

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Civil Revision No.1326 of 2015 (O&M)

Date of Decision: February 27, 2015.

Manmohan Singh

.....PETITIONER(s).

VERSUS

Agyakar Singh and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Gupta, Advocate
for the petitioner (s).

Mr. B.S. Sra, Advocate
for the respondent.

SURINDER GUPTA, J.

Respondent Agyakar Singh filed petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') seeking ejectment of the respondent from the demised premises on the ground of non-payment of rent from 05.01.2006 to 30.09.2010; the premises has become unfit and unsafe for human habitation; the demised premises was required by the respondent-landlord who was retiring on 31.05.2011 from his job to start his own business of driving learning school as he had worked as 'Vehicle Supervisor' during his service. It was also pleaded that the respondent was not occupying or had vacated any shop since the commencement of the Act.

The revision petitioner denied his tenancy under the respondent-landlord. It was also denied that the premises has become

unfit and unsafe for human habitation; there was change of user of the demised premises or it was required by the respondent-landlord for his personal bona fide necessary. Earlier, a similar petition was filed by the mother of petitioner, which was dismissed.

Pleadings of the parties led to the framing of following issues:-

- (1) Whether there exists relationship of landlord and tenant between the applicant and respondent? OPA
- (2) Whether, if issue No.1 is proved, respondent has made a valid tender of the rent ?OPA
- (3) Whether the structure of the demises premises is unsafe and unfit for human habitation ?OPA
- (4) Whether the respondent has changed the nature of user of demised premises without consent of the applicant? OPA
- (5) Whether the applicant requires the premises in question for his own use and occupation ? OPA
- (6) Relief.

On issue No.1, learned Rent Controller observed that there exists relationship of landlord and tenant between the parties. The plea of the respondent-landlord that the rate of rent was ₹1500 per month was discarded as not proved and the demised premises was found fit and safe for human habitation. The plea of respondent-landlord that he required the demised premises for his personal bona fide necessity, was also discarded for lack of evidence. Consequently, the petition was dismissed by the Rent Controller.

Appellate Authority, Patiala reversed the finding of the Rent Controller on issue No.5 and the revision petitioner was ordered to be

ejected from the demised premises with observation that personal bona fide necessity of the respondent-landlord was bona fide and genuine.

I have heard learned counsel for the parties and perused the paper book and have also gone through pleadings and the evidence which were made available by learned counsel for the petitioner.

Learned counsel for the revision petitioner argues that the need projected by the respondent-landlord is not bona fide. He had issued a notice dated 01.10.2005 (Annexure P-8) which was placed on file as mark-A2, wherein he had sought the enhancement of the rent to ₹1500 per month and further to ₹4,000 per month. This reflects that his intention was only to increase the rent. He further argues that this fact was not proved on record that the revision petitioner was not occupying or had not vacated any premises in the urban area concerned. Earlier, the previous landlord Jaswant Kaur mother of respondent-landlord had filed a petition pleading the ground of personal bona fide necessity for her grand son, which was dismissed. The plea of the respondent-landlord about the rate of rent was also discarded by the Rent Controller, which shows mala fide of the plea raised by him to eject the revision petitioner.

Learned counsel for the respondent-landlord has argued that respondent-landlord has retired from service on 31.05.2011. He was working as Vehicle Supervisor and intended to start the business of Driving Learning School. His need was genuine and bona fide. He had pleaded that he had not been occupying or had vacated any shop since the commencement of the Act. No evidence was produced by the revision petitioner on the file to the contrary. Notice mark-A2 is dated 01.10.2005. At that time, respondent-landlord was in service and did not

require the premises. He filed this petition when his retirement was near and he wanted to settle in business to have some additional income to supplement his pension. Earlier landlord Jaswant Kaur had filed ejectment petition for the personal bona fide necessity of her grand son, which was dismissed more than a decade before filing of the instant petition by the respondent-landlord. That petition was not on the ground of personal bona fide necessity of the present respondent.

The Appellate Authority while discussing the personal bona fide necessity of the respondent-landlord, has observed in para 16 of the judgment as follows:-

“16. After giving anxious thoughts to the rival contentions and going through the record of the case, this court is of the considered view that the findings of the Rent Controller on issue No.5 relating to personal necessity are not sustainable. From the evidence on file, it is proved that the appellant/applicant had been working as Driving Supervisor with PSPCL and he has retired from the service in May, 2011. He has raised a plea that he wants to open a Driving School and the shop in question is required by him for the said purpose. During his cross-examination, he stated that he has got the Driving Licence and remained in service as driver for about 20 years. Therefore, it is made out that he has got sufficient experience of driving the vehicles. There is nothing to show that he is in possession of any other premises. The respondents could not produce any evidence to show that the requirement of the applicant is not genuine. The respondent examined RW1 Pushpa Devi, Clerk of Municipal Corporation, Patiala and RW2 Jai Singh with regard to rate of rent. So far as the question of personal necessity is concerned, the

respondents could not produce any evidence to controvert the version of the applicant. He himself made his statement as RW3 that the applicant is in possession of a shop adjoining to the shop in question, but there is no such evidence that any such shop is lying vacant. In his cross-examination, the applicant has stated that the other shop is in possession of his son who is running his business of photostat therein. In these circumstances, the Rent Controller could not have doubted the genuineness of the applicant. The Rent Controller has simply observed that the applicant has failed to produce any other evidence in support of his claim except his own statement. But this court is of the view that in such like circumstances even the statement of the applicant is sufficient to prove his personal necessity for the shop in question. In this view this court finds support from the judgment of Hon'ble Punjab & Haryana High Court in ***Surinder Chopra Vs. Harbans Kaur 2008(3) Recent Civil Reports 315***, wherein it has been held as under:-

17. *A plea for ejectment on the ground of a bona fide personal necessity is available to a landlord/landlady under Section 13(3)(a)(i)(a) of the Act, provided the landlord/landlady establishes that he/she "requires" the tenanted premises for his/her own occupation. The words "requires" appearing in Section 13 has been interpreted by judicial precedents to connote a sincerity of desire, a genuineness of purpose and a need as distinguished from a mere whim or a desire. The requirement should be natural, real, honest and should be asserted in good faith, devoid of an element of deceit, fraud or mala fide. A landlord's/landlady's perception of his/her*

personal necessity, namely the nature and the extent thereof, the premises to be occupied, are generally, in the absence of any evidence to the contrary, accepted as bonafide. The onus to establish otherwise lies on the tenant. In the absence of any cogent evidence or material to doubt the bonafides of the landlord/landlady, a Court would accept the plea of the landlord/landlady. A Court cannot impose its perception of the stat-of-affairs and the parameters of the necessity so pleaded.”

The facts of the case as emerge from the pleadings of the parties and evidence are that the respondent-landlord retired from his job of ‘Vehicle Supervisor’ on 31.05.2011. He filed this petition in the year 2010 putting forth his plea of personal bona fide requirement of the demised premises along with the other pleas. A person, after retirement, always has some plan to boost his family income by utilizing his expertise in a particular field. The requirement of the shop to start a business of Driving Learning School by the respondent-landlord who worked as Vehicle Supervisor, cannot be doubted or his statement requires any corroboration. The revision petitioner had not been able to produce any evidence to rebut or prove that the need of the demised premises projected by the respondent-landlord was mala fide. The mere fact that in the year 2005, the respondent after becoming the landlord of the revision petitioner issued him notice expressing his desire to have rent at a particular rate, has no bearing on the personal bona fide need of demised shop in the year 2010. The rent aspired by him as per the notice was never acceded to by the revision petitioner. At that time, respondent-landlord was in service

and was not requiring the demised premises. The service of notice in the year 2005, in no manner, reflects on the personal bona fide necessity as projected by the respondent-landlord in this petition.

Learned counsel for the revision petitioner has argued that the plea of the respondent-landlord that he has not vacated or was in occupation of any shop, is not supported by any evidence. This argument of learned counsel for the revision petitioner also has no substance in view of the fact that the respondent-landlord on being allowed to plead that he did not possess and had not vacated any shop after the commencement of the Act, the revision petitioner made statement that he had not to file any reply to the amended petition, thereby allowing the pleading of the respondent-landlord to this effect, go unrebutted. Counsel for the revision petitioner as well as of respondent-landlord also suffered statement to forego their right of leading any evidence afresh. The joint statement of counsel for the landlord and counsel for the tenant recorded by the Rent Controller on 30.01.2013 reads as follows:-

“The amended written statement shall not be filed, and no fresh evidence is to be recorded. The case is to be taken up at the stage of arguments. No prejudice shall be caused to the pleadings and no objection shall be taken regarding the amended pleadings.”

The above statement shows that this plea of the respondent-landlord that he did not possess or had not vacated any shop after the commencement of the Act, was not contested and the tenant had foregone any objection regarding this plea. Even otherwise, in the absence of any evidence to the contrary, there is no reason to discard the above plea of

the revision petitioner.

As a sequel of my above discussion, I find no legal or factual infirmity in the judgment of the Appellate Authority calling for any interference.

This revision petition has no merits. Dismissed.

February 27, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE