

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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*C.M. No. 25134-CII of 2015 &
C.R. No. 8008 of 2015 (O&M)*

Date of decision: 04.11.2016

M/s Swaran Singh and sons and another

...PETITIONERS

VS.

Amritsar Sewa Samiti

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. A.P.S.Sandhu, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 25134-CII of 2015

C.M. is allowed subject to just exceptions. Filing of true typed copies and certified copies of the impugned judgments dated 17.09.2011 and 22.04.2015 passed by the Lower Courts is dispensed with.

C.R. No. 8008 of 2015

Challenge in this revision petition is to the order passed by the Rent Controller, Amritsar dated 17.09.2011 whereby petition under Section 13 of the East Punjab Rent Restriction Act, 1949 preferred by the respondent-Amritsar Sewa Samiti (Regd.) has been accepted on the grounds of personal necessity for expansion of Hospital and the nuisance, which was caused by the business being run by the petitioners, namely, the saw machine, appeal against which preferred by the petitioners has also been

dismissed by the Appellate Authority, Amritsar on 22.04.2015 upholding the order passed by the Rent Controller, Amritsar.

It is the contention of the learned counsel for the petitioners that the premises in question is in possession of the petitioners since long rather a portion of the premises was surrendered by the petitioners for the purpose of extension of the hospital being run by the respondent-Society in the year 1987 and a fresh rent note was executed on 20.01.1987. They continued in the premises in question in their possession. As per the said rent note, the petitioners have been continuing in possession and are regularly paying the rent for the premises used by them. He contends that the saw machine, which had been installed in the demised premises, was/is in use for the last more than 40 years and, therefore, it was known to the respondent that the said premises would be and is being used for the said purpose but still they chose to permit the same in the premises and executed a fresh rent note in the year 1987. He, on this basis, contends that now the plea that it is a source of nuisance and is inconvenient to the respondent, which is running a hospital, cannot be accepted rather they should be stopped from raising such a plea. His further contention is that the respondent has not been able to prove that there is inconvenience and nuisance having been caused by the petitioners while running the saw machine. In the absence of any proof, the said plea cannot be accepted as the onus was on the respondent, who is the applicant/petitioner in the eviction petition. He, on this basis, contends that the orders passed by the authorities below cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the impugned

orders.

No doubt, the petitioners, admittedly, are running the business of saw machine in the demised premises for more than 40 years and that the area is a commercial area but that does not mean that for all times to come, a tenant, if is in an inconvenience and the nuisance causing business, cannot be agitated. In the changed circumstances, such a plea is always available to the concerned party.

In the present case, it is not disputed that the respondent-Society is running a physiotherapy hospital adjacent to the demised premises. AW3 Dr. Vishal Verma has appeared on behalf of the respondent and has proved that inconvenience and nuisance is caused to the patients who visit the hospital being run by the respondent-Society. Further, the premises, which is in the possession of the respondent, is not sufficient and in fact more area is required as the number of patients, who are visiting the hospital, are increasing. It is also not in dispute that the hospital being run by the respondent is a charitable hospital. One of the patients, namely, AW4 Durga Dass Mahajan has also appeared as a witness and has deposed with regard to the inconvenience caused to the patients because of the nuisance created by running of the saw machine and a great cause of concern with regard to air pollution as the saw dust being mixed with the air, which is being inhaled by the patients in the hospital. This is a cause of concern and is harmful to the patients who visit the hospital for their treatment. These statements made by the two witnesses, referred to above, have gone un-rebutted as in the cross-examination, the same have not been challenged. Apart from that, no evidence has been produced by the petitioners to rebut the evidence, which has been led by the respondent

on this aspect.

If that be so, the plea with regard to there being nuisance and air pollution by the petitioners and the findings recorded thereon cannot be faulted with. Similar is the position with regard to the personal necessity as the respondent has been able to prove that the area and the premises in its possession is not sufficient for the purpose for which the hospital is being run and, therefore, the adjacent area, which is under tenancy of the petitioners, is required for expansion purpose.

In view of the above, finding no merit in the present revision petition, the same stands dismissed upholding the order passed by the authorities below, which are under challenge herein.

November 04, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No