

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

+ **RC (R) No.78-79/2005**

% **Date of decision: 12th January, 2009**

MUMTAZ BEGUM & ORS.Petitioners

Through: Mr. Vijay Tandon, Advocate.

Versus

MOHD. KHAN ... Respondent

Through: Mr. Rajeev Saxena, Advocate.

AND

RC (R) No.97-98/2005

MUMTAZ BEGUM & ORS.Petitioners

Through: Mr. Vijay Tandon, Advocate.

Versus

SHAFIQUDDIN Respondent

Through: Mr. G.M. Farooqi, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. These two revision petitions under Section 25 B (8) of the Delhi Rent Control Act, 1958 have been preferred by the landlords against the order dated 21st February, 2005 of the Addl. Rent Controller dismissing the two petitions for eviction, both under Section 14 (1) (e) of the Act preferred by the landlords against two tenants, both in different portions of property No.1909, Mohalla Qubaristan, Turkman Gate, Delhi. The Addl. Rent Controller held the petitioners to be owner/landlords of the premises in the tenancy of the tenants; further held the premises to have been let out to the tenants for residential purposes only, negated the plea of the tenant in RCR No.78-79/2005 of the petition for eviction being not with respect to the entire premises in his tenancy.

2. However, the petition for eviction subject matter of RCR No.78-79/2005 was dismissed *inter alia* on the ground of the landlords having not given any plausible explanation for non production of the title deeds of property No.2299, Chhatta Momgran, Turkman Gate, Delhi, which the tenant contended to be belonging to the petitioner No.2 Fazle Azim and the petitioners claimed to be belonging to wife of petitioner No.2 Fazle Azim and which would have been the best evidence to show that the property belonged not to the petitioner No.2 but to his wife. Qua the said property, it was also held that the landlords had not produced the site plan of the property to disclose the extent of the accommodation therein; it was held that when the landlords had filed site plans of the other accommodations/properties which the tenant had averred to be alternative suitable accommodation for the landlords, there was no reason for not producing the site plan of the said property. The other reason for dismissal of the eviction petition subject matter of RCR No.78-79/2005 was qua property No.2384, Jangli Kuan, Gali Shahbuddin, Kucha Pandit, Delhi. It was the case of the tenant that the said property belonged to the petitioner No.1 Mumtaz Begum; it was the case of the landlords that the same was occupied by the mother of the petitioner No.1 and is very small and in a dilapidated condition and not suitable for the residence of the landlords. The Addl. Rent Controller held that the onus was on the landlords to prove that the said property was not suitable for them and the landlords had not filed any site plan in respect of the said property to show the accommodation therein or any document to show as to how the same was not suitable for the landlords.

3. The Addl. Rent Controller thus dismissed the petition for eviction subject matter of RCR No.78-79/2005 for the reason of the landlords having failed to prove that the aforesaid two properties were not reasonable suitable residence for themselves and for having failed to disclose the correct extent of accommodation in the said properties. It was held that the bonafides of the landlords had become doubtful for the failure to disclose the correct extent of accommodation in the aforesaid two properties.

4. The petition for eviction subject matter of RCR 97-98/2005 was dismissed only for the reason of property No.2384, Jangli Kuan, Gali Shahbuddin, Kucha Pandit, Delhi (supra). It was held that the landlords had failed to prove the extent of accommodation therein. Even though the tenant in petition for eviction subject matter of RCR No.97-98/2005 had also set up a case of alternative accommodation in property No.2299, Chhatta Momgran, Turkman Gate, Delhi being available to the landlords (and which formed one of the two grounds on which the other petition for eviction was dismissed) but the Rent Controller vis a vis the said petition for eviction held proved that the said property belonged to Smt. Shaista Begum wife of petitioner No.2. It was so held owing to the admissions in the suggestions given by the counsel for the tenant in the said petition for eviction to the petitioner No.2 appearing as his own witnesses. The counsel for the tenant in the said petition for eviction had in the cross examination of the petitioner No.2 suggested that the said property had been purchased by the petitioner No.2 in the name of his wife. The said suggestion was denied by the petitioner No.2. The Rent Controller however held that from the said suggestion it stood admitted that the property was registered in the name of Smt. Shaista Begum and thus could not be held to be alternative suitable accommodation available to the petitioners.

5. Aggrieved from the aforesaid reasoning, these revision petitions have been preferred averring the order of dismissal of the petitions for eviction to be not in accordance with law. The counsel for the landlords and the counsel for the tenants in both the cases have been heard. Neither of the counsels for the tenants has urged any arguments qua the findings of the Addl. Rent Controller of the petitioners being owner/landlords, the premises being let out for residential purposes and on other

technical pleas taken before the trial court and on which the trial court has returned a finding in favour of the landlords. Thus the said findings have attained finality.

6. The tenants in both the petitions for eviction had, besides the properties aforesaid for the reason whereof the petitions for evictions were dismissed, pleaded a number of other properties as available to and alternative suitable residential accommodation for the landlords. However, the Rent Controller after discussing the pleadings and the evidence vis a vis each of the said other properties returned a finding of either the same being not available to the landlords or being not alternative suitable residential accommodation available to the landlords. The counsel for the landlords urged that the tenants having not challenged the findings of the Addl. Rent Controller vis a vis the other properties with respect whereto findings have been returned in favour of the landlords, are not entitled to challenge the said findings before this court. However, that is not the correct position in law. The remedy of revision under Section 25 B (8) of the Act is available only to a person aggrieved by the order of the Rent Controller and not a person aggrieved by a finding of the Rent Controller. Neither of the tenants was aggrieved by the order of the Rent Controller, the same being in their favour and of dismissal of the petitions for eviction. Thus the remedy of revision provided under the Act was not available. No other remedy challenging the said findings is also available. Thus the tenants are in the present revision petitions by the landlords only, entitled to urge arguments and challenge the findings of the Rent Controller against the tenants and in favour of the landlords.

7. The counsel for the tenant in RCR 78-79/2005 argued that the landlords in the petition for eviction did not disclose any of the other properties available to them; upon the tenants in the application for leave to defend and thereafter in the written statement disclosing the other properties available to the landlords, the landlords while admitting existence and ownership of some of the properties pleaded non suitability thereof. It is contended that the law of Section 14 (1) (e) requires the landlords to disclose in the petition for eviction all the properties available to them and to plead non suitability thereof; if the landlord does not do so, he incurs the penalty of dismissal of the petition for eviction as not bonafide.

8. The counsel further urged that the Addl. Rent Controller negated the plea of the tenant of suitability of other accommodation available to the landlords *inter alia* on the ground of the tenant having not filed site plan of those properties; it was urged that the parties are Mohammedans amongst whom *parda* is still common and the tenant could not be expected to enter the other houses and to have the site plan thereof drawn.

9. It was otherwise generally urged that other bigger properties are available to the landlords and the plea of the landlords of non suitability thereof is non believable; while admitting that the landlord is best judge of the accommodation he/she chooses to occupy, it was urged that such choice has to be rationale.

10. It was also argued that the landlords had failed to raise any question of law qua the findings on which the petition for eviction was dismissed. It was also generally argued that the landlords had been selling other properties; that property No.2299, Chhatta Momgran, Turkman Gate, had been sold by Smt. Shaista Begum wife of petitioner No.2 in August, 2006. It was argued that the tenant has recently learnt of another property of the landlords; however particulars thereof were not given.

11. The counsel for the tenant in RCR No.97-98/2005 urged that the landlords had not approached with clean hands as required by law. It was urged that the requirement pleaded in the petition for eviction was of the petitioner No.1 only and not of petitioner No.2; that eight rooms are shown in the site plan Exhibit PW-1/6 and it was nowhere pleaded that the same are not habitable; that the pleadings of the landlords showed that they owned other properties also besides those of which particulars had been disclosed by the tenant; that the address of the residences of the other sons of the petitioner No.1 had not been disclosed; that the petitioner No.1 is now 74 years of age and cannot be expected to climb stairs to the tenancy premises; that now the tenant has discovered other properties of the landlords in Zakir Nagar; that the Rent Controller has not considered all facts regarding the other properties of the landlords; that the Rent Controller has also not returned a finding of requirement of accommodation of the landlord nor is a case for requirement made out; that the entire conduct of the landlords did not make out a case for bonafide requirement.

12. The counsel for neither of the tenants has been able to make out a case for interference with the findings of the Rent Controller in favour of the landlords. The scope of interference in exercise of power/jurisdiction under Section 25 B (8) of the Act has been laid down by the Supreme Court in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* AIR 1999 SC 2507. This court is not to re-appreciate the evidence or to act as the appellate court. The evidence is to be read only to determine whether the finding of the controller is such which on the given facts and material no reasonable person could have returned and/or whether the same is perverse. It cannot be said so of any of the findings of the Rent Controller in favour of the landlords. The Rent Controller after going through the pleas taken by the tenants in both the cases with respect to other alternative suitable residential accommodation being available to the landlords found the case therefor having not been made out. The counsel for neither of the tenants has drawn attention to any piece of evidence or other material on record which can be said to have been ignored by the controller and/or on the basis whereof it can be said that in spite of existence thereof the finding of the said accommodation being not alternative suitable accommodation can be said to be perverse.

13. The law is now well settled. A landlord is not required to disclose all his properties. Upon a plea with respect to the other properties being taken by the tenant, the landlord is entitled to at that stage show that the same is not alternative suitable accommodation to him. It is significant that the pleas are with respect to properties other than the property in which the landlords are residing and/or the property in which the tenancy premises are situated. It is not a case of the landlord having not disclosed the entire accommodation available to him in the property in which he is residing. The case of the tenants is that if the landlords are facing paucity of accommodation in which they are residing, they should instead of shifting to the property in occupation of the tenants shift to some other property available to them. Non mentioning of such properties in the petition for eviction cannot be a ground for dismissal of the petition for eviction or holding the requirement of the landlord if otherwise made out, to be not bonafide. The position in law is clear that the landlord is entitled to make a choice of the property which he chooses to occupy, there is no mandate of law requiring the landlord to mention all the

properties owned by him and it is for the tenant to take such pleas and the landlord is entitled to give his explanation with respect thereto in his replication/rejoinder.

14. The position may be different where such non disclosure is shown to be malafide and in an attempt to gain an advantage over the tenant. That is not the case here. The tenants in the application for leave to defend themselves came up with particulars of the other properties available to the landlords. It shows that the tenant was fully in the know of the affairs of the landlords and the parties went to trial with full knowledge of the case which each of them was required to establish and/or meet. No case of any intentional malafide/concealment is made out qua the other properties particularly, since the Rent Controller after appreciation of evidence has found the said properties to be not alternative suitable accommodation for the landlords.

15. Similarly, the arguments with respect to the other properties of the landlords of which the tenants are stated to have learnt subsequently are neither here nor there. No applications have been made by the tenants in this regard. Urging such arguments orally and without any basis is of no avail.

16. The argument of the counsel for the tenants in RCR No.97-98/2005 of the petition for eviction containing a case for requirement of the petitioner No.1 only is also not correct. The case with which the petitions for eviction were filed was that the family of the petitioner No.1 comprises of four sons and one daughter; that the petitioner No.1 along with her family is residing in property No.2357, Bazar Chitli Qubar, Turkman Gate, Delhi; the accommodation therein comprises of three habitable rooms; that the petitioner No.1, her two sons with their respective wives and children and one daughter are residing therein; that owing to paucity of accommodation, petitioner No.2 being another son of the petitioner was forced to shift to the factory premises at Noida. It was pleaded that the petitioner No.1 along with the petitioner No.2 and his family will shift to the entire first floor of property No.1909, Mohalla Qubaristan, Turkman Gate, Delhi in different portions whereof the two tenants were in occupation. Thus the case pleaded was of the requirement of the petitioner No.1 as well as the petitioner No.2. The site plan Exhibit PW-1/6 with respect whereof the other argument has been raised is of property *RC (R) No.78-79/2005 &.97-98/2005*

No.2334, Chhatta Momgran, Turkman Gate, Delhi. The counsel for the tenant is wrong in contending that the same shows eight rooms. The site plan shows two rooms on the ground floor, one store room, one tin room, another room on the first floor and one tin shed on the second floor. The part of the accommodation is marked as commercial and only part as residential. The petitioner No.2 appearing as a witness has deposed that the residential portion of the said property is joint and is occupied by Shri Faizle Naim another son of the petitioner No.1 who is residing there with his family comprising of himself, wife and children. I have also perused the cross examination of the petitioner No.2. There is no challenge qua the site plan or the residential and the commercial portions of the said property the only suggestion is that the said property is unoccupied and is in possession of the petitioner No.2 and which was denied. The Controller has rightly held that the tenant has failed to establish that the said property is available or is alternative suitable residential accommodation for the landlords.

17. Similarly, the argument raised of the petitioner No.1 owing to her age being unable to climb to the first floor is misconceived. The petitioner No.1 is pleaded to be residing in property No.2357, Bazar Chitli Qubar, Turkman Gate, Delhi which itself is comprising of ground to the second floor. It has also come on record that the wife of Fazle Illahi another son of the petitioner No.1 residing in the said property is suffering from bone cancer is unable to walk and climb and needs to reside on the ground floor. From the same, it follows that the petitioner No.1 in the said property also is in occupation of the upper floors. It has not been shown to have been put to the petitioner No.2 in cross examination that the petitioner No.1 is residing on the ground floor or is unable to climb to the first floor. In the absence of the same, the argument raised for the first time before this court carries no weight.

18. Thus the tenants in neither of the cases have been able to show that the findings of the Addl. Rent Controller in favour of the landlords are perverse or such which no reasonable person could have reached. The said findings are accordingly affirmed.

19. That brings me to the grounds on which the petitions for eviction have been dismissed. As would have been noticed, while the petition for eviction subject matter of *RC (R) No.78-79/2005 &.97-98/2005*

RCT No.78-79/2005 has been dismissed for the reason of two other properties, the petition for eviction subject matter of RCR No.97-98/2005 has been dismissed for the reason of one other property only. Both petitions have been dismissed for the reason of property No. 2384, Jangli Kuan, Gali Shahbuddin, Kucha Pandit, Delhi (hereinafter called Jangli Kuan property). Only petition for eviction subject matter of RCR No.78-79/2005 has also been dismissed for the reason of property No. 2299, Chhatta Momgran, Turkman Gate, Delhi (hereinafter called Chhatta Momgran property). Though the plea of Chhatta Momgran property was subject matter of petition for eviction in RCR No.97-98/2005 also; as aforesaid the said plea was declined in that case owing to the admission in the cross examination by the tenant.

20. When two cases are being dealt with together, it defies logic that the court can vis a vis one hold a particular property to be not available to the landlords for the reason of the same being owned by his wife and vis a vis another case hold the landlord to have not proved that the same belonged to his wife. Of course, the difference has arisen owing to the different cross examination by the two tenants. However, the question is one of fact and the same fact cannot be different in two cases. This need detain me any further in as much as, as also noticed herein above, the counsel for the tenant in RCR No.78-79/2005 and in which case the petition was dismissed owing to Chhatta Momgran property, during arguments before this court admitted that the said property had been sold in the year 2006 by the wife of the petitioner No.2. It thus stands admitted in this case also that the said property belonged to the wife of the petitioner No.2 and thus could not be alternative suitable accommodation to the petitioner No.2.

21. That leaves the aspect of the Jangli Kuan property. The counsel for the landlords has urged that the present accommodation where the petitioner No.1 is residing is in Turkman Gate area; that the tenancy premises are also in Turkman Gate area and are close by to the existing accommodation of the landlords; on the contrary Jangli Kuan accommodation is near Lalkuan and at a distance from the existing accommodation of the landlords. It is contended that thus nothing wrong can be found with the choice expressed by the landlords in opting to evict the tenants from the tenancy premises rather

than opting to occupy the Jangli Kuan property even if held to be available to the landlords. There is a merit in the said contention of the counsel for the landlords. There is a rationale in the choice exercised by the landlords for the premise close to their existing accommodation rather than far away from their existing accommodation. A case for requirement is also made out considering the number of family members of the petitioner No.1 and the accommodation available in the existing accommodation. The petitioner No.1 is found to have made out a case for requirement of additional accommodation and which necessarily has to be in another property for the reasons of paucity of accommodation available in the existing accommodation.

22. The counsel for the landlords is also correct in contending that the tenants have admitted the occupation of the said property by the stepmother of the petitioner No.1 and the petitioner No.1 cannot be expected to evict her stepmother for the sake of keeping a tenant.

23. The counsel for the landlords has also placed reliance on:-

- (i). *Mohanlal Shamji Soni Vs. Union of India* AIR 1991 SC 1346 laying down that it is the statutory and legal duty of the courts to do justice and to take active role in the proceedings in finding out the truth and to administer justice. The landlords have before this court filed the site plans of the said property. It is contended that the mistake in not filing the said plan before the Addl. Rent Controller ought not to be permitted to come in the way of landlords evicting the tenants. I may, however add that the observations aforesaid relied upon were made by the Supreme Court in the context of a criminal trial;
- (ii). *A.M. Shah Vs. Smt. Pushpa Sood* AIR 2001 Delhi 451 reiterating that the only requirement is for the landlord to disclose such accommodation as a suitable residence for the landlord; if there is no other residential accommodation which is suitable then there is no duty to disclose the same;

(iii). *Prativa Devi Vs. T.V. Krishnan* 1996(5)SCC 353 on the aspect of the landlord having complete freedom in the matter of choosing the accommodation;

(iv). *Sarla Ahuja Vs. United India Insurance Co. Ltd.* AIR 1999 SC 100 laying down that the fact that the landlady was in possession of another flat in another city was not a ground to disentitle her from seeking recovery of tenanted premises and that it is unnecessary to make enquiry as to how else the landlords could have adjusted himself;

(v). *Mahendra Trivedi Vs. Jai Prakash Verma* 157 (2009) DLT 690 to contend that the tenant cannot dictate the mode and manner in which the landlord should live.

24. Per contra, the counsel for the tenant in RCR No.78-79/2005 relies on:-

(i). *Smt. Ahmadi Begum Vs. Sh. Modh. Ismail* 1988 (1) RCR 190 holding that the landlord has to disclose in the eviction petition the accommodation available to him for residence. However, in the same judgment it has also been held that accommodation which was rented out or other accommodation not available to landlord for residence need not be disclosed. Moreover in view of the pronouncement of the Supreme Court referred to herein above, the said matter is no longer open for consideration;

(ii). *Shambhu Nath Vs. Sureinder Kumar Sharma* 44 (1991) DLT 678 laying down that the court can assist the landlord only if he is a honest, straightforward litigant and not a person who conceals and distorts facts and creates artificial scarcity of accommodation. However, in the facts of the present case, it cannot be said that the landlords have created artificial scarcity of accommodation.

25. The reasoning of the Controller dismissing the petitions for eviction for the reason of Jangli Kuan property is thus found to be perverse and not borne out from the material on record. The Controller did not consider that the said property was far away

from the existing accommodation of the landlords where the other sons and grandchildren of the landlords are residing and in comparison the tenancy premises are in the same locality as the present accommodation. Thus nothing wrong can be found with the choice of the landlords. Moreover, once it admitted that the Jangli Kuan property is occupied by the stepmother of the landlady, the landlady cannot be asked to evict her stepmother for the sake of keeping the tenants. The order of the Addl. Rent Controller dismissing the petitions for eviction is set aside. A case for an order of eviction under Section 14 (1) (e) of the Act is held to have been made out. The petitioners/landlords are found to require the premises in tenancy of the tenants in both cases. The petitions for eviction are allowed. An order of eviction is passed in favour of the landlords and against the tenants in each of the cases with respect to the premises/accommodation as described in paras 1,2,8 & 20 of the petitions for eviction and as shown in the site plan proved in each case. There was a controversy as to the extent of accommodation for eviction subject matter of RCR No.78-79/2005. The Controller has found the tenant in that case to have raised construction of a room un-authorizedly above the terrace. It is clarified that the tenant in that case would be liable to be evicted from the unauthorizedly constructed portions also. However, in accordance with law time of six months from today is given to tenants in each of the cases to vacate the premises and the order of eviction is made inexecutable till then. The files of the Addl. Rent Controller requisitioned in this court be returned forthwith for the purposes of execution.

The landlords are also awarded costs of proceedings of Rs.25,000/- against tenant in each of the petitions for eviction.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**January 12, 2010
PP**