

(1989) 03 DEL CK 0091

Delhi High Court

Case No: Civil Revision Appeal No. 328 of 1986

Anil Kumar Jauhar and Another

APPELLANT

Vs

Atlas Cycle Industries

RESPONDENT

Date of Decision: March 3, 1989

Citation: (1989) 38 DLT 233 : (1989) 17 DRJ 83

Hon'ble Judges: Sunanda Bhandare, J

Bench: Single Bench

Advocate: S. Ghosh, I.S. Mathur, Sanjay Parikh, V.K. Makhija, R. Sabharwal and K. Raju, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) This Revision Petition is directed against the order of the Additional Rent Controller, Delhi dated 28th January 1986 whereby the Petitioners' eviction petition filed u/s 14(l)(c) read with Section 25-B of the Delhi Rent Control Act (hereinafter referred to as "the Act") on the ground of bona-fide personal need of the Petitioner No. I was dismissed.

(2) The petitioners' case in the eviction petition in brief was that the Petitioner No. I who is the owner of the suit premises at 128 for Bagh, New Delhi required the premises for his bona fide personal need for his residence. Since the premises in question were constructed on a residential plot of land leased out by the President of India to Petitioner No. I by perpetual lease deed dated 13th May 1959 the construction was of purely residential nature. Though there was no written lease agreement between the Petitioners and the respondent the Respondent had represented at the time of taking the premises on rent that the Respondent would use the premises in dispute as a guest house for the officers of the company and it was so used in the beginning, however later on the Respondent started using it as an office. Thus, the petitioners filed a petition for eviction against the Respondent u/s 14(l)(k) of the Act being Suit No. E-538/76, On the 4th September 1978 the court

of Suit. Manju Goel. Additional Rent Controller, Delhi ordered that the Respondent stops the misuse of the premises within 15 days of the order. The Land & Development Office, D.D.A. levied misuse charges against the Petitioners which were paid by the Petitioners but Safer reimbursed by the respondent. At the time the premises were let out to the respondent the Petitioner No. I was staying in a rented accommodation at 28 Babar Lane, however, in July 1977 an eviction order was passed against the petitioners. The Petitioners went in appeal against that eviction order before the Rent Control Tribunal. The eviction order was confirmed by order dated 16th April, 1980. The Petitioners thereafter filed a second appeal also which was dismissed. A SLP filed by the petitioners was dismissed by the Supreme Court on 30th October, 1980, however time was given to the petitioners to vacate the premises in Babar Lane up to 30th April, 1981. Since the Petitioner No. 1 had no other house to live, the mother of the petitioner No. 1 who is the owner of house No. 127, For Bagh. New Delhi gave her house to the Petitioner No. 1 temporarily as a licensee by getting her house vacated from the Hungarian Embassy to meet the urgent necessity of the petitioner No. 1 The mother of the petitioner No.1 does not have any independent income and is dependent on the income of the rent from 127 Jor Bagh, New Delhi for her livelihood. The Hungarian Embassy was paying her rent of Rs. 2700.00 per month, however in view of the petitioners necessity though the Hungarian Embassy was willing to increase the rent she allowed him to stay in that house temporarily on the undertaking that he will shift to his premises as soon as they are vacated. The petitioners, Therefore, filed the present eviction petition u/s 14(l)(e) read with Section 25-B of the Act on 28th March 1981 against the respondent.

(3) On an application for leave to defend filed by the respondent the Additional Rent Controller, Delhi by order dated 14th August 1981 granted conditional leave. The case of the respondent was that the premises in question were let out for an office and were being used as such till the order dated 14th September 1978 was passed by the Court of Smt. Manju Goel, the then Additional Rent Controller, Delhi on a petition u/s 14(l)(k) of the Act filed by the petitioners. The letting purpose being commercial the petition filed by the petitioners u/s 14(1)(e) read with Section 25-B of the Act was not maintainable. That House No. 127 Jor Bagh, New Delhi though is shown in the name of the mother of the petitioner No. I, she is not the real owner because she is not doing any work and it is not correct, that the petitioner No. 1 was allowed to stay in that that house as a licensee. The petitioners have filed the petition only to pressurise the respondent to increase the rent. The prayer for eviction was mala fide inasmuch as the petitioners do not require the premises bonafide for their residence or for the residence of the family members dependant upon them as the petitioners own huge property of their own in Delhi. Since the petitioners had failed to obtain the eviction order u/s 14(1)(k) of the Act the present eviction petition was filed mala fide because the rent in that area has gone up considerably.

(4) The respondent did not dispute the ownership of the petitioners in respect of the suit property. The main contest was regarding letting purpose and alternate reasonably suitable residential accommodation available with the petitioners at present. The Additional Rent Controller came to the conclusion that the petitioners never objected to the premises being misused for non-residential purpose and had acquiesced by paying penalty charges and collecting the same afterwards from the respondent. Thus even assuming the premises were let out initially for residential purpose since the same were used for office, purpose with the consent and knowledge and acquisition of Petitioner No. 1 the letting purpose reused to be residential.

(5) I have gone through the pleadings and evidence on record with the help of the learned counsel for the parties and I find that though there is no lease agreement on record which would indicate the letting purpose, there is sufficient evidence to show that the letting purpose was residential and not commercial. It was not disputed that the nature of the premises is residential. The house is in a purely residential area and under the lease agreement between Petitioner No. 1 and the Land and Development Office the premise could not be let out for commercial purpose. The fact that the petitioners paid the misuse charges to the D.D.A. and in turn collected it from the tenant-respondent does not change the letting purpose. Petitioner No. 1 in his statement has specifically stated that he had settled the terms of tenancy with one Shri Bishamber Dayal Kapoor, who is the Chairman-cum-Managing Director of the respondent company and it was agreed between them that the premises will be used for a guest house of the company and their officers would reside in it. The respondent did not examine Shri Bishamber Dayal Kapoor. The respondent did not place on 86 record any documents of the company, such as certificate under the Shops & Establishment Act, Attendance Register of the employees working at the premises, correspondence with their customers or clients or other documents like minute book etc. which would indicate that the premises were being used for office purpose. In fact it is not now disputed that the premises are being used as a guest house presently. An undertaking to that effect was given by the respondent in the application filed by the petitioner u/s 14(l)(k) of the Act. The respondent also did not challenge the letting purpose in the eviction petition u/s 14(1)(k) of the Act filed by the petitioners. This coupled with the fact that the petitioners were prosecuted by the D.D.A. on the ground that the premises were used for non-residential purpose against the Master plan of Delhi adds credence to the case of the petitioners that the premises were in fact let out for residential purpose only. Further more it is on record that the respondent has another premises at Mata Sundari Road, New Delhi for office. It is well settled that in the absence of any written agreement, the nature of the building the locality and the dominant use to which the building can be put are the relevant guidelines for deciding the question as to the purpose for which the building was let out. Considering that in the present case use of the premises for office would be against

the master plan of Delhi and the action taken by the Land & Development Office and D.D.A. coupled with the previous litigation between the parties leaves no doubt that the purpose of letting was residential only.

(6) The second question to be decided is regarding availability of alternate reasonably suitable residential accommodation with the Petitioners. The Supreme Court in [Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others](#), has observed that in considering the availability of alternate accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. In the present case, from evidence on record, it is clear that House No. 127, Jor Bagh, New Delhi stands in the name of the petitioner No. 1's mother. Though the respondent has disputed the title and ownership of the petitioner's mother in respect of House No. 127, Jor Bagh, New Delhi the respondent failed to produce any evidence to prove its case. On the other hand the petitioners produced the Wealth Tax returns of Smt. Dayawanti the mother of the petitioner No. 1 which show that the mother is the sole owner of 127 Jor Bagh, New Delhi. The Petitioner No. 1 has categorically stated on oath that he was being permitted to stay in that house only as a licensee by the mother. The testimony of the Petitioner No. 1 has gone un rebutted. Whether the mother of Petitioner No. 1 was dependant on the rent from that house for her maintenance or whether Petitioner No. 1 is the only son is not relevant at all. The short question is whether the petitioner had any legal right to continue to live in that house. Once it is proved that he did not have a legal right to stay there it cannot be said that he had an alternate reasonably suitable accommodation available with him.

(7) It appears that the petitioners filed the eviction petition immediately after the SLP filed by them in the Supreme Court against the order of eviction passed against the petitioners in respect of the rented accommodation was dismissed. The Supreme Court gave six months' time to vacate the rented accommodation and the present eviction petition was filed, before that time expired. In fact these facts go to show that the petitioners did not file the eviction petition against the respondent in haste but took steps for eviction of the respondent only after their actual need arose. I am, Therefore, of the view that the decision of the Additional Rent Controller, Delhi is not according to law and needs to be revised.

(8) The petition is allowed with costs. The impugned order of the Additional Rent Controller, Delhi dated 28th January 1986 is set aside, The respondent is however granted six months' time to vacate the premises in question.