IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: AUGUST 24, 2015

Sham Lal and others

.....Petitioners

VERSUS

Shri Sanatan Dharam Mahabir Mandir Dal, Rajpura

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sapan Dhir, Advocate,
for the petitioner.

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AUGUSTINE GEORGE MASIH, J.

C.M. No.11044 CII of 2015

For the reasons mentioned in the application, which are supported by an affidavit of petitioner No.1, delay of 18 days in filing the revision is condoned.

Application stands allowed.

C.M. Nos.11045, 16927 and 16928 CII of 2015

C.Ms are allowed.

Exemption is granted from filing certified copies of the documents, Annexures P-1 to P-5. Permission is also granted to place the true typed copies of said documents on record.

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Civil Revision No.3546 of 2015

A petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 was filed by Shri Sanatan Dharam Mahabir Mandir Dal, Rajpura for eviction of the petitioner-tenants on two grounds i.e. (i) material alteration in the property by raising fresh construction without consent and permission of the landlord as also change of user of property in question and (ii) bonafide personal necessity for construction of Hanuman temple on the disputed site as the statue of Mahabir (Hanuman Ji) is lying in the hall of the respondent due to shortage of site and, therefore, the statute of Mahabir Ji is lying with *Pran Partishtha* and, thus, cannot be termed as a deity for worship.

The petitioner-tenants disputed both the grounds. The Rent Controller vide judgement dated 13.06.2012 did not accept the first ground i.e. material alteration and change of user of property in question but had accepted the plea of personal bonafide necessity of the respondent-landlord. Even the appeal preferred by the petitioner-tenants has been dismissed on 31.01.2015 and the judgement passed by the Rent Controller, Rajpura, upheld.

It is the contention of learned counsel for the petitioner-tenants that the Courts below have not appreciated the evidence brought on record by the parties in the correct perspective. He has referred to the statement of AW1 Wazir Chand, General Secretary of the respondent, as also the statement of AW2 Surinder Kaushal and their cross-examination to assert that there is no personal necessity as the idol of Hanuman Ji is already installed and arti, kirtan and bhog are being performed/offered to it on every Tuesday and a Caretaker has also been appointed. He has referred to the

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photographs attached alongwith the petition to support his abovesaid assertion. He, thus, contends that the findings recorded by the courts below cannot sustain. Counsel also places reliance on the judgement of Hon'ble Supreme Court reported as Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, 2003 (2) SCC 320 to assert that the onus is on the landlord to prove bonafide requirements and that there is no reasonable alternative accommodation available. Further reliance has been placed on another judgement of Supreme Court in Sri Kempaiah Vs. Lingaiah, 2001 (8) SCC 718 to contend that the bonafide necessity is something more than a mere wish or impulse or desire on the part of the landlord and the element of `must have' in the case of requirement is to be proved. He, thus, contends that in the present case it is a mere desire on the part of the respondent-landlord to construct a temple for Mahabir (Hanuman Ji). Reliance has also been placed upon the judgement of this Court in Amrik Singh Chana Vs. M/s Punjab Weaving Mills, NIT, Faridabad, 2015 (1) PLJ 447 to contend that the degree of requirement would determine whether it would be bonafide and a sincere requirement of the landlord and not merely a wish or desire, which cannot be a ground to direct ejectment.

I have considered the submissions made by counsel for the petitioner and have gone through the judgements passed by the Courts below and the material placed on record.

The law, as has been settled by the Supreme Court in Badrinarayan Chunilal Bhutada's case (supra), Sri Kempaiah's case (supra) as also by this Court in Amrik Singh Chana's case (supra), reference whereof has been made by learned counsel for the petitioner-tenants, cannot be disputed but in the considered view of this Court, the respondent-

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landlord fulfills the requirements as have been laid down in the said judgements. Sufficient evidence has been placed on record, which shows that requirement of the respondent-landlord to construct Mahabir (Hanuman Ji) temple is bonafide as the statue of Hanuman Ji is lying in the hall due to shortage of site without *Pran Partishtha*. Not only the President and General Secretary of the respondent-landlord have appeared and deposed that the premises are required for the said purpose, Draftsman has also been examined to prove the site plan on the file and the photographs have also been produced, which clearly show and prove the personal bonafide requirement of the respondent-landlord. On the other hand, no pragmatic and documentary evidence has been produced except for the oral denial on the part of the petitioner-tenants, which cannot be said to be sufficient to prove that the respondent-landlord has no requirement of the demised premises.

It has been authoritatively held by the Supreme Court as also by this Court in various judgements that the landlord is the best judge with regard to the requirements and the Courts should not substitute its own opinion except where there is ample evidence not to believe the bonafide requirement of the landlord. While taking a decision with regard to the bonafide requirement of the landlord, the evidence produced by the parties has to be sifted properly, considered and thereafter a balance and pragmatic approach has to be adopted by the Court while deciding the question of personal requirement of the landlord. Present is a case where there is ample evidence on record proving the bonafide requirement of the respondent-landlord of the tenanted premises. It cannot be said that it is a mere wish, impulse or a desire on the part of the landlord but the requirement is one,

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which is a genuine, bonafide and reasonable one. The onus, which was on the respondent-landlord has been duly discharge.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

Therefore, finding no merit in the present appeal, the same stands dismissed. As a consequence thereof, C.M. No.11046 CII of 2015, seeking stay of the operation of the impugned judgements also stands dismissed.

August 24, 2015 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**

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