

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

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Civil Revision No.6356 of 2015 (O&M)
Date of Decision: October 05, 2015

Shri Narain Dass (Now Deceased) Trough His LRs Smt. Sheela and others

...Petitioners

Versus

Murti Shree Paras Nathji

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.C. Shahpuri, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Petition for ejectment of the petitioners was filed by the respondent on the grounds of non-payment of rent, seizure of respondent No.1-Kamla Devi to occupy the premises in dispute and transferring possession of the premises to respondent No.2-Narain Dass her younger son without written consent of the respondent-landlord and that the respondent-landlord needed the demised premises for its personal use and occupation i.e. for the residential purpose of its Chowkidar, who is presently residing within the temple premises causing inconvenience and hardship to the worshipers in the temple. The Rent Controller, Jagadhri, dismissed the ejectment petition on 11.01.2001, appeal against which preferred by the respondent-landlord stands allowed by the Appellate Authority, Yamuna Nagar at Jagadhri, on 21.07.2015, which has been challenged in the present revision petition by the petitioners-tenants.

2. It is the contention of learned counsel for the petitioners that

out of the three grounds, which have been pressed into service by the respondent-landlord on the tender of the rent, the ground of non-payment of rent ceased to exist. The Rent Controller by a detailed order on considering the pleadings and the evidence brought on record, had come to a conclusion that the other two grounds i.e. having ceased to occupy the premises and the personal necessity, have also not been found to be proved. He contends that the well reasoned and fully justified order of the Rent Controller has been upset by the learned Appellate Authority without properly appreciating the evidence on record. His contention is that the evidence, which has been brought on record, does not prove that the demised premises is not being occupied by Smt. Kamla Devi. The documents which have been produced i.e. the Ration Card applications, the records of the issuance of the Ration Cards and the Voter Identity Card list Exhibits A-1 to A-4 would not prove that Smt. Kamla Devi was not residing in the premises in question for the last 7-8 years, rather her younger son Narain Dass is residing with her in the demised premises and, therefore, the findings recorded by the Appellate Authority are unsustainable. His further contention is that the *bona fide* requirement of the respondent-landlord for the purpose of residence of the Chowkidar also is not made out as it has been admitted by AW-2 Rajinder Kumar in his cross-examination that there are 2-3 rooms, which are situated in the *Mandir* and are used for stay of *sanyasis/jain munis* etc. Apart from these, there are two others rooms situated in the premises and, therefore, there are five rooms in total. It is also admitted that there is no *pujari* permanently residing in the *Mandir* and the Chowkidar residing in one of the rooms for the last about 9-10 years. He, thus, contends that since the Chowkidar is residing in the premises for the last 9-10 years, there is no

necessity, which would force the respondent-landlord to get the premises vacated or the same could be said to be a *bona fide* necessity. The Chowkidar of the temple, for whom the room is being sought to be vacated for his residence, has not been examined, which is fatal to the case of the petitioner and, therefore, non-examination of the Chowkidar is a serious flaw in the case of the respondent-landlord and, therefore, the *bona fide* necessity of the respondent-landlord, cannot be said to have been proved. In support of this contention, he has placed reliance upon the judgment of this Court passed in case titled as ***Rajiv Gupta Versus Jiwan Ram 2015(1) R.C.R. (Civil) 762***. He has further relied upon the judgment passed in case titled as ***Brij Bhushan and another Versus Sanjay Harjai and another 2015(2) R.C.R. (Civil) 68***, where it has been held that the requirement of landlord is *bona fide* should be proved by cogent evidence and is not just a mere wish and desire. He accordingly contends that the impugned judgment of the Appellate Authority, Yamuna Nagar at Jagadhri, dated 21.07.2015 cannot sustain and deserve to be set aside.

3. Having considered the submissions made by learned counsel for the petitioners and on going through the orders passed by the Courts below, this Court is unable to subscribe to the contentions raised by the counsel for the petitioners.

4. The contention of the counsel for the petitioners that Smt. Kamla Devi, who is the tenant of the demised premises, has not ceased to occupy the premises, cannot be accepted as there is evidence, which has been brought on record, which clearly establish that she had moved out of the premises and is residing with her elder son Vishavnath in House No.285, C-VIII, Labour Colony, Ward No.18, Jagadhri. AW-1 Vinay

Kumar, an official of the Food and Supply Department, Jagadhri, brought the summoned records of both sons of Smt. Kamla Devi namely Vishavnath (elder son) and Narain Dass (younger son). He placed on record photocopy of the application form of Ration Card of Vishavnath Exhibit A-1, according to which there are entries of six members namely Vishavnath, Sona Devi-wife, Pushpa- daughter, Manoj-son, Vijay-son and Kamla Devi-mother. In the Ration Card record of Vishavnath, the residential address is House No.285, C-VIII, Labour Colony, Ward No.18, Jagadhri. He has also produced photocopy of the application form for Ration Card of Narain Dass as Exhibit A-2, according to which there are entries of four members namely Narain Dass, Bimla Devi-wife, Raju-son and Rajni-daughter. These applications are of the year 1992. The witness has further deposed that he conducted the survey pertaining to application form for Ration Card of Vishavnath Exhibit A-1 and verified the same, whereas application form of Ration Card of Narain Dass Exhibit A-2 was verified by Mehar Chand, Clerk, whose signatures he identified. He also deposed that the Ration Card of Vishavnath and Narain Dass have been entered in the register brought by him. This showed that Smt. Kamla Devi had been staying in House No.285, C-VIII, Labour Colony, Jagadhri, at least since 1992. Copy of the Voter Card list Exhibit A-4 has been produced by Rajinder Kumar Jain AW-2, which was prepared in the year 1995, where again her name figures and her residence is shown to be House No.285, C-VIII, Labour Colony, Ward No.18, Jagadhri. It may be added here that no evidence has been led by the petitioners before the Rent Controller to rebut the oral and documentary evidence adduced on record by the respondent-landlord, which prove beyond doubt that Smt. Kamla Devi had left the premises in question and

had started residing with her elder son Vishavnath at his residence leaving her son Narain Dass and his family in the demised premises. It is not the case of the petitioners that they had obtained the consent of the respondent-landlord for such an arrangement.

5. The next contention, which has been pressed into service by the counsel for the petitioners, is that the *bona fide* necessity of the respondent-landlord has not been proved and for the said purpose, he has referred to the cross-examination of Rajinder Kumar Jain AW-2, who had stated that there are 2-3 rooms and apart from them, two other rooms and the Chowkidar is residing in the *Mandir* for the last 9-10 years. Apart from contending that the Chowkidar himself has not been produced to prove *bona fide* necessity of the respondent-landlord. Suffice it to say that Rajinder Kumar Jain has categorically deposed that 2-3 rooms of the temple are being used for the stay of *saints/jain munis* etc. and that apart, there are two other rooms measuring 10 feet X 15 feet and a hall of about 40 feet X 50 feet, which are being used for worship. The witness has clarified as to how the rooms are being used i.e. for the stay of *saints and jain munis* etc. and for worship purposes. He has also stated that there is no other suitable room available for residence of Chowkidar and his family. Merely because the Chowkidar and his family is living in the premises of the temple would not show that the demised premises is not required for the purpose it is being sought to be evicted for. He has further deposed that this arrangement causes lot of inconvenience and hardship to the worshipers, which is understandable as it would be a hindrance and cause disturbance for the worshipers.

6. The landlord is the best judge of his need and the tenant cannot dictate his terms on the landlord as to which is the best premises for his

need and requirement. The evidence and the pleadings which have been brought on record leaves no manner of doubt that the premises in question is required by the respondent-landlord bonafidely for personal use and occupation. The judgments, on which reliance has been placed by the counsel for the petitioners, would not be applicable to the case in hand. In **Rajiv Gupta's case** (*supra*), the Court was dealing with a case where the landlord required the premises for his son and that was the *bona fide* necessity which was projected. It is under these circumstances the Court observed that non-examination of the son, for whose necessity eviction was claimed, was a serious flaw in the case of the landlord as the statement which was given was highly sweeping and general in nature by the landlord, which is not the case in hand, where the respondent-landlord has been able to establish by leading cogent and convincing evidence with regard to *bona fide* need and necessity. In **Brij Bushan's case** (*supra*), the Court was dealing with a situation where the pleadings were not in consonance with Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, as the necessary pleadings were missing. It is under these circumstances that the Court proceeded to hold that the requirement of the landlord is not *bona fide* and it was just a wish and desire of the landlord to get the premises vacated, which again cannot be said to be case in hand.

6. The judgment passed by the Appellate Authority, in the considered opinion of this Court, is based upon the pleadings and proper appreciation of the evidence on record, which is in accordance with law and, therefore, upheld.

7. Finding no merit in the present petition, the same stands dismissed.

8. In the light of the dismissal of the petition, the application for stay i.e. CM No.20367-CII of 2015, stands disposed of as infructuous.

October 05, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE