

CR No.4905 of 2015 (O&M)

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

CR No.4905 of 2015 (O&M)

Date of Decision: August 12, 2015

Sudhir Kumar

...Petitioner

Versus

Kartar Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (Oral):

This rent revision petition has been preferred by the tenant against the order passed by the Rent Controller, Chandigarh, dated 12.12.2014 by which the eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as 'Rent Act') was allowed, against which the appeal preferred by the present petitioner-tenant was dismissed by order dated 21.05.2015. The eviction of the petitioner has been ordered on the ground of *bona fide* need of the respondent-landlords and for non-payment of rent.

Counsel for the petitioner has urged that the ground of *bona fide* need of the respondent-landlords cannot be accepted for allowing the petition for eviction as the same is not in conformity with

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the term 'requirement' as provided in Section 13 of the Rent Act. The definition of 'Landlord' is only restricted to the owner of the building which they are not as they are only Sub-Power of Attorney holders. In support of this contention, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Dr. Ambica Prasad Vs. Md. Alam and another, 2015 (1) RCR (Rent) 544.** He, however, admits that the Power of Attorney holder is a landlord for the purpose of receipt of rent as per the judgment of the Hon'ble Supreme Court referred to above.

His further contention is that the respondents cannot be treated as landlords for the purpose of receipt of rent also as they did not have a valid Sub-Power of Attorney in their favour. He asserts that the owner of the property Shri Sadh Singh, expired on 29.09.1996 and Sub-Power of Attorney is dated 30.11.1994, on the basis of which, the respondents stepped into the shoes of the landlords and have entered into an agreement by executing a lease-deed dated 30.12.2006 which resulted in the tenancy, which they could not enter into as the original owner of the property had died on 29.09.1996 and the authority of the respondents extinguished then and there. He, thus, contends that the lease deed executed by the respondents with the petitioner is non-est in the eyes of law. The findings of the Courts below that the petitioner has not paid the rent to the landlord, thus, cannot be sustained.

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When this Court was inclined to issue notice in this case, Shri Surinder Kumar Arora, Advocate, has put in appearance on behalf of the respondents and informed the Court that the revision petitioner is not paying the assessed rent since April, 2014 and even after the date of eviction order passed by the Rent Controller.

Counsel for the petitioner has, on instructions from the petitioner who is also present in Court, admitted the said fact. He, however, asserts that in the light of the fact that the original owner has expired and the respondents are only Sub-Power of Attorney holders, which authority stood extinguished, as such they are not entitled to receive the rent.

This contention of the counsel for the petitioner cannot be accepted in the light of the definition of 'Landlord', as provided in Section 2 (c) of the Rent Act which reads as follows:-

“(c) “Landlord” means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account, or on behalf or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorized, and, every person, from time to time deriving title under a landlord.”

It is not in dispute that on the date when the Sub-Power

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of Attorney was executed, the original owner of the property was alive. Merely because the original owner has expired, the rights which have accrued on the Power of Attorney as per the terms of the said Sub-General Power of Attorney, cannot be said to have extinguished, especially in the light of the statement of the respondents.

In any case, this plea as has been sought to be raised with regard to the respondents being not the landlords and therefore, not entitled to receive the rent because of the death of the original owner of the property, cannot be permitted to be so raised in the light of the fact that this plea was not raised in the written statement which has been filed by the petitioner-tenant before the Rent Controller. An application was filed before the Appellate Authority under Order 6 Rule 17 of CPC read with Section 151 of CPC for amendment of the written statement for incorporating new facts with regard to the original allottee having expired on 29.09.1996 resulting in no authority being conferred upon the respondents for letting out the demised premises, has not been allowed by the Appellate Authority. In any case, these pleas could have been taken at the very outset and cannot be permitted at the appellate stage.

The assertion of the counsel for the petitioner-tenant that the respondents did not have the authority to lease the demised premises and therefore, were not the landlords, cannot be accepted

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in the light of the definition of the 'landlord' as provided under Section 2 (c) of the Rent Act (reproduced above). Admittedly, in this case, the respondents inducted the petitioner as a tenant in the demised premises by way of a notarized lease deed dated 30.12.2006, therefore, the petitioner cannot raise an objection that the respondents are not the landlords. He is estopped from denying the title. The Rent Controller needs to decide whether the relationship of landlord and tenant exists or not and question of title to the property in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceedings. In the light of provisions of Section 116 of the Indian Evidence Act, a tenant who has been let into possession cannot deny his landlords title however defective it may be. A tenant is precluded from denying the title of the landlord on the general principles of estoppel between landlord and tenant as a person cannot be allowed to approbate and reprobate. Reliance can be placed upon the judgment of the Supreme Court in the case of **Bhogadi Kannababu & others Versus Vuggina Pydamma & others 2006 (5) SCC 532** and **Tej Bhan Madan Versus II Additional District Judge 1988 (3) SCC 137.** Since the petitioner had been inducted as tenant in the demised premises by the respondents for the purpose of the Rent Act, the respondents would be the landlords and therefore, would be entitled to receive the rent.

Admittedly, petitioner-tenant has, from April, 2014

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onwards, not paid the provisional rent as assessed by the Rent Controller to the respondent-landlords nor has he paid the rent which was finally determined by the order dated 12.12.2014 of the Rent Controller while deciding the rent petition. Even no rent at all has been paid by the petitioner-tenant either during the pendency of the first appeal or after the filing of the present revision.

The findings recorded by the Courts below that petitioner-tenant has not paid the rent are undisputed which do not call for any interference of this Court. The impugned orders are, therefore, upheld and the revision petition stands dismissed.

August 12, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**