

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 6416 of 2013

Date of Decision: May 4, 2015

Narinder Pal Singh

.....Petitioner

Vs.

Dharam Pal Singh Grewal

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Davinder Singh, Advocate
for the petitioner.

Mr. Divanshu Jain, Advocate.

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M.M.S. BEDI, J.

The tenant has preferred this revision petition under Section 15 (5) of the East Punjab Urban Rent Restriction Act challenging the order dated August 3, 2013 passed by the Appellate Authority reversing the order passed by the Rent Controller by virtue of which the Rent Controller had dismissed the ejectment application filed by the petitioner, inter-alia on the ground of personal necessity and the impairment.

Respondent-landlord had sought the ejectment of the petitioner from two shops one in occupation of the petitioner and another in occupation

of another tenant measuring approximately 10' x 10'10" situated in Sunami Gate Bazar, Patiala, claiming that the respondent required both the shops after having retired from Indian Army as Colonel on April 10, 1996. As he had settled at Patiala, he intended to start his business in the shops in dispute. He had taken Gas Agency from Hind Gas and had become an authorized dealer at Sanaur with the name and style of 'Pinnacle Gas Agency'. The respondent wanted the demised premises to start his petroleum business. He claimed that he controlled and managed Punjab Petroleum Corporation and agency is being managed by him from his residence due to scarcity of vacant shop or commercial places in the area of Patiala for the business purposes. He claimed to have undergone two years petroleum course in military service with adequate knowledge of petroleum product and gases and its allied instruments. He had disclosed in his ejectment petition that the demised premises was part of building bearing MC No. 1337/4 situated in said Sunami Gate Bazar built at one time. The building was 75 to 85 years supported by ballas and on account of its age, the entire building was in bad condition. He wanted the building for reconstruction for setting up business for personal use and occupation.

The Rent Controller had dismissed the application on the following grounds:-

- i) The respondent does not bonafide require the shop in dispute and to prove the requirement he had not

produced any documentary evidence regarding allotment of Gas agency at Sanaur;

- ii) He had closed his business in the year 2000 on account of ill health;
- iii) He being 71 years of age, it would not be possible for him on account of ill health and old age to start the business. There was a delay of 7 years in filing of the petitioner after retirement on April 10, 1996.

The Appellate Authority has reversed the finding of the trial Court and held that the respondent bonafide requires the shops.

Learned counsel for the petitioner has vehemently contended that the Appellate Authority has acted illegally in holding that the need of the respondent-landlord is bonafide. He argued that the Rent Controller by passing a reasonable order had rightly dismissed the application for ejectment on the ground that on account of ill health and delay in filing of the petition, the bonafide was not established. The Appellate Authority did not appreciate the fact that the respondent has not successfully pleaded and proved the necessary ingredients of Section 13 (3) (ii) of the East Punjab Urban Rent Restriction Act, for short 'the Act' as he has filed two separate petitions against the tenants in two adjacent shops and failed to prove that he had made any plan to run the business of the petroleum products. In the absence of any preparation for the business, the plea of bonafide has been wrongly believed by the Appellate Court. There is open space behind the

demised premises in the site plan. The respondent could start his business in the said area. He is in occupation of the said vacant area as such he was not entitled to seek ejectment against the tenant- petitioner.

The Appellate Authority has minutely considered all the aspects of personal necessity and passed the ejectment order. In **Sarla Ahuja Vs. United India Insurance Company Ltd.**, 1998 (2) RCR (Rent) 533, the Apex Court has held that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of tenanted premises. When a landlord asserts that he requires his building for his own occupation, the Rent Controller is not required to proceed on the presumption that requirement is not bonafide. When the landlord shows prima facie case, it is open to the Rent Controller to draw the presumption that the requirement of the landlord is bonafide. The said judgment was followed by Punjab and Haryana High Court in **M/s Satpal Vijay Kumar Vs. Sushil Kumar**, 2011 (3) RCR (Civil) 82.

I have heard learned counsel for the petitioner as well as counsel for the respondent and carefully considered the contention of both the parties. A similar petition filed by another tenant Chobbar Singh in adjacent shop has been dismissed by this Court vide order of even date, holding that the respondent bonafide requires the premises in dispute. The operative part of the judgment in Chobbar Singh's case is as follows:-

“I have considered the contention of counsel for the petitioner/ tenant that the landlord has become old as such he is

not likely to start business. A Coordinate Bench of this Court in **Ishwar Chander Vs. Saroj Karwal**, 2009 (2) RCR (Rent) 657 has observed that a tenant, on the grounds that the landlord on account of advancement of age or insufficiency of funds or lack of experience, is not entitled to resist the claim of landlord to get his premises vacated. It is admitted fact that the petitioner is a retired Colonel. Nothing has been brought on record by the tenant- petitioner pertaining to his illness or insufficiency or incapability to run the business in the field for which he holds expertise. It will not be appropriate for this Court to examine whether the business to be set up by the respondent-landlord would be successful in the tenanted premises or the proposed business is mere speculation. The landlord is always considered to be best judge of his needs unless and until the plea of personal necessity appears to be absurd on the face of it or it is apparently impossible. The bonafide need cannot be doubted generally. In **Tarsem Lal Vs. Pritam Dass Khullar**, 2005 (2) RCR (Rent) 215, it has been observed that landlord is not required to present a project report to the tenant regarding the business which he intends to start. The requirement of landlord to settle in his home town and his need for a shop to start a business cannot be doubted. In **Kewal Krishan Vs. Amrik Singh**, 2001 (1) RCR (Rent) 434, it was

observed that even if the landlord does not have past experience in the business, it would not reflect lack of bonafide of the landlord. It is not necessary for the landlord to indicate the precise nature of business in the pleadings. The statement of a landlord on oath for personal need under Section 13 (3) (a) (i) of the Act has to be believed unless the need pleaded by a landlord could be unfounded and fanciful. In this context, reference can also be made to a judgment in **Smt. Janak Dulari Khosla Vs. Jaswinder Singh and others**, 2004 (1) PLR 626.”

In view of above circumstances, I do not find any ground to interfere in the ejectment order passed by the Appellate Authority. **The revision petition is dismissed.**

Counsel for the petitioner has submitted that the petitioner has been in possession of the shop in dispute for the last more than 30 years and that sufficient time be granted to him to vacate the premises.

Three months time is granted to vacate the premises subject to the condition that the petitioner will pay the entire arrears of rent/ mesne profits within a period of one month. He will handover vacant possession to the respondent-landlord on expiry of period of three months.

May 4, 2015
sanjay

(M.M.S.BEDI)
JUDGE