

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

CR No.3164 of 2015

Date of decision: May 15, 2015

Krishan Gopal and another

....Petitioners

Versus

Dr. Ramesh Kumar Jain

....Respondent

CORAM : HON'BLE MR. JUSTICE GURMIT RAM

1. To be referred to the Reports or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present: Mr. Ramesh Hooda, Advocate,
for the petitioners.

Mr. Sumit Gupta, Advocate,
for respondent.

GURMIT RAM, J.

1. This petition is preferred by the petitioners herein who were tenants before the learned Rent Controller against the impugned order dated 10.04.2015 (Annexure P-5) passed by learned Rent Controller, Karnal, vide which the application (Annexure P-3) for recalling the summoning order dated 08.01.2015 and also for grant of leave to defend the ejectment petition under section 13 (A) (1-A) of Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short "the Act) was dismissed.

2. The facts in brief which are relevant for the disposal of this revision petition are that the respondent herein (specified landlord)

before the learned Rent Controller filed an ejectment petition under the provision of Section 13 (A) (1-A) of the said Act for the ejectment of the tenants (petitioners herein) from the demised shops before the learned Rent Controller, Karnal. His claim in brief was that he is a Government employee working as Associate Professor in the Department of Veterinary in Lala Lajpat Rai University of Veterinary and Animal Sciences, Hisar. He is going to retire from his service on 30.06.2015. By way of family settlement, the demised shop came to his share through a civil Court decree which is an integral part of one building, the site plan of which is attached with the petition. Respondent No.1 (tenant) is in possession of one of the demised shops where he is running a *Kriyana* shop, and respondent No.2 (tenant) is in possession of second demised shop wherein he is running a cloth merchant business. The petitioner requires both the demised shops for running the Veterinary clinic by modifying the same after removing intervening wall of these two shops and hence was the instant petition.

3. On receipt of notice of this petition, the petitioners herein (tenants) filed the aforesaid application (Annexure P-3) which was declined by the learned Rent Controller after hearing the learned counsel for both the parties and going through the record as well vide the impugned order (Annexure P-5).

4. Being not satisfied with the impugned order recorded by the learned Rent Controller, the present petitioners have come up with the instant revision petition before this Court.

5. Though no notice was ordered to be issued in this case, but power of attorney on behalf of respondent was filed by Mr. Sumit Gupta, Advocate, which is taken on record. Learned counsel for both the parties were heard, record as available on the file was also perused with their able assistance.

6. Learned counsel for the petitioners has contended that the impugned order is not tenable in the eyes of law. It is further his contention that the petitioners herein have raised triable issues in their application (Annexure P-3), but the learned Rent Controller has failed to take judicious notice of the same and on this ground also, the impugned order is liable to be set aside. Further he has prayed that revision petition be accepted by setting aside the impugned order and leave to defend the petition be granted to the petitioners (tenants), so that the ejectment petition can be disposed of on merits by keeping in view the defence of the petitioners herein.

7. In support of his above contentions, the learned counsel for the petitioners has contended that as per the Rules framed by the Government at least one acre area is required to open the veterinary hospital. In this regard he has relied upon copy of the information (Annexure P-6) dated 28.04.2015 received from the concerned Department under the RTI Act, 2005. Then it is also his contention that permission is also required from the concerned Department for opening any veterinary hospital, which has also not been obtained by the respondent herein so far. Then he has also submitted that demised shops are situated in the heart of city Gharaunda, which is

thickly populated area and as such, the premises of demised shops are totally unfit for running any veterinary hospital, since cattle are to be brought therein for their treatment.

8. But in the case in hand, the respondent is going to start a veterinary clinic in the demised shops and not any veterinary hospital. There is a lot of difference between clinic and hospital. In veterinary clinic, concerned Doctor checks the pet animals suffering from any ailment brought in clinic for their treatment and discharges them after their check up by providing medical prescriptions and also after providing medicines available with him. In the case of hospital, the animals suffering from the ailments are not only to be medically checked but they can also be hospitalized in the hospital for their indoor treatment under the supervision of the Doctor, if it is so required. So there is no need of minimum one acre land for running any veterinary clinic which the present respondent is going to start after his retirement on 30.06.2015. So far as permission for starting any veterinary clinic is concerned, it is between landlord and the concerned Department and same is to be granted if the landlord satisfies all the requirements as required under the rule. The landlord can apply for such permission only when adequate premises is available with him for doing the needful. So prior permission to start any clinic is not at all required. Moreover nowadays people are very fond of keeping pets which are miniature in size such as dogs, cats etc. which they can very easily carry in their lap. So the above contention of learned counsel for the petitioners is declined.

Then in the instant application (Annexure P-3) in para No.4, it is mentioned that there are several properties other than demised shops which are jointly owned by the present respondent along with other family members and as such he can also run his alleged veterinary clinic from the said properties without uprooting the petitioners (tenants) from the demised shops. But no proof with regard to these properties was brought on the file by the tenants to show that same are jointly owned by the present respondent with his other family members. Moreover, the respondent herein is claiming that he is the owner of the demised shops which had come to his share through a Civil Court decree filed on the basis of family settlement. Moreover, it is a settled law that it is for the landlord to see as to which accommodation is suitable for his living as well as from his business point of view as the case may be. Tenant has no right either to dictate or to suggest any other alternative to the landlord to do the needful for saving his ejectment from the demised premises. Then it is also his case that he requires both the shops for running his veterinary clinic by modifying the same by removing intervening wall of these two shops.

9. The case law i.e., ***Charan Dass Duggal vs. Brahma Nand 1983 (1) SCC 301*** is not applicable to the facts of this case, since its facts are entirely different from the facts of the case in hand.

Then it is also the settled law that provisions of section 13(A) (1-A) of the Act are applicable to the residential as well as non-residential buildings. So the plea that the demised shops are non-residential premises and as such the provisions of abovesaid Section

13(A)(1-A) of the Rent Act are not applicable to these premises is held to be not tenable.

Herein the principles as laid down in the case law titled as State of Haryana through Chief Secretary Civil Sectt., Haryana vs. Ved Parkash Gupta and another, 1999(1) PLR 482 are followed. In this case law it has been held that impugned provisions of Section 13(A)(1-A) of the Act of 1973 are violative of Article 14 of the Constitution of India. No distinction can be drawn by way of residential and non-residential buildings, so far as the eviction on the ground of personal necessity is concerned.

Herein the Id. counsel for respondent has also cited an authority titled as Jitender Kumar vs. R.S. Virk and others, 2014(2) R.C.R. (Rent) 234, wherein it has been laid down that distinction of residential and non-residential buildings brought for classification of buildings has been held to be violative of Article 14 of Constitution of India and now this provision equally applies to the residential as also non-residential buildings. Then it is further referred in this case law,

“that in Zenobia Bhanot vs. P.K. Vasudeva and another, 1996(1) R.C.R. (Rent) 72: AIR 1996 (SC) 601 with reference to provisions of Section 13-A of the Punjab Act, it was held that ‘specific landlord’ has right to recover immediate possession of residential or scheduled building and such right of landlord is not restricted to one tenant only. It is further held that he can recover the whole building or a part, if he so chooses.”

10. I have carefully gone through the impugned order and have found that there is nothing in it in order to hold it to be either perverse or recorded on the basis of misinterpretation of pleadings of parties or without considering any evidence available on the record.

This revision petition is held to be meritless and as such, it stands dismissed and disposed of accordingly.

May 15, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**