. The landlord had placed a copy of ration card issued in his name at the premises in question on record showing that the petitioner and

10

his family was living at the premises in question and the alleged Rohini accommodation was not available to him.

14. The plea taken by the petitioner that since the landlord had sought additional accommodation. It was a good case for grant of leave to contest, must fail. It is the case where accommodation is being sought by the landlord as the family of the landlord grew and he needed accommodation for need of his family. The learned ARC can consider the requirement of the landlord taking into account the family members, the accommodation needed by them and the accommodation already in his occupation and if it is found that the accommodation in occupation was insufficient for the family of the landlord and tenanted accommodation was bonafidely required by landlord, then leave to defend has to be denied. In the present case, the son of the landlord had to hire accommodation and shift there temporarily because of paucity of accommodation. I consider that there was no ground for ARC to allow the application of the petitioner for leave to defend.

15. I find no force in this petition. The petition is hereby dismissed.

November 27, 2008
ak


SHIV NARAYAN DHINGRA J.