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

**Judgment reserved on: 25.08.2023**

**Judgment pronounced on: 29.11.2023**

+ **RC.REV. 117/2016**

MANMOHAN SINGH ..... Petitioner

Through: Mr. Medharshu Tripathi and Mr.  
Manoj Sehgal, Advs.

Versus

ARJUN UPPAL & ANR ..... Respondents

Through: Mr Nakul Sachdeva and Mr  
Damandeep Singh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

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

: **JASMEET SINGH, (J)**

1. The present revision petition has been filed by the petitioner (*hereinafter referred as "tenant"*) seeking to challenge the impugned order dated 28.08.2015 passed by learned ARC-2, Central, Tis Hazari Courts in E. No. 661/14/10, wherein the leave to defend application filed by the tenant was dismissed and order of eviction was passed with respect to shop municipal no. 1635, Shyama Prasad Mukherjee Marg, Delhi-110006 admeasuring 217 sq. ft. (*hereinafter referred as "tenanted premises"*), against the tenant.



### **FACTS/PLEADINGS**

2. Respondent No. 1 is the son of the Respondent No. 2 (*hereinafter collectively referred as “landlords”*).
3. Respondent no. 1 and respondent no. 2 are the joint owners of property bearing municipal nos. 1635, 1635-A, 1640 to 1648, Shyama Prasad Mukherjee Marg, Delhi-110006 (*hereinafter referred as “property”*) having their 3/8<sup>th</sup> and 5/8<sup>th</sup> share in the property respectively.
4. At the time of purchase of the property by the landlords, the petitioner/tenant was already occupying the tenanted premises under the previous owners and subsequently, started paying the rent to the landlords.
5. Eviction petition was filed by the landlords against their tenant under section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter referred as “DRC Act”*) for recovery of the tenanted premises.
6. It is stated in the eviction petition that the tenanted premises was let out for non-residential purpose at the monthly rent of Rs. 120.80 per month excluding electricity charges.
7. It is further stated that respondent no. 2 is a hotelier and has been running his hotel under the name and style of M/s. New Royal Hotel on the first and upward floors of the property. The respondent no. 1 is very ambitious and desirous to run an independent business on his own. He has completed his M.B.A. course from La Trobe University, Melbourne, Australia and has come to India on 27.03.2008 with the ambition of starting an independent business. Respondent no. 1 has



decided to open a plush restaurant on a magnified scale for which he has also got a project report prepared.

8. It is further stated in eviction petition that there are about 50 hotels without the facility of any posh restaurant in the area which is an additional asset giving an added strength to the requirement of the respondent no. 1 for the space for the proposed project. Therefore, the landlords require an area of approximate 5000 sq. ft. to open this restaurant for respondent no. 1 and for which they require the entire ground floor to complete the project.
9. It is further stated that the respondent no. 1 has acquired sufficient knowledge and experience by working at the family hotel business and since his return from Australia, he has been working for the launching of the project taking advantage of his experience in the trade. However, because of the portions of the ground floor of the property being under the occupancy of the tenant, landlords have not been able to give their proposed restaurant a practical shape.
10. It is stated that the tenanted premises under the tenancy of the tenant and the other adjoining shops under the tenancy of other tenants are most suitable for respondent no. 1 to set up and run the proposed plush restaurant because the location of the property where tenanted premises is located is very close to the Old Delhi Railway Station and the strategic location of the property has all the potential to make the project tremendously successful.
11. It is stated that the opening of restaurant by respondent no. 1 on the ground floor of the property including the tenanted premises will also



get a boost, thus proving the project to be mutually inclusive and exclusive.

12. Therefore, landlords require the tenanted premises bona fide for the running of the plush restaurant and they have no other reasonably suitable alternative commercial property for the running of the plush restaurant. Thus, it was prayed that an eviction order be passed in favour of the landlords and against their tenant with respect to the tenanted premises.
13. The tenant filed his leave to defend application wherein it was stated that he was inducted as a tenant in the tenanted premises in the year 1971. Further, landlords in their eviction petition have not disclosed the proper area under their possession and also not disclosed the proper area possessed by other 14 tenants. Eviction petition is nothing but an afterthought as the property and the rent in the area has astronomically risen. Therefore, the eviction petition is filed as the intention of the landlords is nothing but to seek a higher rent from the tenant or to sell the tenanted premises at a premium.
14. It is stated that the respondent no. 1 is fully employed and earning heavy profit from the existing hotel business, therefore, the tenanted premises is not required.
15. It is further contended that as the tenanted premises is situated in a very narrow and congested place / gali and have no parking facility due to heavy traffic congestion and the tenanted premises is adjoining to Shiv Mandir, therefore, this area would no way serve any purpose for opening a five-star restaurant as per the policy laid down by the Delhi Government. Landlords have also not disclosed the area in their



possession and including a huge vacant shop on the main S.P. Mukherjee Marg.

16. It is further stated that the respondent no. 1 has completed the M.B.A. course from Melbourne, Australia and presently assisting and also a business partner with his father in his hotel i.e. M/s New Royal Hotel.
17. Tenant further points out that respondent no. 1 also did not have any relevant experience to run a restaurant business or have acquired any experience related to it. Respondent no. 2 is in hotel business and the hotel does not have a kitchen, hence it cannot be visualized that the respondent no. 1 has the relevant experience.
18. Tenant also points out that landlords had earlier filed an eviction petition on the same ground of bonafide requirement wherein the tenant raised an objection of not filing any project report or documents showing necessary licenses required for running a restaurant. The said eviction petition bearing no. E-151/2009 was dismissed as withdrawn vide order dated 21.07.2010.
19. Tenant further states that even in the present case, the date, month and year are missing and the name of the consultant or the person who has prepared the project report is not disclosed.
20. It is further stated that the landlords have not mentioned the respective area of each tenanted shop total 14 in number enabling the tenant to know the exact, total area these 14 shops comprises of. In the absence of clear and cogent facts, the eviction petition is nothing but is false, frivolous and vague and untenable in law.
21. Leave to defend was contested by the landlords by way of written reply wherein preliminary objections were taken to the effect that the



landlords are entitled to eviction of the tenant from the tenanted premises as they required for their bonafide commercial use and no triable issues are raised in its leave to defend application. Therefore, landlords were entitled to relief as claimed under section 14(1)(e) of the DRC Act.

### **FINDINGS RECORDED BY THE LEARNED ARC**

22. The learned ARC after giving thoughtful consideration to the submissions made on behalf of the parties while dismissing leave to defend application has held as under:-
- A. Tenant has not disputed the fact that the landlords are the owners of the tenanted premises and the rent is being paid to them. Therefore, landlords/tenant relationship was found to be existing.
  - B. Learned ARC rejected the contention of the tenant that the respondent no. 1 can start his projected restaurant from the vacant shops at the ground floor, first, second and top floor of the existing hotel run by respondent no. 2 in the suit property and the respondent no. 1 has reasonable, suitable, sufficient accommodation available for his alleged bonafide need. Learned ARC held that this contention is devoid of merits as the landlords are the best judge of their necessity and tenant cannot dictate the terms to the landlords as to what to do and what not to do.
  - C. The learned ARC was further of the view that no triable issue has been raised by the tenant *vis-à-vis* the bonafide



- need of the landlords for the tenanted premises. Merely stating in the affidavit that the eviction petition has been made with *malafide* intention would not suffice to sustain the contentions of the tenant.
- D.** Learned ARC further observed that nothing has been brought on record by the tenant about the ownership or existence of any commercial building/alternative accommodation with the landlords in Delhi.
- E.** With regard to the permission from Civic Authorities to start a restaurant, learned ARC held that obtaining civic permission prior to the filing of eviction petition is not an essential pre- requisite. In the present case, learned ARC held that landlords are not required to obtain and file civic permissions and licences required for establishing a restaurant in the tenanted premises before obtaining possession.
- F.** Learned ARC placing reliance on **Ram Babu Aggarwal vs. Jai Kishan Dass, 2010 (1) SCC 164** was of the view that respondent no. 1 having no experience to start and run the restaurant is of no use to the tenant as one can start a new business even if there is no prior experience.
- G.** With regards to the plea taken by the tenant that the eviction petition is barred by res-judicata, learned ARC observed that the ground for bonafide requirement is a recurring cause and subsequent eviction petition even after withdrawal of the earlier eviction petition on the same ground without



permission of the Court cannot be barred by the principles of res judicata.

- H. Based on aforesaid reasons, application for leave to contest the eviction petition was declined and the order of eviction was passed in favour of the landlords and against the tenant.
  - I. Learned ARC was of the view that no triable issue has been raised which entitles the tenant for leave to contest the present application for eviction.
23. Assailing the above order passed by the learned ARC, the instant revision petition is preferred by the tenant.

**APPLICATIONS FOR TAKING SUBSEQUENT EVENTS ON RECORD**

24. During the pendency of this petition, tenant moved an application bearing CM No. 42701/2019 seeking to place on record subsequent possessions received by the landlords from other tenants after filing of this petition which are as follows:-
- A. Arjun Uppal & Another vs. Seth & Sons, Eviction Petition No. E542/14/10. This eviction petition was decreed on 4.9.2012 in respect of ground floor portion of the property bearing Shop No. 1647 measuring 1208 Sq. Ft in favour of the landlords against M/s. Seth & Company. Landlords received the vacant and peaceful possession of the aforesaid ground floor portion of the property on 23.5.2018.
  - B. Arjun Uppal & Another vs. Jaipur Motor Company, Eviction Petition No. E92/10. This petition was decreed on





- 31.8.2015 in respect of ground floor portion of the property bearing Shop No. 1645 measuring 572 Sq. Ft. in favour of the landlords against M/s. Jaipur Motor Company. Landlords received the vacant and peaceful possession of the aforesaid ground floor portion of the property on 18.7.2018.
- C.** Arjun Uppal & Another vs. M/s Orient Tyre, Eviction Petition No. E41/10. This eviction petition was decreed on 22.8.2016 in respect of ground floor portion of the property bearing Shop No. 1641 measuring 428 Sq. Ft. in favour of the landlords against M/s. Orient Tyre. Landlords received the vacant and peaceful possession of the ground floor portion aforesaid property on 01.07.2018.
- D.** Arjun Uppal & Another vs. M/s. Commercial Tyre. This eviction petition was decreed on 22.8.2016 in respect of ground floor portion of the property bearing Shop No. 1641A measuring 135 Sq. Ft. in favour of the landlords against M/s. Commercial Tyre. Landlords have received the vacant and peaceful possession of the ground floor portion of the aforesaid property on 01.07.2018.
- E.** Arjun Uppal & others vs. M/s. Imperial Tyre, Eviction Petition No.79807/16. This eviction petition was decreed on 08.08.2018 in respect of ground floor shop situated on the front side of the property 14x8 equivalent to measuring 112 Sq. Ft. in favour of the landlords against M/s. Imperial Tyre.



Landlords have received the vacant and peaceful possession of the aforesaid property on 08.02.2019.

25. It was further stated in the application that the landlords have received the possession of the total area 2455 sq. ft. from other tenants and landlords are already in possession of one shop measuring 520 sq. ft. at the ground floor of the property bearing no. 1648, S.P. Mukherjee Marg, New Delhi.
26. Landlords are also having the portions of the property bearing no. 1643, S.P. Mukherjee Marg, New Delhi measuring 19x12 equivalent to 228 and also another portion measuring 7x7 equivalent to 49 Sq. Ft. of the part of the shop bearing no. 1643 S.P Mukherjee Marg, New Delhi on the ground floor portion of the property.
27. It was further pointed out that landlords are having total area 3252 Sq. Ft. on the ground floor portion of the properties bearing no. 1645, 1646, 1647 & 1648 S.P. Mukherjee Marg, Delhi which is lying vacant.
28. Lastly, it was contested that there are ample of properties lying vacant and in possession of the landlords which can be utilized for their alleged bonafide requirement.
29. *Vide* Order dated 23.09.2019, the above mentioned application was allowed and subsequent events were taken on record.
30. Another application was filed by the tenant bearing CM APPL. 43994/2023 seeking to place on record subsequent events regarding the possessions received by the landlords from other tenants which are as under:-



- A.** On 19.02.2020, this court in RC Rev. 681/2015 & CM Appl. 31202/2015 titled as “Jain Motor Car Company Pvt Ltd Vs Arjun Uppal & Anr.” had granted time to the petitioner in the said revision petition to vacate the premises on or before 28.2.2021. Landlords have received vacant and peaceful possession of the shop bearing No.1668 measuring 1409 sq. ft. from M/s Jain Motor Car Company Pvt Ltd on 28.2.2021.
- B.** On 19.12.2022 in RC Rev. No. 616/2018 titled as “Parduman Khanna vs. Arjun Uppal & Anr.” the tenant has delivered the vacant and peaceful possession of the area of 66 sq. ft. of the property bearing no. 1635A, S.P. Mukherjee Marg, Delhi, pursuant to the joint application filed by the parties.
- C.** Landlords have received the vacant and peaceful possession of 30 sq. ft. of the shop bearing No.1644A of the property bearing No.1635, 1635A, 1641-1648, S.P. Mukherjee Marg, Delhi-II0006 on 31.7.2023.
- D.** Landlords have received the vacant and peaceful possession of 56 sq. ft. of the shop bearing No.1644 of the property bearing No.1635, 1635A, 1641-1648, S.P. Mukherjee Marg, Delhi-II0006 from Royal Tyre on 08.08.2023.
- E.** Landlords have not filed any income tax returns with regard to the rental income received from the aforesaid properties bearing no. 1635, 1635A, 1640 to 1648, SP Mukherjee Marg, Delhi and also income derived from other sources.



31. In total, landlords are in possession of 4813 sq. ft. of area vacated by 9 other tenants.
32. *Vide* order dated 25.08.2023, the said application was allowed and the subsequent events have been taken on record.

### **SUBMISSIONS ON BEHALF OF THE TENANT**

33. At the outset, learned counsel for the tenant submits that the landlords are now in vacant and peaceful possession of total area of 4813 sq. ft. of the properties bearing no. 1635, 1635A, 1641-1648, S.P. Mukherjee Marg, Delhi-110006. Hence, the need of the landlords can primarily be satisfied.
34. In addition, he relies on Section 420 and 430 of the Trade License of Municipal Act of Delhi and states that there is an old Prachin Shiv Mandir right next to the tenanted premises existing since 1921. No restaurant can be opened near Mandir as per the bye-laws of the MCD. Reliance is placed on the judgment passed by this court in **Vinod Kumar Vs. Municipal Corporation of Delhi and Ors., 2005 SCC OnLine Del 1115**, wherein it was held that no restaurant can be opened within 100 metres from the place of worship. Hence, the need of the respondent is arbitrary, whimsical and *malafide*.
35. He further argues that the registered gift deed dated 09.12.2004 was signed and executed by the donor namely Smt. Raj Rani Uppal in favour of the respondent no. 1. Perusing the gift deed, the total area of the properties bearing no. 1635, 1635A, 1641-1648, S.P. Mukherjee Marg, Delhi-110006 is 535 sq. yds which is equivalent to 4815 sq. ft. Hence, the landlord cannot claim the area of 5000 sq. ft. of the



properties as the same is not in existence as per the details mentioned in the registered gift deed dated 09.12.2004. Landlords are in possession of the total area of 4813 sq. ft.

36. Learned counsel further places reliance on “**Amarjit Singh vs. Khatoon Quamarain, AIR 1987 SC 741**” and “**Hasmat Rai vs. Raghunath Prasad, AIR 1981 SC 1711**” to submit that court can rely upon the subsequent events which crop up during the pendency of this petition.
37. Lastly, he submits that eviction petition has become infructuous as the landlords are in possession of various properties totalling to 4813 sq. ft. of area which can be used for their alleged bonafide requirement.

#### **SUBMISSIONS ON BEHALF OF THE LANDLORDS**

38. Mr. Sachdeva, learned counsel for the landlords submits that the landlords have filed total 13 eviction petitions for their bonafide requirement under section 14(1)(e) of the DRC Act. Out of 13, 6 eviction petitions were initially filed in the year 2010, in which landlords have successfully obtained eviction orders in their favour against all 6 tenants.
39. He further submits that the orders passed in Eviction Petition No. E540/14/10 against Sandeep Jain and Eviction Petition No. E542/14/10 against M/s Seth and Sons have attained finality as they have been upheld till the Hon’ble Supreme Court. Landlords also filed remaining 7 eviction petitions and all of them were allowed in favour of the landlords, revision against some of them are pending.



40. With regard to non-disclosure of alternative accommodation, learned counsel submits that Municipal No. 1643, S.P. Mukherjee Marg, New Delhi (which is first and upwards floors above the tenanted premises) is under tenancy of M/s New Royal Hotel. It is stated in the eviction petition that respondent no. 2 is Hotelier and has been running his hotel in partnership with his mother since 1971 and the said fact is mentioned in the reply to leave to defend application.
41. He relies on **Sait Nagjee Purushotham & Co. Ltd. vs Vimalabai Prabhlal &Ors., (2005) 8 SCC 252**, wherein it was categorically held that it is not the tenant who can dictate the terms to the landlords as to what he should do and what he should not with regard to the tenanted premises. It is always the privilege of the landlords to choose the nature of the business and the place of business.
42. He further argues that the financial status of the landlords is not relevant to adjudicate the eviction petition filed under section 14 (1)(e) of the DRC Act. Reliance is place on **Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (Deceased) through LRs. and Ors., (2008) 9 SCC 1**.
43. It is further submitted that the premises bearing no. 1648, S.P. Mukherjee Marg, New Delhi is concerned, the same is duly mentioned in the project report. The project report categorically states that the abovementioned premises is in possession of the landlords.
44. Learned counsel further states that the judgment passed by this court in R.C. Rev. No. 116 of 2016 was challenged before the Supreme Court and was upheld by the Supreme Court vide order dated 23.02.2018. Further the judgment passed in R.C. Rev. No. 27 of 2016



was also upheld by the Hon'ble Supreme Court vide order dated 18.01.2018.

45. With regard to the contention raised by the tenant that sanction is required from MCD to start the business, learned counsel for the landlords states that this plea was not taken by the tenant in their leave to defend application. Further he argues that this plea has already been decided by this court in R.C. Rev. No. 116 of 2016 and the same was upheld by the Hon'ble Supreme Court.

### **ANALYSIS, FINDINGS AND CONCLUSION**

46. I have heard the rival contentions addressed by the counsels and perused the materials available on record.
47. It is requisite to highlight the scope of revisional jurisdiction exercised by the High Court which is discussed by the Hon'ble Supreme Court in **Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222** and more particularly in para 11 which reads as under:-

*“11... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with*



*illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the Controller is according to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B(8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law”. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See: Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC*





119] and Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141] .)”

*(emphasis added)*

48. Further in **Abid-Ul-Islam vs. Inder Sain Dua, (2022) 6 SCC 30**, the Hon’ble Supreme Court has held as under:-

*“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”*

*(emphasis added)*

49. In light of the above cited judgments, it is clear that the jurisdiction of this court is very restrictive and can only be exercised sparingly if the impugned order suffers from any illegality. Therefore, the order



passed by the learned ARC is to be tested on the touchstone of “*whether it is according to law*”.

50. As per section 14(1)(e) of the DRC Act, the following ingredients are required to be satisfied by the landlords:-

*A. Relationship of landlord and tenant.*

*B. The landlord required the premises bona fide for his needs/or for his family members.*

*C. Landlord must not have an alternate, suitable accommodation.*

51. Learned ARC has already given a finding which is not disputed by the tenant that rent is being paid to the landlords by the tenant as they are the owners of the tenanted premises. The first ingredient stands satisfied.

52. The second ingredient i.e. bonafide requirement. It is urged on behalf of the landlords that the tenanted premises is required by the respondent no. 1 who has completed his MBA from Australia and wants to start his own business by establishing plush restaurant in his own property. Further, approx. 5000 sq. ft. of area is required to open a restaurant. In this respect, landlords have filed a project report as to how it will be given a practical shape.

53. Tenant in his leave to defend application has pleaded that the respondent no. 1 has no experience or expertise in running of a restaurant. It is settled law that experience or expertise is not a pre requisite condition to fulfil under section 14(1)(e) of the DRC Act. This aspect is dealt in **Dattatraya Laxman Kamble v. Abdul Rasul**



**Moulali Kotkunde, (1999) 4 SCC 1**, wherein the Hon'ble Supreme Court has held as under:-

*“12. If a person wants to start a new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his bona fides is a fallacious and unpragmatic approach. Many a business has flourished in this country by leaps and bounds which was started by a novice in the field; and many other business ventures have gone haywire despite vast experience to the credit of the propounders. The opinion of the learned Single Judge that acquisition of sufficient know-how is a precondition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepreneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pedantic a norm to be formulated that “no experience no venture”.”*

**54.** In addition, learned counsel for the landlords has relied on **Raj Kumar Khaitan v. Bibi Zubaida Khatun, (1997) 11 SCC 411** and more particularly para 4 which reads as under:-

*“4. It is clear from the averments made in the above-quoted paragraphs that the plaintiffs asserted that there were no other means of livelihood with them and as such they wanted to set up their own business in the premises in*



*dispute. The High Court, however, came to the conclusion that apart from the above-quoted pleadings it was necessary to plead the nature of the business which the appellant-plaintiffs wanted to start in the premises. We are of the view that the High Court fell into patent error. It was not necessary for the appellant-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.”*

*(emphasis added)*

55. By referring to the above cited judgments, it is obvious that landlords are not required to possess or to show any prior experience to start a new business and additionally they are also not bound to start the same business. Also the respondent no. 1 after obtaining an MBA degree has been assisting his father in hotel business which is somewhat similar nature.
56. Hence, there is no material on record which shows that the need of the landlords is either *malafide* or fanciful.
57. Another plea taken by the tenant is that the tenanted premises is within the 100 meters of Old Prachin Shiv Mandir, and therefore, landlords cannot open a restaurant as per the bye-laws of the MCD.
58. The desire of the landlords of running a restaurant cannot be faulted with as they are the best judge of their requirement and it is trite law that tenant cannot dictate to landlords as to how the property has to be utilized.



59. Needless to add, the purpose of eviction which is running a restaurant has found favour by this Court in various revision petitions as well as the Hon'ble Supreme Court by upholding two orders passed by this court in revision petitions. The findings rendered by the learned ARC that the license will be obtained after possession cannot be faulted with.
60. This court exercising revisional jurisdiction cannot presume that the license if applied for, whether would or would not be granted.
61. In light of the above, the second ingredient stand satisfied.
62. With regards to the third ingredient i.e. Alternate suitable accommodation, tenant has argued that the landlords have already received the possession of 4813 sq. ft. of the area from other tenants which can be utilized for their bonafide requirement.
63. As already noted above that the landlords have categorically stated that they need about 5000 sq. ft. of area on the ground floor for running a restaurant. Landlords have fairly stated that in 9 out of 13 properties, they have received the vacant and peaceful possession.
64. As regards to other properties, the orders passed by the learned ARC have been tested by filing revision petitions and have been upheld by this court as well as the Hon'ble Supreme Court.
65. It is pertinent to note that none of these 9 shops which have been vacated and are in possession of the landlords have been let out. The landlords have kept vacant and peaceful possession of all the premises for their need i.e. running a restaurant.
66. I am of the view from the materials placed on record that the tenanted premises is bonafidely required to give a practical shape for running a



restaurant. Landlords cannot be deprived of the beneficial enjoyment of their property. Further, the Court is not to sit in the arm chair of the landlords to dictate as to how the property should be utilized. It is the sole discretion of the landlords to get all the tenanted premises vacated and use as per their need.

67. As a revisional court, I am not required to undertake the exercise as to whether the gift deed bequeaths 4815<sup>th</sup> sq. ft. and the landlords already have 4813 sq. ft. The fact of the matter is landlords requires 5000 sq. ft. of space and the tenanted premises is needed for making up that space.
68. For the foregoing reasons and findings given above, I find no merit in the pleas taken by the tenant, hence revision petition *sans* merit and the same is accordingly dismissed.
69. Pending application(s), if any, are disposed of accordingly.

**JASMEET SINGH, J**

**NOVEMBER 29, 2023/(MSQ)**

*Click here to check corrigendum, if any*