

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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C.M. Nos. 23999-CII & 24000-CII of 2016 &
Civil Revision No. 8001 of 2016

Date of decision: 29.11.2016

Roshan Lal and others

...*PETITIONERS*

VS.

Shri Digamber Jain Sabha (Regd.)

...*RESPONDENT*

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S.Saini, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Challenge in this revision petition is to the order dated 23.03.2015 (Annexure P-2) passed by the Rent Controller, whereby petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for ejectment of the petitioners-tenants from Shop No. 1, Shri Digamber Jain Sabha Dharamshala Building, Timber Market, Ambala Cantt., has been allowed on the grounds of bona-fide personal necessity, appeal against which preferred by the petitioners has been dismissed by the Appellate Authority, Ambala on 31.08.2016.

It is the contention of the learned counsel for the petitioners that the authorities below have not appreciated the pleadings and the evidence, which has been led by the parties, in the right perspective. He contends that the petition, which has been preferred by the respondent-Shri Digamber Jain Sabha (Regd.) (hereinafter referred to as 'Sabha'), is not maintainable as the resolution, which has been passed by the said Sabha is defective. He further contends that the respondent-Sabha has not been able

Shop measuring 11'x12'. A contention has been raised that the respondent-Sabha is running various religious temples, Dharamshala, schools and institutions at Ambala Cantt., where it manages various type of religious activities, processions and religious functions and festivals and these said premises can be utilized for the purpose, for which the building is sought to be dismantled and re-constructed. In any case, he contends that as per the admitted position, except for the demised shop, the other premises have been dismantled and a new building, in its place stands constructed, therefore, the demised shop is not required by the respondent for the purpose, for which it is being sought to be evicted i.e. for dismantling and re-construction. He contends that a perusal of the shop and its location, as per the site plan, which has been brought on record by the respondent, would show that it is situated opposite the *Nala* and the respondent would not like to have the access to the newly constructed *Dharamshala* with latest amenities on such a location with a stinking *Nala* flowing. This he contends is apparent from the fact that the reception of the *Dharamshala* is being sought to be constructed at the place where the demised premises exists. That apart, he contends that the petitioners are only in possession of 124 sq. ft. whereas the respondent has a covered area of 42042 sq. ft., which runs into the newly constructed four storied building of the Dharmshala. His further contention is that an application was moved by the petitioners before the Appellate Authority under Order 14 Rule 5 CPC for framing of additional issues, which application has been wrongly dismissed by the Appellate Authority vide order dated 31.08.2016 without any justification, wherein an additional issue was being sought with regard to the bona-fide necessity of the respondent-Sabha based upon the pleadings apart from the

title. He, thus, prays for setting aside the impugned orders passed by the authorities below and for dismissal of the petition for eviction, as preferred by the respondent-Sabha.

I have considered the submissions made by the learned counsel for the petitioners and with his able assistance, have gone through the impugned orders as also the pleadings and evidence, which have been placed on record.

As per the pleadings, the tenanted premises was constructed more than 25 years prior to the filing of the eviction petition. A decision was taken by the Trust running the Society for dismantling the Dharamshala and constructing a new one with modern facilities and space to organize big functions as the said premises was found to have become old and not fulfilling the needs as per the personal requirements. Keeping that in view, a decision was taken in the meeting of the respondent-Sabha on 29.08.2011 vide Resolution No. 8 (Ex. P-5), whereby it was unanimously decided that Dharamshala be got demolished at the earliest and re-constructed. A Committee was constituted consisting of four members for the said purpose.

As regards the demised premises i.e. Shop of the Dharamshala Sh. Hem Chand Jain, Vice President and Sh. Sushil Jain, Vice President were appointed and authorized to initiate the required legal proceedings as per law by the above resolution No. 8 (Ex. P-5) dated 29.08.2011. A request was made to the petitioners for vacating the premises in pursuance to the decision taken by the Sabha and further for payment of rent, which was due w.e.f. 01.04.2008 but when no response was received, the respondent had to take a decision with regard to the eviction. In the meanwhile, a suit was filed by one of the petitioners against the respondent-

Sabha for permanent injunction restraining them from dispossessing the petitioners from the demised premises forcibly, in which on notice being issued, the respondent-Sabha appeared in Court and made a statement that they would not take forcible possession of the tenanted premises and will take possession only as per law. The petition having been filed, the petitioners-tenant, on receipt of notice, have deposited the amount due as rent along with arrears and in pursuance thereto, a statement was given by the counsel that this ground would not survive i.e. the non-payment of rent.

In the reply filed by the petitioners, the objections, which have been taken, have been highlighted by the counsel for the petitioners in his arguments, which have been referred to above, out of which, the basic question, which has been pressed, is that the respondent-landlord has not filed the petition after passing a proper Resolution and on this ground alone, the eviction petition deserves dismissal.

This contention of the counsel for the petitioners would not hold good in the light of the copy of the Resolution dated 29.08.2011 (Annexure P-5), which has been appended along with the petition, according to which, there is authorization given to Sh. Hem Chand Jain, Vice-President, for initiating eviction proceedings and the present petition has been so preferred through him. He has further appeared as PW1 in the witness box and supported the case of the respondent-Sabha. That apart, in the light of the judgment of this Court in **Nirmala Devi and others vs. Lala Bhola Nath Trust (Regd.) and others**, 2004 (1) HRR 270, the irregularity, if any, in the resolution passed by the Sabha for authorizing a person to file a petition before the Rent Controller authorizing a trustee to proceed with a case would not be fatal to the petition. The plea, thus, of the counsel for the

petitioners stands rejected.

The next contention, which has been raised by the learned counsel for the petitioners, is that there is no bona-fide necessity of the respondent especially when, the *Dharamshala* has been re-constructed after dismantling the same except for the demised premises, which is only 124 sq. ft. and, therefore, the purpose having been achieved by the respondent, the eviction of the petitioners is not called for. This contention of the counsel for the petitioners cannot be accepted as it has categorically come on record in the evidence, which has been led by the respondent and by the petitioners as well, when one of its witnesses, namely, Raj Kumar, who appeared as RW-1 and was produced by the petitioners although being an employee of the landlord Sabha, has categorically admitted, in his cross-examination, that there is no reception room available in the *Dharamshala*. He has gone to the extent of saying that if the demised premises is vacated, then the said area will be utilized for construction of the reception room.

It would not be out of way to mention here that it is an admitted position that the demised shop was the part and parcel of the old *Dharamshala* building and when a decision was taken with regard to dismantling of the old *Dharamshala* and construction of a new one, these premises were also included therein as a specific decision with regard to getting the demised premises evicted was taken by the respondent-Sabha.

As regards the contention raised by the counsel for the petitioners that the respondent has sufficient accommodation available with it and, therefore, the eviction would not be justified of the petitioners, suffice it to say that the respondent has been able to prove the necessity and requirement with regard to the demised premises as well especially when,

the demised premises, after demolition, is required for construction of the reception room of the *Dharmshala* as there is none as of now. It may be added here that the landlord is the best Judge with regard to his needs and requirements for which the tenant cannot dictate terms in this regard or with regard to the availability of the accommodation. The bona-fide need and requirement is to be proceeded with an assumption in favour of the landlord unless proved otherwise by the tenant by cogent and justifiable positive evidence. This is, by now, a settled preposition of law and, therefore, the contention of the counsel for the petitioners is not sustainable.

As regards the argument which has been projected by the counsel for the petitioners that it would be impractical and unacceptable for having a reception of a freshly constructed *Dharmshala* having an access facing the *Nala*, which is flowing in front of the demised premises, suffice it to say that this again is within the domain of the landlord, who is the best Judge to take such a decision. The tenant cannot take exception to the same, therefore, the plea of the counsel for the petitioners stands rejected.

A plea, which has been pressed into service by the counsel for the petitioners, is the wrongful dismissal of the application under Order 14 Rule 5 CPC for framing additional issues preferred by the petitioners vide order dated 31.08.2016 passed by the Appellate Authority. I have gone through the said order but do not find any illegality in the same as the order, which has been passed by the Appellate Authority, is correct. Authority, under the Rent Act, cannot go into the question of title of a landlord especially when, the tenancy is admitted. There is no dispute and rather admitted that the petitioners are the tenants of the respondent-Sabha.

In view of the above, finding no merit in the present revision

petition, the same stands dismissed.

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In view of the dismissal of the main revision petition, these applications have been rendered infructuous and, therefore, the same stand disposed of as such.

November 29, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes