

## Bhai Ram Vs Madan Lal Gupta

**Court:** Delhi High Court

**Date of Decision:** Jan. 1, 1995

**Acts Referred:** Delhi Rent Control Act, 1958 " Section 14(1)

**Citation:** (1995) 1 AD 833 : (1995) 57 DLT 527

**Hon'ble Judges:** Devinder Gupta, J

**Bench:** Single Bench

**Advocate:** K.C. Kalra and O.P. Tyagi, for the Appellant;

### Judgement

Devinder Gupta, J.

(1) The tenant has come up in revision against the order passed on 15/10/1993 by Shri D.S.Bawa, Additional Rent Controller, Delhi dismissing his

application seeking leave to contest and simultaneously passing an order of his eviction from the ground floor of House No.7233 to 7236 in1/38

Roop Nagar, Delhi.

(2) The tenant's eviction was sought by the landlord/respondent u/s 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as "the Act")for

his bona fide use and occupation by the landlord for himself and for other members of his family dependent upon him. It was alleged that premises

are residential and were let out for residence and are also located in residential colony. Neither the landlord nor any member of his family owned

any other residential accommodation in Delhi, New Delhi or at any other place and claimed that his family consists of himself, his wife, two

daughters, his son and parents. In addition, there was a servant. The landlord in the eviction petition gave details of the manner in which he

proposed to use and utilise every part of the building in question owned by him having four units therein, two in each floor, each described

separately by a distinct number with disputed premises known as House No. 7233and the others 7234 to 7236. The tenant sought leave to

contest by filing an application within the period of limitation. In the affidavit, the tenant took up a plea that the entire property 1/38, Roop Nagar,

Delhi was constructed by its owner/landlord Shri Dal Chand Thekadar about 40 years back. Ground floor portion comprising many units were let

out by the owner to the members of weaker Section of society for using the tenanted premises for residential-cum-commercial purpose. It was

alleged that he was also let out the accommodation in the ground floor more than 30 years ago under the explicit consent, knowledge and

permission of the landlord/owner for using the tenanted premises for residential as well as commercial purposes like other tenants of the ground

floor. According to the tenant, he had been carrying on part/whole time business of different nature such as florist, a repair and assembly of old iron

strips, tailoring and cuttings, upholstery, supply of sofa set material, assembling and packing of electrical goods etc. to earn his livelihood. It was

also disclosed by the tenant in the affidavit that in the locality each and every house in the ground floor was being used for residence-cum-

commercial purpose, since this area was otherwise surrounded by many big industries like Gresham Factory, Jolly Factory etc. Ever since he was

inducted as a tenant, he had been making use of the property for residence-cum-commercial purpose. The tenant has also given detail of

accommodation in the ground floor of the complex with other tenants by disclosing their names who have been using their accommodation for

residence-cum-commercial purpose. Another ground taken by the tenant seeking leave to contest was that the landlord had sufficient

accommodation on the ground floor, first floor and terrace in which he could comfortably accommodate the entire family. It was alleged that names

of parents had been got transferred in ration-card to the present address just to substantiate a false plea of bona fide requirement. Otherwise, the

parents of the landlord had got their own independent business and had their separate ration cards. According to the tenant, the landlord along with

his elder brother and his family were residing at House No. 20/45, Shakti Nagar, Delhi, which was sufficient to meet the requirements of landlord,

his family as also the brother of the landlord and his family.

(3) The landlord contested the tenants claim by filing the reply. In his affidavit, the landlord denied that premises were let out for carrying on any

commercial activity therein. It was contended that the premises were let out for residential purpose only and had been used as such. As per his

version, commercial activities are prohibited in the locality. Regarding the details which the tenant has given in his affidavit about the other persons

making use of their accommodation also for residential-cum-commercial purpose, the landlord contended that he had no concern with those

persons but mere use of premises by those persons will not convert residential premises into a commercial premises. Landlord asserted his claim

that premises were badly needed for his bona fide use and occupation and for other members of family.

(4) The Additional Rent Controller, through the impugned order dealt with the ground taken up by the tenant in detail and has returned a finding

that the facts disclosed in the tenant's affidavit do not give rise to any triable issue and thus the tenant was not entitled to grant of leave.

(5) I have heard learned Counsel for the parties, who have also taken me through the entire record. Learned Counsel for the petitioner has

vehemently contended that in the facts and circumstances, leave ought to have been granted. The Controller was not justified in recording finding of

fact without taking the petition for trial and permitting the tenant to lead evidence. triable issues do arise on the facts disclosed in the affidavit.

(6) Learned Counsel for the respondent has vehemently opposed the averments made by learned Counsel for the plaintiff and urged that the

Additional Rent Controller was right in negating the grounds taken by the tenant and holding that pleas are vague and do not give rise to any

triable issue. Leave to contest, according to learned Counsel for the respondent could be given in a case where a very strong case was made out

by the tenant. There was absolutely no plea taken by the tenant that premises were let out for commercial purpose. On the question of bonafide

requirement, the landlord was the best judge of his own requirements over which tenant's whims could not be imposed. Learned Counsel for the

parties have also placed reliance of a number of decisions of this Court in support of their submissions.

(7) The Additional Rent Controller in his 10 page order discussed the merits of the claim of the tenant including the one as to whether the premises

were or were not let out for residence-cum-commercial purpose. After discussing the facts disclosed in the affidavit, the Additional Rent Controller

held that the premises are not being used as full fledged commercial purpose, as per tenant's own version. Incase the tenant is residing in the

premises and is carrying on business, it will show that the commercial activity, if at all, is being carried on only incidentally to the tenant's living

there, which will not change the nature of the premises for the purpose of letting. Such observations made by Additional Rent Controller are wholly

unjustified in view of the facts disclosed in the tenant's affidavit. The tenant in his affidavit has asserted that the premises were let out to him under

the explicit consent, knowledge and permission of the landlord for using the same for residence as well as for commercial purpose, like other

tenants in the ground floor. Ever since the day he was inducted, he has been using the premises as such. Thus it was be noticed that the Controller,

instead of recording his finding as to whether the facts disclosed in the affidavit give rise to a triable issue or not, proceeded to record a finding of

fact on merits. This approach was also adopted by the Additional Rent Controller while considering the ground taken by the tenant as regards the

other alternate accommodation available to the landlord. In fact the jurisdiction of the Controller at the Stage of considering the application for

grant of leave to contest is very limited. Controller's jurisdiction at the stage of granting or refusing leave to contest has been subject matter of

number of decisions by the Supreme Court, such as, Kulwant Singh and Others Vs. Smt. Amar Kaur and Others, ; Smt. Jamna Devi and Others

Vs. Kude Ram and Another, ; Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301 . In the last decision, it has been held that the Controller

is not to record a finding on the disputed questions of fact at this stage or his preference on one set of affidavits against the other set of affidavits.

The Controller while examining the question whether there is a proper case for granting leave to contest the application or not has to confine

himself to the affidavit filed by the tenant disclosing such fact as would prima facie, and not on contest, disentitle the landlord from obtaining an

order for recovery of possession. If the averments in the affidavit disclose such facts, which if ultimately proved to the satisfaction of the Court,

would disentitle the landlord from the recovering possession that by itself makes it obligatory upon the Controller to grant leave.

(8) In the instant case, it was not in dispute that the landlord was a subsequent purchaser, when tenant was already in occupation, who had been

inducted in the premises by his predecessor. The question whether or not the premises were let out for residential-cum-commercial purpose cannot

be decided on merits without affording parties permission to lead evidence. The observations by the Additional Rent Controller that even if the

premises are in use by the tenant for commercial purpose the same will not change the nature and character of the same from residence to

commercial are wholly unwarranted. Equally the submission made on behalf of the respondent is unfounded that there is no plea taken by the

tenant that premises were let out for residential-cum-commercial purpose. The affidavit of the tenant in clear and categorical terms disclosed the

fact that the premises were let out to him by the predecessor of the respondent for residential-cum-commercial purpose, like other tenants in the

locality in the ground floor. In these circumstances the order of the Additional Rent Controller cannot be sustained since he has traveled beyond his

jurisdiction in recording findings of fact on merits of the pleas without taking the petition to trial. The result is that the revision is allowed, the

impugned order is quashed and set aside. The tenant's application for leave to contest is allowed. The Controller will now proceed to dispose of

the matter on merits, in accordance with law. The parties are directed to appear before the concerned Additional Rent Controller on -----.