

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 2421 of 2013 (O&M)
Date of Decision: 03.8.2015.**

Subhash Chander

.....Petitioner

Versus

Harjit Singh alias Sukhdershan Singh
and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Divanshu Jain, Advocate
for the petitioner.

Mr. Gaurva Chopra, Advocate
for the respondents.

SABINA, J.

Respondents had filed the petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 seeking ejectment of the petitioner from the premises in question. Learned Rent Controller vide order dated 20.10.2007 allowed the ejectment petition. Aggrieved against the said order, petitioner preferred an appeal and the same was dismissed by the Appellate Authority vide order dated 7.8.2008. Petitioner challenged the said order by filing Civil Revision No. 6192 of 2008 and the same was allowed by this Court vide order dated 19.4.2010 and the matter was remanded to the Appellate Authority for a fresh decision. The appeal was again dismissed by the Appellate Authority vide order dated 24.5.2010.

Thereafter, petitioner filed Civil Revision No. 4269 of 2010

challenging the said order of the Appellate Authority. The said revision petition was allowed by this Court vide order dated 9.3.2011 and the matter was remanded to the Appellate Authority. Vide order dated 23.8.2011, the appeal was again dismissed by the Appellate Authority. Petitioner challenged the said order of the Appellate Authority in this Court by filing Civil Revision No. 5570 of 2011 which was allowed by this Court vide order dated 09.5.2012 and the matter was remanded to the Appellate Authority for a fresh decision in accordance with law. The Appellate Authority vide order dated 15.3.2013 dismissed the appeal filed by the petitioner. Hence, the present petition by the petitioner-tenant.

Learned senior counsel for the petitioner has submitted that in fact, the premises in question was being used for commercial purposes and the landlord could not seek eviction of the petitioner from the premises in question on the ground that he required the premises in question for his residential purposes. The property in question was owned by Karnail Singh. The landlord had put up a fake will in favour of the respondents alleged to have been executed by Karnail Singh to seek eviction of the petitioner from the premises in question on the ground of personal necessity as Mehar Singh father of the respondents owned another property. Petitioner had been paying the rent to Mehar Singh by way of cheques. In this regard, reliance has been placed on receipt Annexure P-17. In support of his arguments, learned senior counsel has placed reliance on '**Shabir Ahmad versus Sham Lal, 2002(2) R.C.R. (Rent) 306**', wherein it has been held as under:-

Our attention was invited to the following recitals in the deed of conveyance (Ex.P-6) :

"DEED OF CONVEYANCE of a site at Chandigarh sold by auction to be used as a site for commercial purpose in the New Capital of Punjab at Chandigarh." (Emphasis added)

They also emphasise the commercial aspect of the building.

"and whereas the Punjab Government has sanctioned the sale of the site to the transferee in consideration of the sum of Rs. 26,000/- (Rupees Twenty six thousand only) for the purpose of building shop-cum-flat and using the same exclusively for general trade (or restaurant i.e. shop portions)." (Emphasis added)

From these recitals, in the deed of conveyance, the letter of allotment of the site, the plan and the agreement of tenancy it is evident that 'shop-cum-flat' is a non-residential building within the meaning of the Act and we have absolutely no doubt that the premises is a part of a non-residential building and in view of the embargo, noticed above, cannot be used for residential purposes. The High Court was, therefore, not correct to construe the word 'flat' in the expression 'shop-cum- flat' out of context with reference to the dictionary meaning of the word.

Mr. Swarup relied on the judgment of this Court in [Chandigarh Housing Board & Anr. vs. Narinder Kaur Makol](#) 2000(3) RCR (Civil) 543 : 2000(6) SCC 415 to show that in the expression 'shop-cum- flat', the first floor is

meant for residential purposes. In the light of the above discussion, it is too broad a proposition to merit acceptance. In that case, the building was in a different sector and the requirement of the Chief Architect and the Secretary of the Board was that the ground floor should be the shop and the first and second floors should be constructed as residential flats, therefore, the said judgment is clearly distinguishable on the facts of that case. In the instant case, we have already held, the first floor is meant for non-residential purposes and cannot be treated as residential building.

Learned senior counsel has next placed reliance on '**State Bank of Patiala versus S. Zulzuaoar Singh Virk and others 2003(1) R.C.R. (Rent) 670**' wherein it was held as under:-

"Therefore, the principle of law laid down by Hon'ble the Supreme Court in Attar Singh's case (supra) would very well be applicable in respect of eviction from a non-residential building. This Court has taken a view in [Ashok Kumar Jain v. Lachahman Dass](#), 1996(2) RCR (Rent) 180 (P&H) : (1996-2) 113 P.L.R. 783 that the land which has been let out for commercial purposes cannot be got vacated by an Advocate for constructing his office and Library as office by the lawyer cannot be termed as commercial activity. In Civil Revision No.2501 of 1992 decided on 30.10.2002, I have held that he landlord can not seek ejectment from a non-residential building for the purpose of residence which is evident from a conjoint

reading of Clause (a), (b) and (c) of Clause (ii) of Section 13(3) of the East Punjab Rent Restriction Act. Since the Haryana Act is pari materia with the provisions of the East Punjab Rent Restriction Act, therefore, the said judgment will be applicable in the facts of the present case as well.”

Learned counsel for the respondents, on the other hand, has submitted that the petitioner had been paying rent to the respondents by way of cheques. Hence, the Courts below had rightly held that their existed relationship of landlord and tenant between the parties. Moreover, the petitioner could not challenge the Will executed by the grandfather of the respondents in their favour. The premises in question was a shop cum flat. Part of the building was to be used for residential purposes. Hence, the ejectment petition filed by the respondents had been rightly allowed by the Courts below. In support of his arguments, learned counsel has placed reliance on '**Rakesh Vij versus Dr.Raminder Pal Singh Sethi and others, 2005(2) R.C.R. (Rent) 354**' wherein it has been held as under:-

“7. Thereafter, the Parliament enacted the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (for short "1982 Act"), which also consists of only 4 sections. Sections 2 and 3 of this Act are being reproduced below: -

"Amendment of Section 1. In the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act III of 1949), as in force in the Union Territory of Chandigarh (hereinafter referred to as the Principal

Act), in [section 1](#), in sub-section (1), for the words "East Punjab", the word "Punjab" shall be substituted.

3. Amendment of [Section 2](#). - In [section 2](#) of the principal Act, for clause (d), the following clause shall be substituted, namely: -

(d) "non-residential building" means

(i) a building being used solely for the purpose of business or trade;

(ii) a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence.

Explanation. For the purposes of this clause, residence in a building only for the purpose of guarding it, shall not be deemed to convert a "non-residential building" to a "residential building".

[Section 4](#) makes provisions for pending cases, which is not relevant for the purpose of the present case. The important amendment brought about by this Act is that a "non-residential building" would also mean a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence. It appears that there are many such buildings in Chandigarh where the ground floor is used as a shop and the first floor is used for residential purpose and they are known as Shop- cum-Flats (SCF). The premises in dispute in the present case is a Shop- cum-Flat and, therefore, as

a result of the aforesaid amendment brought about by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 it became a non-residential building.

8. To complete the chain of events it is necessary to take note of another development, which is of great significance. The constitutional vires of the East Punjab Urban Rent Restriction (Amendment) Act, 1956 was challenged and the same was held to be ultra vires and was struck down by this Court in [Harbilas Rai Bansal vs. State of Punjab and another](#) 1995(2) RCR (Rent) 672 (SC) : (1996) 1 SCC 1. The judgment in this case was delivered on 5.12.1995. After a thorough examination of the provisions of the aforesaid Act the Court recorded its conclusion as under in paragraphs 13, 17 and 18 of the reports: -

"13. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. [The Act](#), therefore, initially provided--conforming to its objects and reasons--bona fide requirement of the premises by the landlord, whether residential or non- residential, as a ground of eviction

of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow-up and need the premises for their personal use. It would be wholly arbitrary -- in a situation like this -- to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non- residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly

unjust for the landlord of a non-residential premises.

17. In Gian Devi's case (1985 (2) SCC 683) the question for consideration before the Constitution Bench was whether under the [Delhi Rent Control Act, 1958](#), the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground of bona fide requirement for personal use. The observations of the Constitution Bench that "bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial" fully support the view we have taken that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of [Article 14](#) of the Constitution of India and are liable to be struck-down.

18. We allow the appeal, set aside the impugned judgment of the High Court, declare the above said provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before

coming into force of the amendment. The net result is that a landlord - under the Act - can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use. The parties to bear their own costs."

In view of the above quoted conclusions of this Court the position of law, which emerges, is that a landlord can seek eviction of a tenant on the ground of his own use both from residential and also non-residential building under the East Punjab Urban Rent Restriction Act, 1949."

x x x x x

23. The ultimate question is what is "the Act". For ascertaining the meaning of the words "the Act" we have to refer back to [Section 2](#), viz., the East Punjab Urban Rent Restriction Act, 1949 and the provisions of this 1949 Act have to be seen and examined as they stood on the date when the eviction petition was filed or till the continuance of the litigation culminating in the final judgment. On the date when the eviction petition was filed or at any stage subsequent thereto including the date when the matter was heard and is being decided by this Court, it is not possible to read the East Punjab Urban Rent Restriction Act, 1949 in a manner in which it was amended by the [Amendment Act](#), 1956 but has to be read as it originally stood which contained a provision giving right to a landlord to seek eviction of a tenant from a non residential building on the ground of his own use. This is

so because in *Harbilas Rai Bansal (supra)* the provisions of the *Amendment Act*, 1956 were held to be violative of *Article 14* of the Constitution and were struck down. Therefore, read in any manner the inevitable consequence is that the word "the Act" occurring in Section 2 of the Chandigarh Extension Act has to be read as the East Punjab Urban Rent Restriction Act, 1949 as it stood before the *Amendment Act*, 1956. The result that follows is that in the Union Territory of Chandigarh it is open to a landlord to seek eviction of a tenant from a non residential building on the ground of his own use.

24. Apart from what has been said above, the Act has to be interpreted in a just and equitable manner. To completely deprive a landlord of his right to seek eviction of a tenant from a non residential building even on the ground of his own use for all times to come would be highly unjust and inequitable to him."

Learned counsel for the respondents has next placed reliance on '***Ishwar Chander versus Saroj Karwal 2009(2) R.C.R. (Rent) 657***', wherein it has been held as under:-

"In *Shamshad Ahmad & Ors. V Tilak Raj Bajaj [deceased]* through Lrs & Ors. 2008[2] RCR (Rent) 346 : 2008(5) RAJ 496, the Supreme Court ruled that the eviction petition of a landlady requiring the shop for business of her husband who had retired from service, can not be rejected on the ground that the landlords belong to the upper class of the society having facilities of a car and/or have been

enjoying all amenities of life. It was held that for the start of a business of Readymade Garments, no technical education or expertise was required by the landlord. Similarly, there can be no presumption that a pensioner can not have any bona-fide necessity to start his business after the retirement or because of advance age. The respondent having enjoyed good time during the most part of her life, is therefore, not only entitled to keep herself busy in some creative activity but would also fetch some additional income to her and, thus, no fault can be found with her projected requirement.”

Learned counsel for the respondents has also placed reliance on '**Ashok Narang versus Mrs. Shanta Anand 2006(2) R.C.R. (Civil) 421**', wherein it has been held as under:-

“Learned Counsel for the petitioner has also argued that the landlady has sought eviction of tenant Daya Singh on the ground that the demised premises are required for bona fide requirement again for her son Vinod Kumar. The requirement was negatived by both the Courts below and the ejectment, in fact, was ordered on the ground of change of user. Reliance has been placed on [Salim Ahmed v. Surjit Kumar Sahai, 1998\(2\) RCR \(Rent\) 391 : \(1998-3\)120 P.L.R. 182; M/s. Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon 1998\(1\) Rent Control Reporter 482; Kempaiah v. Lingaiah and others, 2002\(1\) RCR\(Rent\) 532 : 2001\(8\) SCC 718, and Savani Transport \(P\) Ltd. v. L. Rajamanikkam\(dead\) by L.Rs., 1995\(2\) R.C.R. 419. It](#)

is pointed out that prior to amendment in the year 1982, shop-cum-flat in Chandigarh was considered to be residential property and, therefore, the ground of personal requirement was available. However, it is not necessary that the requirement which was pleaded in the year 1973 has to fail in the ejectment petition filed on 8.5.2001. With the passage of time, the circumstances have undergone material change. The son of the landlady retired in the year 2001. Therefore, the requirement pleaded that son of the landlady wants to establish his business in the shop portion cannot be said to be suffering from any illegality.

The plea of bona fide requirement of premises by a landlord is a question of fact which has to be decided on the basis of facts of each case. Hon'ble Supreme Court in [Joginder Pal v. Naval Kishore Behal, 2002\(1\) RCR \(Rent\) 582 : \(2002-2\)131 P.L.R. 625](#), has found that bona fide requirement is not of the landlord himself but of his family members as well. It has been further found that it is natural desire of the father to settle his son in business or profession, as the case may be. Therefore, the desire of the landlady that her son should start business in the shop portion of the tenanted premises which is corroborated by the statement of said son that he is to establish his business leaves no manner of doubt that the landlady has established her bona fide requirement in respect of the premises in dispute. Both the Courts below have concurrently found that the shop portion is required

by the landlady for bona fide use of her son though the learned Rent Controller declined to pass ejectment order on the ground that tenancy cannot be splitted and ejectment order in respect of a part of the tenancy cannot be passed. The said approach of the learned Rent Controller has been rightly found to be not correct. It is, no doubt, correct that tenancy cannot be splitted, therefore, even if the landlady has established her need in respect of the shop portion, the tenants are liable to be evicted from the entire building let out as a single tenancy. Thus, I do not find any patent illegality or material irregularity in the order passed by the learned Appellate Authority which may warrant interference by this Court in exercise of its revisional jurisdiction.”

In the present case, respondents had filed petition under Section 13 of the East Punjab Urban Rent Restriction Act seeking eviction of the petitioner from the premises in question. The Case of the respondents was that they were owners of the premises in question. Respondent No. 1 was doing agricultural work after completing his 10+2 whereas respondent No. 2 was a student of Bachelors of Arts Part-1. Both the respondents required the premises in question for running the business of sale of cement on the ground floor and would use the first and second floor for their residential purposes.

Petitioner in his written statement admitted the fact that he was a tenant qua the property in question and averred that he had taken the same on rent from Karnail Singh. After the death of Karnail Singh, his son Mehar Singh was being paid the rent. In

fact, there was no dealing between the petitioner and respondents. The plea put-forth by the respondents that they required the premises in question for their own use and occupation, was denied by the petitioner.

A perusal of the cross-examination of RW-1 Subhash Chander reveals that he had admitted that cheque (Exhibit P-5) for the period of July 2004 to December 2006, had been issued in the name of Harjit Singh. He further stated that he had verified qua the ownership of the demised premises and the same was in the name of the respondents. He further admitted that the papers in this regard were shown to him by Mehar Singh. Hence, it is evident that the petitioner had admitted that the demised premises was owned by the respondents and he had also issued cheque Exhibit P-5 in the name of respondent Harjit Singh with regard to payment of rent. Therefore, the receipt Annexure P-17, issued by Mehar Singh qua acceptance of rent, does not lead to the inference that Mehar Singh was owner of the premises in question. The receipt Annexure P-17 was issued by Mehar Singh qua acceptance of rent qua the demised premises, although, a cheque qua the period in question i.e. from July 2004 to December 2006 was issued in the name of respondent Harjit Singh. Hence, Annexure P-17 fails to advance the case of the petitioner to the extent that the respondents were not the owners/landlords of the premises in question. In view of the cross-examination of petitioner, the Courts below rightly held that there existed relationship of landlord and tenant between the parties.

The next question that requires consideration is as to whether the respondents could seek ejectment of the petitioner on

the ground that they required the premises in question for their own use and occupation. The premises in question is a shop-cum-flat. The case of the respondents was that they wanted to run their business on the ground floor and wanted to use the first floor and second floor of the premises for their residential purposes. The amendment in Section 2 of the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 was considered by the Apex Court in *Rakesh Vij's* case (supra) and in terms of the said amendment, the shop-cum-flat is a non-residential building. Thus, the demised premises in question which is a shop-cum-flat, is liable to be treated as a non-residential building and in view of the decision given by the Apex Court in *Rakesh Vij's* case (supra), the landlord could seek ejectment of the tenant on the ground of his own personal use and occupation.

It is a settled proposition of law that the landlord is the best judge qua his needs and requirement. There is nothing on record to suggest that need put-forth by the respondents that they required the premises in question for their own use and occupation, is not genuine. Even otherwise, as per Section 13 of the Act, protection has been given to the tenant that in case the landlord fails to occupy the premises in question within the stipulated period or rents out the same to another tenant, then evicted tenant can apply for restoration of possession to the Rent Controller.

In the facts and circumstances of the present case, the Courts below had, thus, rightly ordered the ejectment of the petitioner from the demised premises. In view of the decision given by the Apex Court in *Rakesh Vij's* case (supra), the judgments relied

upon by the learned senior counsel for the petitioner fail to advance the case of the petitioner.

Petitioner had also moved an application before the Appellate Authority under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for permission to amend the written statement. By way of amendment, petitioner wanted to bring on record that Mehar Singh father of the respondents owned an industrial building in Chandigarh. However, the fact that the father of the respondents owned an industrial building in Chandigarh did not have any bearing on the merits of the present case. The respondents were owners of the demised premises and the fact that their father owned industrial property in Chandigarh, was not relevant for the purposes of the decision of this case. In these circumstances, the learned Appellate Authority had rightly dismissed the application moved by the petitioner under Order 6 Rule 17 CPC for permission to amend the written statement.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

August 03, 2015
Gurpreet