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

% *Judgement delivered on:07.07.2023*

+ RC.REV. 367/2018, CM APPL. 13453/2023 & CM APPL. 22041/2023

NISAR AHMED

..... Petitioner

Through: Mr. Rajat Aneja and Mr. Ajay Saroya, Advocates.

versus

AGYA PAL SINGH

..... Respondent

Through: Mr. M.A. Niyazi and Mr.Siddharth Aggarwal, Ms. Anamika Ghai, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi ad Mr. Arquam Ali, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**J U D G M E N T**

**NAJMI WAZIRI, J**

**RC.REV. 367/2018 & CM Nos. 13453/2023 & 22041/2023**

1. By this revision petition, the petitioner/landlord impugns the dismissal of his eviction petition bearing No. RE-23/15, against the respondent/tenant by the judgment dated 07.06.2018 passed by the Addl. Rent Controller-I (ARC), Central District, Tis Hazari Court, Delhi.



2. Eviction of the tenant was sought under section 14(1)(e) read with section 25-B of the Delhi Rent Control Act, 1958 ('DRC Act') on the ground that: (i) the tenanted premises was required for *bonafide* use by the landlord and his dependant family members for business purposes, (ii) they had no suitable alternate accommodation available, (iii) the landlord's two married daughters were unemployed but they were well educated and had commercial aspirations, therefore the *bonafide* need for space, for which they were dependent upon their father-the petitioner. The elder daughter: Ms. Sufia Ikhlal is a graduate from Lady Sri Ram College and the younger daughter: Dr. Noris Nisar has an MBA degree and has earned a Ph.D too. The petitioner says that he is a senior citizen and suffers from many ailments: he has had a brain-hemorrhage, has neurological problems; is hypertensive; has difficulty in climbing stairs because his knee joints are not functioning well, therefore, there was a need for him to conduct his business from the ground floor.
3. The petitioner is *Mutawalli* of a *Wakf-ul-aulad* which includes the tenanted premises: being Shop no. 1344 (Ground Floor), Star Building, Qutab Road, Sadar Bazar, Delhi – 110006 (Suit Property). The eviction petition apropos the said property was initiated on 24.07.2009. It was first dismissed by an order of the learned ARC on 26.05.2011 under Order 7 Rule 11 CPC. The said order's dismissal was impugned before this court in RC.Rev. 377/2011 and was set aside by order dated 11.02.2015. The case was remanded to the learned ARC for determination on the aspect of *bonafide* requirement and to consider the application for leave to defend. A SLP bearing No. 13204/2015 against



the order dated 11.02.2015 was dismissed by the Supreme Court on 07.05.2015.

4. Leave to defend was granted to the tenant; evidence was led. The eviction petition was dismissed primarily on the ground that *bonafide* requirement had not been established. The petitioner submits that the said impugned dismissal is erroneous, both on facts and in law; it suffers from material irregularity and patent illegality, therefore, it is amenable to the revisional jurisdiction of this court.
5. At the outset, the respondent has questioned the maintainability of the eviction petition before the learned ARC on the ground that under section 83 of the Wakf Act, 1995 only the Wakf Tribunal had jurisdiction to deal with matters relating to eviction of a tenant of a Wakf property, section 85 of the said Act bars jurisdiction of other courts in respect of the matters which the Wakf Tribunal is empowered to decide, therefore, the eviction petition could not have been decided or entertained by the learned ARC. Reliance is placed by the respondent upon the following judgments: *Rashid Wali Beg vs Farid Pindari (2022) 4 SCC 414*; *Syed Amir Ali vs Anjuman-e-Maidan [CM(M) 521/2021* decided on 02.12.2021 by High Court of Delhi; and *Mehnish Adil vs Delhi Wakf Board 2002 (286) DLT 654*.
6. Refuting the aforesaid contentions, the learned counsel for the petitioner submits that in view of the decision of the Supreme Court in *Ramesh Gobindram vs Sugra Humayun Mirza Wakf (2010) 8 SCC 726*, which while dealing with an eviction petition prior to the amendment of section 83 of the Wakf Act in November, 2013 held that an eviction



petition against a Wakf property would also be maintainable before a Civil Court. In *Rashid Wali* (supra) the Supreme Court held as under:

“....45. Interestingly, the basis of the decision in *Ramesh Gobindram* was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, *Ramesh Gobindram* sought to address the question whether a Waqf Tribunal was competent to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, Section 83(1) was amended by Act 27 of 2013 to include the words, “eviction of tenant or determination of rights and obligations of the lessor and lessee of such property”.”

7. However, the 2013 Amendment does not make section 83 of the Wakf Act applicable retrospectively. The eviction petition relates to 24.12.2009, i.e. more than over four years before the amendment came into effect. No notification was issued regarding transfer to the Wakf Tribunal of all cases relating to wakfs pending before the ARC under the DRC Act. Interestingly, this issue was never raised before by the tenant. On 11.02.2015, this court had remanded the matter to the learned ARC for decision on the issue of leave to defend. The said remand and direction received affirmation of the Supreme Court on 07.05.2015.
8. In view of the above, the eviction petition was maintainable before the learned ARC. The tenant’s contentions to the contrary are untenable and are rejected. The respondent’s reliance upon the judgments *Syed Amir Ali* (supra) and *Mehnish Adil* (supra) dealt with cases which were filed after the 2013 amendment of the Wakf Act, proceedings initiated under the Wakf Act in 2013 under Section 55 of the Wakf Act apropos



directions to Sub-Divisional Magistrate for implementation of eviction orders and removal of encroachment from Wakf property. It did not relate to eviction of a tenant under the Delhi Rent Control Act.

9. The impugned order has dealt with other properties of the landlord and concluded that since these properties were not disclosed by the landlord, he would not be entitled to the relief sought. It further opined that the landlord is otherwise financially well-off. However, it was nowhere shown on the record or proven that any of the other shop or premises owned by the petitioner was available from the ground floor for his use or for the benefit of his daughters, who were dependent upon him to start their business enterprise. The landlord has refuted the tenant's contention that the landlord was getting rent and was earning lacs of rupees from a number of shops. The impugned judgment held that even if the receipts did not run into lacs of rupees or that he had not received rental from all shops, he ought to have disclosed the precise rental amounts he was receiving from the shops and/or from other businesses.
10. The court is of the view that disclosure of his entire financial affairs by a tenant is neither essential in an eviction petition nor is it mandatory for the landlord to disclose all properties owned by her/him. Receipt of rentals from leased properties is a legitimate exercise. A plea of *bonafide* requirement has to be pivoted on the fact that the landlord had no other suitable alternative accommodation and there was a need for the same, not a mere wish. The landlord was not required to file details of his income tax returns and not filing the same along with the eviction petition would neither whittle away nor cast a doubt on the *bonafide*



need, which is otherwise made out in the eviction petition.<sup>1</sup> The “sufficiency” of income of a landlord or that he was well-off cannot be an issue for examination in eviction proceedings under the Delhi Rent Control Act.<sup>2</sup> For who can sit in judgment as to what is sufficient finance for a person or his/her family. There can be no check, hindrance or curtailment to aspirations of an individual.

11. The impugned judgment then delves into the examination of nature of business being carried out by the landlord i.e. whether the hotel business was being run from 19 rooms to 13 rooms and how it was being run. It also doubted the credibility of the landlord on the ground that, since his family comprised only his wife and two daughters, he should have known the received income of his wife from her business of running a hotel. It further records that the hotel business was being run from the first and second floor of a building which was rented by the same *Wakf-ul-aulad*, to a partnership firm in which his brothers, sisters and sister-in-law were partners. The learned ARC inferred dishonesty and concealment on the part of the petitioner because he did not disclose these aspects and of his wife’s business.

12. The court is of the view that the aforesaid inquiry was neither relevant nor necessary because for the purposes of a petition under section 141(1)(e) read with section 25B of the DRC Act, only the availability of suitable alternate accommodation is to be seen. It also presupposes that a husband has a right to know all details of his wife’s business and

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<sup>1</sup> Jodha Ram & Ors vs Pramod Kumar Gupta MANU/UP/2274/2017.

<sup>2</sup> Rais Mian vs Abdul Samad 2014 SCC OnLine Del 4286.



financial affairs, as if the wife had no right to financial and business confidentiality or personal independence or privacy. There cannot be an assumption that the wife is subservient to her husband and is obliged to disclose to or share with her husband details of all her financials. In the present case, it was only to be seen: Whether a suitable alternate accommodation was available on the ground floor for the petitioner and/or his daughters for starting the business.

13. The renting out of a *Wakf-ul-aulad* to a partnership firm, which is thus happened to be the benefit of the larger family, is a legitimate exercise. The wakf is separate from the partnership to which some of the wakf property was let out. A wakf, be it public or private, such as *Wakf-ul-aulad*, too needs to survive and keep its properties in good repair. Licensing and leasing out of the assets of the wakf, to optimize the use and returns therefrom is a prudent and lawful exercise. Wakf properties are not meant for a deemed perpetual lease. For lease to a tenant who would enjoy protection under rent control statutes or protected tenancies, a *Mutawalli* has the right to induct or evict a tenant/licencee, keeping it in mind the needs and objectives of the wakfs. In the present case, the wakf is for the *aulad* i.e. the children /descendants of the *wakif*. The appellant is the *Mutawalli*-its manager and has every right to file the eviction petition for his benefit and for the benefit of the children, so that the latter could have financial independence and realize their aspirations as businesswomen. The inquiry into the education and qualification of the daughters for starting a business was unnecessary.
14. It is an accepted fact that a shop, business or enterprise on the ground floor receives nearly all the footfall in a market, than a shop on the first



and second floor of a building.<sup>3</sup> The psychology, nature and category of the prospective customers and clients, has to be kept in mind by a prudent business person before the start of a business enterprise.

15. In the present case, the landlord had also pleaded about his gradually declining health, including his knee-joints, heart and neurological ailments. The impugned order has dealt with properties on first and second floors, which is irrelevant because only the availability of suitable alternate accommodation on the ground floor was to be ascertained. The tenant has not brought-forth any alternative accommodation nor has it been so found in the impugned judgment. Therefore, to this extent, the inquiry about other aspects of the petitioner's dependent proposed business was irrelevant and unnecessary.

16. The landlord wanted his property not only for his daughters but for himself also. Assuming that accommodation was available with the respective husbands of the two daughters, surely it was not expected of the father-in-law to take assistance of his daughters and request them to make available such space through their respective husbands, for him to start a business enterprise. And why should he? The law does not require him to do so. Would it not compromise his self-respect and affect delicate family relations? Furthermore, the nature of the proposed business could be discussed/re-assessed/altered at any stage when the

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<sup>3</sup> Dhannalal vs Kalawatibai & Ors. (2002) 6 SCC 16; Jai Gopal & Ors. vs Vikas Bansal 236 (2017) DLT 382; Om Prakash Bajaj vs Chander Shekhar 102 (2003) DLT 746; and Uday Shankar Upadhyay vs Naveen Maheshwari Manu/C/1876/2009.





accommodation was made available, the landlord was not required to indicate the nature of business he intended to initiate.<sup>4</sup>

17. The landlord had also contended that he had let out a property in 2002, which was seven years prior to the filing of the eviction petition, and at that time his daughters were studying and there was no need for him to start a new business since he had suffered a brain-stroke. The shop which was vacated by the erstwhile tenant was very small in size, measuring about 250 sq. ft.; it was located in a narrow lane on the backside of the building; it was not easily approachable as compared to the tenanted premises. Receipts were produced to prove that the shops were let out in 2002.

18. The impugned order has opined that the landlord could have started his business from Shop no. 918 with his daughters. However, this opinion is based on an assumption of its suitability, despite it being noted that it was a very small shop – only 250 sq. ft. in size. Whether a small shop was suitable for the landlord to start his business from or suitable for his daughters' enterprise, is for the landlord and the dependent daughters to decide and not for the tenant or any other party to determine or dictate. The person who proposes to start a business would be the best to assess what size of accommodation, location, visibility, frontage to the street and accessibility would be suitable for the proposed business venture.

19. The eviction petition was also dismissed on the ground that: (i) the landlord lives in a posh locality, in a house on 250 sq. yds. of land; (ii) he was collecting rent from a number of shops, therefore, (iii) he was a

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<sup>4</sup> Seth & Sons Pvt. Ltd. vs Arjun Uppal & Ors. MANU/DE/3084/2017.



man of means; (iv) his wife ran a hotel and maintains two cars; (v) his daughters are happy and well settled in their matrimonial life and never worked before; (vi) one of the daughters is residing at Hyderabad with her husband and children and had no work experience; and (vii) no reason has been disclosed by the petitioner why his daughters should start a business, therefore, the impugned judgment regarded the petitioner as a dishonest litigant and not entitled to relief from the court. The impugned order records that under the test of proof, the court has to see the preponderance of probability and the probability was more in favour of the respondent.

20. The court is of the view that the status of financial well-being of a landlord or his family members-wife and children, who were dependent upon him, is not the test of *bonafide* requirement. All that was to be seen was whether there was a suitable alternate accommodation available with the landlord, for him to use or for providing the same to his daughters. No such suitable alternate accommodation has been shown. The impugned judgment has misdirected itself in an inquiry about the landlord's, his wife's and of the business of the husband's of the dependent daughters' or their economic well-being or in concluding that simply because the daughters of the petitioner were married, "happy with their matrimonial life" and alternate accommodation was available with their respective husbands, therefore, there was no need for them to start their business or to ask their father to provide them an accommodation for business.

21. A wife is neither an appendage of nor an adjunct to her husband. Her identity does not merge with or get subsumed in her husband's identity.



In law, she retains her individual entity. She retains her natural right to pursue her dreams, aspirations and the desire and need to be financially independent or otherwise do some meaningful social work. Idle luxuriation may not be the life-goal of many a woman or to be simply known as a rich man's wife. There is a certain self-worth which a person acquires by running her or his own business/commercial enterprise, vocation and professional activity. This aspiration cannot be questioned in proceedings for eviction of a tenant on the ground of *bonafide* requirement of the tenanted premises. Ordinarily, for a daughter, irrespective of her matrimonial status, her paternal/maternal home is always a psychological, physical and emotional sanctuary, a place to which she can relate and return to freely, irrespective of how far she is geographically located from her parents. The law provides for eviction of a tenant on the need of dependants. Married daughters are included among dependents of their parents, for commercial/residential space.<sup>5</sup> The test in law is about the dependency of the children upon the landlord/ landlady when the property of the parent is in question.

22. In the present case, the married daughters are dependent upon their father for space to start their business in Delhi. The dependency was not pleaded on the husbands. The petition is maintainable. The daughters' need continues, so does the need of the petitioner. He is also going through difficult medical ailments and needs the tenanted premises (shop) located on the ground floor. No suitable alternate accommodation has been shown by the tenant or otherwise brought on

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<sup>5</sup> *Vidyawati vs Gautam Mahajan & Ors. 2020(271) DLT 99*



record. The landlord has established a case for eviction of the tenant from the ground floor. Nothing more is required to be examined. Accordingly, the petition is allowed. The tenant-respondent is directed to vacate and hand over to the landlord-petitioner the peaceful physical possession of the tenanted premises bearing Shop no. 1344 (Ground Floor), Star Building, Qutab Road, Sadar Bazar, Delhi – 110006.

23. The petition, alongwith pending applications, if any, stands disposed-off in terms of the above. However, as per provisions under section 14(7) of the Delhi Rent Control Act, 1958, this order shall not be executable for a period of six months from the date of receipt of copy of the order.

**JULY 7, 2023/kk**

**NAJMI WAZIRI, J**

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