

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

**Civil Revision No.360 of 2015 (O&M)
Date of Decision: January 16, 2015.**

Satish Kumar and others

.....PETITIONER(s).

VERSUS

Dev Bala and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.L. Sarin, Senior Advocate with
Ms. Himani Sarin, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

A doctor, who is specialist in the field of neurosurgery and is running his clinic/hospital from his house situated at Amritsar, if wish to shift to Ludhiana, whether the need projected by him for the non-residential building owned by him at Ludhiana, falls within the domain of his 'personal bona fide necessity'. Rent Controller, Ludhiana and Appellate Authority, Ludhiana have answered the above proposition in favour of landlords-respondents No.1 and 2.

Respondents No.1 and 2 filed petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Rent Act) seeking ejectment of the revision petitioner and respondent No.3 from shop bearing No. B.VI.13(old) and B.IX.93(new) situated at Chaura Bazar, opposite OBC Bank, Ludhiana on the ground of non-

payment of rent, personal bona fide necessity and subletting. The ground of personal bona fide necessity as taken in the petition is as follows:-

“That the shop in dispute is honestly and bonafidely required by the petitioner No.2 for his personal use and occupation. Dr. Om Parkash Thaman husband of the petitioner No.1 and father of the petitioner no.2 was well known doctor of City Amritsar (Child Specialist). Petitioner no.2 Dr. Dushyant Thaman passed his M.B.B.S. from Amritsar and then passed his M.Sc. from Amritsar in the year 1998 and thereafter passed his M.C.H. from Lucknow in the year 2003 and since 2003 petitioner no.2 is practicing as doctor at Amritsar. Petitioner no.2 Dr. Dushyant Thaman is a well known Neuro Surgeon and Specialists in General Neuro Surgery. Petitioner no.2 Dr. Dushyant Thaman is also known as Super Specialisation Neuro Brain Surgeon and he is having super Specialisation Neuro Brain Surgery and is Specialists in Brain and Spine Surgery. At present, petitioner no.2 Dr. Dushyant Thaman is doing part time private practice at Madan Hospital, Majitha road, Amritsar, E.M.C. Hospital, Lahori Gate, Amritsar. Petitioner No.2 Dr. Dushyant Thaman is also Honourary consultant of Guru Ram Dass Medical College and Hospital at Amritsar. At present, Dr. Dushyant thaman is residing at Amritsar. Petitioner no.2 Dr. Dushyant Thaman is having good and rich experience in the field of Brain and Spine Surgery. So petitioner no.2 wants to start his own independent clinic of Neuro Brain and Spine Surgery in the shop in dispute. He has sufficient and rich experience in this field. The shop in question is very suitable for running the said clinic as same is situated in the heart of the City. The petitioners are not

occupying any other non residential building premises in the Urban Area of Ludhiana nor they have vacated any such non residential building after the commencement of East Punjab Urban Rent Restriction Act, without any reasonable and sufficient cause. The petitioner No.1 thus require, the premises in question bonafide for the use and occupation of petitioner no.2.”

The revision petitioners contested the plea taken by the landlords-respondents No.1 and 2, inter-alia pleading that Dr. Dushyant Thaman is having his residence at Amritsar, which is a palacious double storey building having an area of 1000 square yards. He is a consultant doctor in various hospitals and clinic of the respondent is in an area of 300 square yard. He is well placed and well established doctor in Amritsar, as such, has no need or reason to shift to Ludhiana

Pleadings of the parties led to the framing of issues as follows:-

1. Whether petitioner is entitled for eviction on the ground of non-payment of rent?OPA
2. Whether petitioner is entitled for eviction on the ground of personal necessity?OPA
3. Whether petitioner is entitled for eviction on the ground of subletting?OPA
4. Whether petitioner has no locus standi to file the petition?OPR
5. Whether petition is bad for misjoinder of parties?OPR
6. Whether petition is not maintainable?OPR
7. Whether petitioners have not come to the court with clean hands?OPR
8. Relief.

Learned counsel for the revision petitioners has argued that the petition filed by landlady-respondent No.1 is a misuse of provisions of the Rent Act. The premises was required by landlady-respondent No.1 for the personal bona fide necessity of her son Dr. Dushyant Thaman, who is a renowned Neurosurgeon and Specialist in neurosurgery. He is well settled at Amritsar and as admitted by him, is a part time consultant at Madan Hospital, Majitha road, Amritsar, E.M.C. Hospital, Lahori Gate, Amritsar and Honourary consultant of Guru Ram Dass Medical College and Hospital, Amritsar. He is having his palacious house where he is carrying on his clinic. He has no necessity to shift to Ludhiana. The shop which is about 12' X 16' is not a suitable place for setting up independent clinic of neurosurgery. He cannot have the surgery room, ICU, waiting hall etc in such a small premises. There is no element of need for respondent No.2 to shift to Ludhiana. Even otherwise, Chaura Bazar, where the shop is situated is a very congested locality and traffic movement is very difficult and in case of emergency, ambulance cannot be taken to this market. The respondents have coined the genesis of personal bona fide requirement of Dr. Dushyant Thaman only to get the shop vacated. The Rent Controller and Appellate Authority have not looked into this fact while ordering the ejectment of revision petitioners from the demised premises.

The first Appellate Court, while justifying the personal bona fide necessity of the demised premises by the landlady-respondent No.1 has observed in para 16 of the judgment as follows:-

“16. It is not disputed that at present PW1 is running his medical practice at Amritsar. It also stands fully proved that he owns house no.1, Sant Avenue, Radha Swami Satsang Road, The Mall, Amritsar and the area of said house is 1000 sq.yds. It has also come into evidence that PW1 is running his clinic/hospital from the said house. The photographs of the said house are Mark-A to Mark-E, which are admitted by PW1 and PW2 in their testimony. PW1 also admitted in his testimony that from 2003, he is also working in Madan Hospital, Majitha Road, Amritsar. So, it is evident that PW1 Dashyant Thaman is having well established medical practice at Amritsar for the last more than 10 years. It is the plea of the tenants that at this stage, there is no reason/opportunity for Dashyant Thaman to shift to Ludhiana to set up his medical clinic/hospital in the shop in dispute situated in Ludhiana. This court is of the view that the tenants are no body to dictate to the landlord as to where and in what manner he should run his medical practice. It is settled law that the landlord is the best Judge of his need and the court cannot go into the same unless it is proved that his claim is exaggerated. It is also settled law that it is always for the landlord to see as to where he is to run his business and he is the best Judge of his need and choice and cannot be dictated by the tenant as to where he should run his business

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Ludhiana is a commercial hub and most populated and big industrial city of Punjab. If a super specialist doctor wish to come to start his clinic at Ludhiana, his choice, wish and requirement cannot be faulted on the ground that he is already settled in another city and has contacts

with several hospitals there. It is not difficult for a doctor and particularly for a super specialist to maintain his contacts with the doctors/hospitals at Amritsar by using advance means of communication in the field of information and technology. It is not for the tenant to worry about as to where the doctor, if set up his clinic in the demised premises, will set up his surgery room, ICU, waiting room etc. This matter should be left to the discretion of the doctor himself. Now-a-days, it is not uncommon that a doctor has his clinic at one place, place of surgery, consultancy and ICU at other place in reputed hospitals and Ludhiana has privileged to have such facilities.

The entire arguments put forth by learned counsel for the revision petitioner appears to be a sort of dictation and concern of the tenant direct to the landlady as to how and in what manner her son should carry on his medical practice. The Appellate Authority has rightly observed that the tenant cannot dictate his terms with regard to the suitability of the accommodation to the son of landlady. Admittedly, demised premises is situated in the heart of the city and if a qualified doctor decides to come there to provide his expertise to the people living there, his intention and bona fide cannot be doubted without any basis.

Learned counsel for the revision petitioners has referred to the observations of Hon'ble Supreme Court in case ***Phiroze Bamanji Desai Vs. Chandrakant M. Patel and others*** AIR 1974 Supreme Court 1059 and has argued that while ordering the ejectment of tenant, the authorities under the Rent Act has to see his need and not mere wish. He has also relied upon the observations of Hon'ble Supreme Court in case of

***Deena Nath Vs. Pooran Lal* 2001(2) Rent Control Reporter 131** and has argued that while inferring the personal bona fide requirement of the landlord based on the evidence produced, the Authorities under the Rent Act are required to take care and to avoid any arbitrary or whimsical arguments of the landlord to evict his tenant. Reference has also been made to the observations of Co-ordinate Bench of this Court in cases of ***Jagdish Rai Chandna Vs. Swaran Singh* 2000(1) Rent Control Reporter 373** and ***Mrs. Manpreet Arora Vs. Jagan Nath* (2000-1) PLR 430**.

In case of ***Deena Nath Vs. Pooran Lal (supra)***, the personal bona fide necessity of the landlord was held to be not bona fide on the ground that he already had a vacant shop/room and during the pendency of the petition, one more showroom vacated by the tenant came to his possession, where the son of landlord for whose need the ejection of the tenant was sought, could start his business. In case of ***Phiroze Bamanji Desai Vs. Chanderkant M. Patel and others (supra)***, the matter related to the provisions of Section 21(4) of Bombay Rents, Hotel and Lodging House Rates Control Act of 1947, which are alien to 'the Rent Act' in Punjab, as such, the observations therein are not relevant or applicable to the present case.

Before the Co-ordinate Bench of this Court in case of ***Jagdish Rai Chandna Vs. Swaran Singh*** and ***Mrs. Manpreet Arora Vs. Jagan Nath (supra)***, the findings of personal bona fide necessity for requirement of tenanted premises was based on peculiar facts and circumstances of those cases, which are not relevant in his case. In case

of *Jagdish Rai Chandna Vs. Swaran Singh (supra)*, the wish of the landlord for shifting from Delhi to Panipat was found to be not bona fide. Similarly, in case of *Mrs. Manpreet Arora Vs. Jagan Nath (supra)*, the landlord was settled at Baroda with her husband and the children for whose studies at Chandigarh, bona fide need was projected had grown up and it was observed that her requirement had come to an end.

Hon'ble Supreme Court, while defining the scope of revision under the Rent Act, in case of *Hindustan Petroleum Corporation Ltd Vs. Dilbahar Singh 2014(9) SCC 78*, has observed as follows:-

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy

itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Perusal of the paper-book and the judgments of Rent Controller and Appellate Authority do not depict any legal or factual infirmity therein calling for any interference.

This revision petition has no merits. Dismissed.

January 16, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE